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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 18th April, 2016

+ **MAC.APP. 145/2011**

PUSHPA SETH & ORS Appellants

Through: Mr. L. S. Chaudhary, Adv.

versus

REHMUDDIN & ORS Respondents

Through: None.

+ **MAC.APP. 256/2015 & CM APPL. 4490/2015**

MASTER HARSH SETH Appellant

Through: Mr. L. S. Chaudhary, Adv.

versus

REHMUDDIN (DECEASED) & ORS (M/S NATIONAL
INSURANCE CO LTD)

..... Respondents

Through: None.

+ **MAC.APP. 257/2015 & CM APPL. 4492/2015**

PUSHPA SETH Appellant

Through: Mr. L. S. Chaudhary, Adv.

versus

REHMUDDIN (DECEASED) & ORS (M/S NATIONAL
INSURANCE CO LTD)

..... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 19.12.2004, Pankaj Seth with his wife Pushpa Seth and their son Harsh Seth were travelling in Matiz car bearing registration no.HR-51G-2250 (the car) driven by the former (Pankaj Seth) on Delhi Jaipur highway, when the car met with an accident near Shahpura in District Jaipur, Rajsthan, it having been involved in a collision with the truck bearing registration no.HR-38G-9991 (the truck). All three persons travelling in the car were injured, Pankaj Seth dying in the consequence. Three claim petitions were preferred before the motor accident claims tribunal (the tribunal), one concerning the death of Pankaj Seth (suit no.616/2008), another concerning injuries suffered by Pushpa Seth (suit no.615/2009) and the third concerning injuries suffered by Harsh Seth (suit no.265/2009). In all the three cases, Rehmuiddin (the driver of the truck) and Hitesh Kumar Garg (the owner of the truck) were impleaded as the first and second respondents with allegations that they were jointly and severally liable to pay the compensation since the accident had occurred due to negligence on the part of the truck driver. Additionally, National Insurance Co. Ltd. (the insurer) which had admittedly issued an insurance policy against third party risk in respect of the truck was also impleaded as third respondent in each case.

2. All three claim petitions were clubbed together and an inquiry was held by the tribunal leading to a common judgment being passed on 29.07.2010 whereby the case of the claimants about negligence on the part of the truck driver was upheld and compensation payable was assessed in the sum of ₹20,52,170/- for the death of Pankaj Seth, ₹50,000/- for the injuries suffered by Pushpa Seth and ₹20,000/- for the injuries suffered by Harsh Seth. The tribunal, however, also held that Pankaj Seth had been responsible for composite negligence, the liability having been apportioned against him to the extent of 50%. On the basis of this finding, the tribunal directed the insurer of the truck to pay the compensation with corresponding interest only to the extent of 50% in favour of the claimants in each case.

3. These three appeals have been pressed to raise only one grievance; namely, that the finding of contributory (or composite negligence) on the part of Pankaj Seth was improper and incorrect, it not being borne out of the record.

4. Having heard the counsel on both sides and having gone through the tribunal's records, this court finds substance in grievances raised in these appeals.

5. The sequence of events leading to the accident were proved during the inquiry before the tribunal primarily on the basis of deposition of Pushpa Seth (PW1), who was concededly a passenger in the car driven by her late husband Pankaj Seth. She testified on the strength of her affidavit (Ex.PW1/A) which was tendered by her in evidence on 01.09.2007 and on which she offered herself for cross-examination by opposite parties on

30.09.2009. Noticeably, in the said affidavit, Pushpa Seth (PW1) testified that when the car was headed towards Jaipur from Delhi and had reached Shahpura in District Jaipur, Rajasthan, the truck which was moving ahead of the car had taken sudden sharp turn towards right side at a traffic intersection without giving any signal and though the deceased car driver (Pankaj Seth) had tried to apply brakes and to avoid collision, the car had hit against the body of the truck resulting in injuries being suffered. In spite of opportunity, no cross-examination was led against PW1 to discredit her veracity. No evidence was led by the contesting respondents in spite of opportunity. Noticeably, the truck driver was not brought in the witness box to prove any facts to the contrary.

6. The impugned judgment shows that the insurance company had placed on record copy of the report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C) which had been submitted by the local police on conclusion of investigation into the first information report (FIR) no.702/2004 that had been registered by the police station Shahpura in respect of the motor vehicular accident involving offences punishable under Sections 279, 337 and 304-A of Indian Penal Code, 1860 (IPC). According to the said report, the police having investigated the case appear to have reached the conclusion that the accident had occurred due to negligence on the part of the car driver. According to the documents relating to the said FIR and the report under Section 173 Cr.P.C, the car driver was trying to overtake the truck from the wrong side (left side) and while the truck was moving towards left for stopping at a nearby facility, the two vehicles came to be involved in collision with each other.

7. The conclusion about the contributory (composite) negligence on the part of the car driver has been reached by the tribunal primarily on the basis of impression gathered by the local police upon investigation into the FIR. The tribunal also noted in the impugned judgment that the widow Pushpa Seth (PW1) had also taken out a criminal revision petition contending that the police had closed the investigation into the FIR in order to unduly help the truck driver. It appears that the revision petition did not result in any orders contrary to the conclusion reached by the local police during investigation.

8. Undoubtedly, in a motor accident claim cases, the evidence gathered by the police during investigation into the corresponding FIR comes handy. But, it will not be proper to accept the said evidence as one representing the entire truth. The conclusions reached by the investigating police do deserve to be kept in mind while appreciating the evidence adduced before the tribunal in the inquiry into the claim petition. But, it will be wrong to proceed on the assumption that the view taken by the investigating police would clinch the issue. The tribunal is duty bound to consider the evidence brought before it and arrive at its own conclusions.

9. In the present case, as noted above, the solitary evidence brought on record was the deposition of PW1, concededly an eye witness to the sequence of events leading to mishap. Her word about the reasons for collision had gone unrebutted and unchallenged. In this view of the matter, it was wholly impermissible and unfair on the part of the tribunal to refer to the opinion of the investigating police to return a finding of contributory (or composite) negligence on the part of the car driver. Pertinent to note here

that evidence on the basis of which the police had reached conclusion contrary to what was contended by the claimants in these cases has not been shared with the tribunal. Thus, what seems to have been accepted by the tribunal is not evidence but opinion of the investigating officer. This was wholly an erroneous approach.

10. In the facts and circumstances of the case, the finding of contributory (or composite negligence) on the part of the car driver is perverse and, therefore, cannot be sustained. Thus, the appeals are allowed. The finding of contributory (or composite) negligence on the part of the car driver is set aside. It is directed that the insurance company (third respondent in each case) is liable to pay the entire compensation computed by the tribunal.

11. The insurance company is directed to deposit the balance of its liability with the tribunal within 30 days of this judgment whereupon it shall be released to the respective claimants in terms of the directions in the impugned judgment.

12. The appeals (with applications) are disposed of in above terms.

**R.K. GAUBA
(JUDGE)**

APRIL 18, 2016

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