

\$~R-107

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

Date of Decision: 25.05.2016

+ **MAC.APP. 715/2007 and CM No.17090-17091/2007**

GENERAL MANAGER RAJASTHAN STATE
ROADWAYS TRANSPORT CORPORATION Appellant
Through: Ms. Ritu Bhardwaj, Advocate

versus

PRABHA DEVI Respondent
Through: None

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Manoj Kumar and his wife Prabha Devi were travelling in Palio car bearing registration No.DL 8CG 9224 (the car) with certain other members of the family on way from Delhi to Jaipur on 03.07.2004. It is common ground on both sides that at a place close to Sabi Pulia in front of hotel of Mali Ram the stretch of the road meant for traffic from Delhi to Jaipur was closed for road repairs, on which account the traffic had been diverted on to the other lane meant for traffic from Jaipur to Delhi. While moving on the said stretch of the road, the car was involved in a head-on collision with bus bearing registration No.RJ 17P 0720 (the bus) of Rajasthan State Road Transport Corporation (RSRTC). As a result of the collision, both Manoj Kumar and Prabha Devi suffered injuries, the injuries of Manoj Kumar including fracture of both bones of the right leg with compound fracture of

shaft humerus bone and fracture of the right hip (as revealed by medical record, Ex.PW2/1 and PW3/1). Both the injured persons were moved to the hospital in Jaipur from where Manoj Kumar was first shifted to another medical facility in the same city and later brought to Delhi. His condition remained critical and he ultimately succumbed to injuries on 25.07.2004. Two claim cases were instituted on 25.10.2005, one (suit No.92/06) for the injuries suffered by Prabha Devi, and the other (suit No.93/06), on account of death of Manoj Kumar. In both case RSRTC and Kartar Singh (driver), deployed as driver and owner of the bus on the relevant date and time were impleaded as respondents. It may be added that in the claim arising out of death of Manoj Kumar, the petitioners before the motor accident claims tribunal (tribunal) were the widow and two children of deceased Manoj Kumar, his parents having been impleaded as fourth and fifth respondents (proforma parties). Both the claim cases were clubbed for purposes of inquiry by the tribunal. It may be mentioned here that in the claim cases, it was alleged that the accident had occurred on account of the bus having come at rash speed and colliding against the car head-on.

2. *Per contra*, the respondents before the tribunal (now appellants before this Court) by their written statement contended that it was the car driver (deceased) Manoj Kumar who was negligent in view of having come on to the carriage-way meant for traffic from Jaipur to Delhi, on account of road repairs and diversion of the traffic, and having tried to suddenly overtake a truck moving in his front and thus coming in the way of the bus resulting in the collision.

3. The tribunal during inquiry allowed opportunity to both sides to lead evidence. On the issue of negligence, Prabha Devi appeared as PW1, she

apparently being an eye-witness to the occurrence, inasmuch as she was also travelling in the car with the deceased and had suffered injury in the process. On the other hand, Kartar Singh (the driver of the bus) was examined (as R2W1) mainly to depose the facts along the lines of the pleadings in the written statement.

4. The tribunal, by common judgment dated 20.12.2006, returned a finding to the effect that the accident had occurred due to negligence on the part of the bus driver. It proceeded to calculate and award compensation in the sum of Rs.20,24,000/- on account of death of Manoj Kumar and Rs.77,000/- as compensation for injuries of Prabha Devi, directing the appellants to pay jointly and severally.

5. By the appeal at hand, common to both the cases, the appellants seek to assail the finding on the issue of negligence. It is argued that the carriage-way meant for traffic from Delhi to Jaipur having been closed on account of road repairs, the car had come into the wrong lane and, thus, there was an onus on the car driver to be careful. It is submitted that the evidence of Kartar Singh (R2W1) clearly shows that the car driver had tried to overtake a truck moving ahead of him and in that process had suddenly come in the way of the bus resulting in the head on collision. It is further argued that the medical evidence indicates that the deceased had been discharged on 12.07.2004 and having regard to the nature of injuries suffered which, in the opinion of Dr. Mahesh Kaith (PW2), were not dangerous, it cannot be conclusively said that the death had occurred on account of injuries suffered in the accident.

6. Having heard the learned counsel for the appellant and having gone through the record, this Court finds no substance in any of the above-mentioned contentions.

7. The tribunal has noted the evidence led on both sides at length and had examined it acutely. It is noted that it is the car which was in the lane actually meant for traffic from the opposite direction. But then, the car driver had full justification for entering the said wrong lane. Concededly, the carriage-way meant for movement of traffic from Delhi to Jaipur had been closed on account of road repairs. Thus, the car driver had no option but to follow the diversion of traffic and fall into line with the other vehicles moving towards Jaipur. A copy of the site plan prepared by the local police during investigation of the corresponding criminal case was submitted with other connected materials on record. The site plan (page 179 of suit No.93/06) shows that having entered the carriage-way meant for traffic from Jaipur to Delhi, the car was keeping close to the central verge. Since one carriage-way only was open to traffic, this was the appropriate choice taken by the car driver. After all, he would be expected to be moving on the extreme left of the road, since the road's limited space had to be shared by motor vehicles moving in both directions. The site plan graphically shows that the bus which was actually moving on the extreme left of the road had come into the inner lane meant for fast traffic. In these circumstances, it is the bus which had suddenly changed the lane so as to collide head-on against the car rather than the car striking against the bus in the process of overtaking another vehicle moving ahead of it.

8. For the foregoing reasons, the plea of negligence on the part of the car driver must be rejected. The tribunal has taken a proper view in holding the

bus driver responsible for the head-on collision. The said finding is, thus, confirmed.

9. Coming to the issue of nexus between the injuries suffered in the accident and the death, all that needs to be said is that the record clearly shows that the death had occurred within a space of 22 days of the injuries being suffered. PW2 may have stated during his testimony that the injuries were not dangerous. Ordinarily speaking, multiple fractures in the body may not be immediately life threatening. But then, as noted by the tribunal in the impugned judgment, there is nothing on record to show that the deceased was suffering from any other ailment which may have led to his sudden death. He may have been discharged for the time being from the hospital on 12.07.2004. But, the evidence also shows that his condition became critical and he had to be re-hospitalized immediately whereafter he died. Clearly, the death cannot be attributed to any reason other than the injuries suffered in the accident.

10. No another point was pressed at the hearing on the appeal.

11. The appeal being unmerited is dismissed.

12. The appellants must satisfy the awards in both the cases by requisite deposits with the tribunal.

13. The registry shall release the statutory amounts, if paid, after confirming that the awards have been satisfied.

(R.K. GAUBA)
JUDGE

MAY 25, 2016
VLD