

\$~R-102 to 106

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

Date of Decision: 24.05.2016

+ **MAC.APP. 714/2007**

JASBIR SINGH AND ANR APPELLANTS

Through: None

versus

MANGE RAM AND ORS. RESPONDENTS

Through: Mr. M.K. Sinha, Advocate

+ **MAC.APP. 717/2007**

JASBIR SINGH AND ANR APPELLANTS

Through: None

versus

ACHLA RAM AND ORS. RESPONDENTS

Through: Mr. M.K. Sinha, Advocate

+ **MAC.APP. 719/2007**

JASBIR SINGH AND ANR APPELLANTS

Through: None

versus

ACHLA RAM RESPONDENT

Through: Mr. M.K. Sinha, Advocate

+ **MAC.APP. 3/2008 and CM No.193/2008**

JASBIR SINGH AND ANR. APPELLANTS

Through: None

versus

DARIYA

..... RESPONDENT

Through: Mr. M.K. Sinha, Advocate

+ **MAC.APP. 4/2008 and CM No.231/2008**

JASBIR SINGH AND ANR

..... APPELLANTS

Through: None

versus

SARIYA

..... RESPONDENT

Through: Mr. M.K. Sinha, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 12.04.2004, a motor vehicular accident occurred at about 7.40 p.m. in the area of Navkar Farm house, Bijwasan, admittedly involving two motor vehicles, one a tractor trolley bearing registration no.HRP 9878 (tractor trolley) and the bus bearing registration no.DL-1PA-0376 (bus). A number of persons were travelling in the tractor trolley, they including Mange Ram, Kasturi, Achla Ram, Saria, Kishore, Dariya, Bihari Lal Mishra. All of them suffered injuries and Kasturi died in the consequence. Seven accident claim cases were filed, one MACT case (suit no.292/2006) preferred by the dependent family members of the deceased Kasturi seeking compensation on account of her death, and the others (suit no.288/2006,

289/2006, 290/2006, 291/2006, 293/2006 and 294/2006) by Achla Ram, Mange Ram, Dariya, Bihari Lal Mishra, Kishore and Saria respectively for compensation on account of injuries suffered by them. In the said cases, the appellants herein were impleaded as party respondents on the averments that they were driver and owner respectively of the bus, the accident having been caused allegedly on account of negligent driving of the bus by the first appellant.

2. The Oriental Insurance Co. Ltd. was also impleaded as one of the respondents in each case on the averment that the bus was insured against third party risk with the said insurance company. This plea, however, was not proved at the inquiry.

3. The Motor Accident Claims Tribunal(tribunal) clubbed all the seven cases and held inquiry and decided them by a common judgment rendered on 03.07.2007. A finding was returned that the accident had occurred due to negligent driving of the bus. While case for compensation filed on behalf of Bihari Lal Mishra was dismissed, the other six claim cases were allowed. While compensation in the sums of ₹ 2,93,000/- was awarded on death of Kasturi, compensation in the sum of ₹ 37,270/-, ₹ 28,589/-, ₹50,041/-, ₹ 7000/- and ₹12,950/- were awarded for injuries suffered by Achla Ram, Mange Ram, Dariya, Kishore and Saria respectively.

4. The award in the case of Kishore seems to have attained finality as no appeal appears to have been preferred.

5. These five appeals were filed by the driver and owner of the bus challenging the awards in the claim cases on account of death of Kasturi and

for injuries suffered by Mange Ram, Achla Ram, Dariya and Sariya respectively.

6. These appeals were admitted and directed to be shown in the category of regular matters, to come up on their own turn as per proceedings recorded on 24.04.2008. Since no one appeared for the appellant on the several subsequent dates when MACA 714/2007 and 717/2007 were taken up, the said appeals came to be dismissed in default on 25.05.2009 and 31.08.2009 respectively. On applications for restoration subsequently moved, the appeals were restored by similar orders passed on 09.02.2010. By subsequent orders dated 30.11.2010, these appeals were again directed to be put in the category of regular matters. Once again, when these appeals are taken up, no one has been appearing on behalf of the appellant. This has been the state of affairs on the previous dates as well. Since these appeals include the oldest appeals on the board of this court, there is no reason why the hearing should be deferred yet again. The learned counsel for the claimants in these appeals has been heard and the record perused.

7. It is noted that all these appeals have been filed on identical grounds mainly to question the finding about the negligence on the part of the bus driver.

8. A perusal of the record shows that, in order to prove their case, the claimants had examined Achla Ram (PW-1), Bihari Lal Mishra (PW-2), Mange Ram (PW-3), Sariya (PW-4) and Dariya (PW-5). On the other side, the first appellant Jasbir Singh had appeared in his own defence (DW-1) besides relying on the evidence of Madan Sagwan (DW-2). SI Jagpal Singh (RW-1), the Investigating Officer of the FIR (first information report)

No.76/2004 of PS Kapashera which had been registered respecting the motor vehicular accident in question was also examined to prove the documents relating to the evidence gathered during investigation. The impugned judgment shows that the tribunal considered the evidence thus led in entirety and concluded that the accident had occurred because the bus coming from the rear side at rash speed had hit the tractor trolley causing it to turn turtle resulting in injuries to all the claimants and death of Kasturi. It is noted that the first appellant appearing as DW-1 had claimed that the bus had gone out of order and required to be repaired and for such purposes it was being towed with a tempo from Rangpuri on the way to Najafgarh. It was his claim that when the two vehicles had reached the place where the collision took place the tempo had also gone out of order and thus, the bus had to be parked and the tempo was detached for efforts to be made to arrange another vehicle for towing the bus upto the workshop. It was the version of the first appellant (DW-1) that he had left the spot to return after one hour to find the tractor trolley having collided against his stationery bus. The tribunal disbelieved this evidence and accepted the version of the aforementioned witnesses on the side of the claimants to return a finding on the basis of which the appellants were held liable to pay the compensation.

9. In the appeal, reference is made to daily diary (DD) entry no.24A recorded at 7.52 p.m. on 12.04.2004 in police station Kapashera wherein reference was made to a collision between the bus and a truck. The investigating officer as RW-1 is on record to affirm that the accident had actually involved the tractor trolley and the bus. The first appellant appearing as DW-1 himself also spoke of collision between the bus and the

tractor trolley. With reference made to no vehicle in the nature of a truck in the pleadings or evidence of both sides, the above noted discrepancy in the initial DD entry recorded by the police is of no consequence.

10. The appellants submit that the tractor was damaged from its front side and its steering wheel was also broken, its left rear wheel having got burst. These circumstances are of no import in as much as the site plan (Ex. PA) prepared by local police clearly shows that the tractor trolley had been hit by the bus from the rear side.

11. On careful appraisal of the evidence on record, this court finds that the tribunal had considered the evidence properly and reached appropriate conclusions on the question of negligence. In these circumstances, the appeals are unmerited and liable to be dismissed. Ordered accordingly.

12. Stay against execution stands vacated. The claimants are at liberty to enforce the awards by appropriate proceedings before the tribunal. Statutory deposits, if made, shall be paid to the claimants towards part satisfaction of their entitlement to compensation.

14. The appeals and the pending applications are disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 24, 2016/yg