

\$~R-398

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

Decided on: 3rd November, 2017

+ MAC.APP. 871/2011

SHEELA & ORS.

..... Appellants

Through: None.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. A.K. Soni, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Ranbir Sharma was driving a three wheelor scooter bearing registration no. HR 38 E 8022 (TSR) on 13.03.2002 and at about 4.00 p.m. was crossing an unmanned railway crossing at railway *Phatak* no. 14, Prem Nagar, near Mundka Railway Station when his TSR was hit by a railway train (Janata Express), driven by Dev Raj (RW1), Rajinder Sharma (RW2) being the guard deputed by the railways on the said train. As a result of the impact, Ranbir Sharma suffered injuries which proved to be fatal. His wife and other members of the family dependent on him, they being the appellants (collectively, the claimants), instituted accident claim case (suit no. 18/06/02) on 28.05.2002 before the Motor Accident Claims Tribunal, Delhi, impleading the Union of India through its General Manager, Head Quarters office (claims branch) as the first respondent, in addition to

Oriental Insurance Company Limited, it being the insurer against third party risk of the TSR as the second respondent. The claim case was resisted by both the respondents and was decided by judgment dated 20.09.2007. It may be added here that the tribunal did not fasten any liability on the insurance company since it could not be treated as a case of third party claim, the insurer being the entity which had issued insurance policy in respect of the TSR which was driven by the deceased himself. It may be mentioned here that the exoneration of the insurance company has not been challenged and, therefore, has attained finality.

2. The issue of maintainability of accident claim case against the backdrop of facts noted above arose on preliminary objections being taken, it forming the subject matter of issue framed. The tribunal answered the said issue in favour of the claimants. Since Union of India (first respondent) did not challenge the correctness of the said finding, the appeal at hand being of the claimants seeking enhanced compensation, this Court ought not delve into the correctness of the said view taken by the tribunal.

3. During the inquiry, the claimants had examined an eye witness Ram Swaroop (PW-2) who deposed on the strength of his affidavit (Ex.P2), this in addition to the record of investigation by the police as brought in through the official witness Head Constable Mahavir Singh (PW-3). On the other hand, the respondent examined the train driver (RW1) and the guard of the train (RW2) to bring on record its contention that there was no negligence on the part of train driver. The tribunal has concluded that it was a case of contributory

negligence on both sides and apportioned the liability equally amongst the train driver and the deceased TSR driver. It computed compensation in the sum of Rs. 6,00,000/- that could be awarded but directed first respondent, Union of India to pay 50% of the said amount on account of finding of contributory negligence. The compensation determined by the tribunal is based on calculation of loss of dependency on the assumed income with the help of minimum wages (Rs.3100) and on the multiplier of 15, with deduction of one-third ($1/3^{\text{rd}}$) on account of personal & living expenses.

4. The appeal of the claimants sought compensation to be enhanced and the finding on the issue of contributory negligence to be set aside. It was admitted and put in the category of 'regulars', to be taken up in due course as per order dated 29.01.2013. When it is taken up for hearing there is no appearance on either side. In view of the absence of counsel for appellants and for respondent Union of India, only the afore-mentioned two contentions raised in appeal are considered.

5. On perusal of the tribunal's record, this Court finds no good reason to disturb the finding on the issue of negligence on the part of deceased. The evidence of PW-2 about the deceased TSR driver having taken the precautions by looking in each direction before attempting to cross the railway lines is, *per se*, not acceptable. It is not a case where he was driving on a public road where the collision took place with other objects or vehicles or individuals. It is a case where the TSR driver knew that he was attempting to cross an unmanned railway line. Having regard to the fact that the accident had occurred

at 4.00 p.m., it being not a case, or time, of poor visibility, judicial notice being taken of the fact that railway lines generally follow a straight path and since no objects conceivably would block the view on either side, it not being difficult to see an incoming train, particularly on account of the noise that it would create while in motion, negligence of TSR driver is writ large on the record of the case.

6. There is no error found committed by the tribunal in calculating the compensation.

7. The appeal, therefore, is devoid of substance and is dismissed.

NOVEMBER 03, 2017
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R.K.GAUBA, J.