

\$~R-559 & 560

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 28th November, 2017

+ **MAC.APP. 806/2012**

FAKIR CHAND TANEJA & ORS Appellants
Through: Mr. Vikas Jain, Advocate.

versus

SUDAMA GUPTA & ORS Respondents
Through: Mr. Pradeep Gaur, Advocate for
R2.
Mr. A.K. Soni, Advocate for
R5.

+ **MAC.APP. 951/2012**

THE ORIENTAL INSURANCE CO. LTD.Appellant
Through: Mr. A.K. Soni, Advocate.

versus

FAKIR CHAND TANEJA & ORS Respondents
Through: Mr. Pradeep Gaur, Advocate for
R8.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Sunil Taneja, working as Assistant Vice President (Exports) in a private company (Maral Oversees Limited), then aged 36 years, was travelling as a passenger in a motor vehicle described as Tata Qualis, bearing registration No. MP-09V-6753 (the car), on 03.02.2007 from

District Khargone, Madhya Pradesh to Shirdi in Maharashtra. At about 7.30 a.m., when the car had reached the area of Babhalephata on National Highway No.3, within the jurisdiction of Police Station Sindkhera, District Dhule, it was involved in a head on collision with Tata truck bearing registration No. MH-04-CP-357 (the truck). As a result of the impact, Sunil Taneja and the car driver died on the spot. The local police registered a criminal case (FIR) and proceeded with the investigation.

2. The members of the family dependent upon Sunil Taneja (collectively, the claimants), instituted accident claim case (MACT Suit No. 357/10), on 02.04.2007 impleading, amongst others, the insurer of the truck as party respondent, this in addition, of course, to the driver and owner of the truck besides the owner and insurer of the car, the driver of the car though shown in the array having expired in the accident. On conclusion of inquiry, the Tribunal, by judgment dated 21.05.2012, held that the accident had occurred due to negligence on the part of the truck driver. It awarded compensation in the total sum of Rs.1,01,50,000/- and directed the insurer of the truck to pay the same with interest.

3. The insurer of the truck, by its appeal (MAC. Appeal No. 951/2012), has challenged the said judgment of the Tribunal on the ground that the liability should also have been fastened on the car driver and, thus, the responsibility to pay compensation should have been apportioned.

4. *Per contra*, the claimants by their appeal (MAC. Appeal No. 806/2012), seek enhanced compensation on the ground that the

income of the deceased was wrongly taken as Rs.50,000/-, this resulting in error in the calculation of loss of dependency.

5. The learned counsel on all sides have been heard and with their assistance the record perused.

6. The claimants had examined Kishan Dattu Patil (PW-2), who runs a hotel in the name of Kishan Hotel in the vicinity of the place of accident, as an eye-witness, his evidence showing that the collision had taken place when the truck driver while trying to overtake another vehicle had come in the path of the car, he having used excessive speed and this resulting in the collision. On the other hand, the truck driver was examined (as R3W1), his evidence seeking to indicate that the car driver was negligent in driving and had come in the lane of the truck all of sudden while overtaking another vehicle moving in its path. During the course of hearing, the counsel for the insurer of the truck referred to the FIR and the record relating to the investigation thereinto.

7. Having perused the evidence led before the Tribunal during the inquiry and also the corresponding record of the criminal case, particularly the site plan which was prepared during the course of investigation by the local police, translated copy whereof has been submitted with the appeal of the insurer (page 53A), this Court finds no merit in the submissions raised by the insurer of the truck. The fact that PW-2 was running a hotel in the vicinity of the accident is not in dispute. It is clear from the record that he was a signatory to the *panchnama* prepared during the course of investigation immediately after the collision. His presence is, thus, duly confirmed by the

contemporaneous police record. The evidence of R3W1 is clearly a self-serving certificate by the truck driver given to himself seeking to get absolved from the complicity in the accident. PW-2 was categorical in revealing that the truck driver had come in the path of the car and thus, in the wrong lane, this primarily being the cause for accident. The manner in which the two vehicles ended up after the collision, as revealed by the site plan referred to above, speaks volumes about the excessive and uncontrolled speed at which the truck was moving. The findings on the issue of negligence as returned by the Tribunal, therefore, do not call for any interference.

8. The learned Tribunal has given valid reasons for exclusion of certain allowances from the calculation of loss of dependency. The wife of the deceased was in government employment and would be entitled to house rent allowance. Other allowances on which reference was made being personal in nature, the calculation of loss of dependency is not erroneous. Thus, both appeals are dismissed.

9. By order dated 29.08.2012 (in MAC. Appeal No. 951/2012), the insurer of the truck had been directed to deposit the entire awarded amount, the period for compliance being later enlarged by order dated 05.11.2012. By subsequent orders, some portion of the said deposit was released to the claimants. The balance, if any, lying in deposit shall be released to the claimants in terms of the judgment of the Tribunal. If there is any deficiency, the claimants would be at liberty to move the Tribunal for enforcement.

10. The statutory deposit made by the insurer of the truck shall be refunded.

11. Both the appeals are disposed of in above terms.

R.K.GAUBA, J

NOVEMBER 28, 2017

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