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

Decided on: 5th September, 2017

+ **MAC APPEAL No. 762/2013**

LEELA RAM YADAV & ORS. Appellants
Through: **Ms. Amrita Prakash, Adv.**

versus

RAJINDER SINGH & ANR. Respondents
Through: **Mr. Kamlesh Kumar, Adv.**

+ **MAC APPEAL No. 763/2013**

LEELA RAM YADAV & ORS. Appellants
Through: **Ms. Amrita Prakash, Adv.**

versus

AMIT KUMAR Respondent
Through: **Mr. Kamlesh Kumar, Adv.**

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

JUDGMENT (ORAL)

1. Amit Kumar (first respondent in MAC Appeal No. 763/2013) was riding on the pillion of motorcycle bearing registration no. DL 4S AY 7850 (the motorcycle) driven by Pradeep Kumar on 17.10.2006 moving in the direction of Najafgarh. When the motorcycle had reached near Grain Market at about 6.16 p.m., it came to be involved in a collision with truck bearing registration no. UP 32AW4040 (the truck) driven by the first appellant (Leela Ram Yadav) in these

appeals, the vehicle belonging to Central Reserve Police Force (CRPF) and, therefore, the owner being represented in these appeals by second and third appellants. Due to the collision, the riders of the motorcycle fell down, each suffering injuries Pradeep Kumar dying in the consequence at the spot. The accident came to the notice of the local police station Najafgarh through police control room (PCR) and it was found that a third person Neeraj was also travelling on the motorcycle as a pillion rider, who came up to narrate the sequence of events and as a result FIR No. 991/2006 came to be registered on the basis of his statement, taken up for investigation for offences punishable under Sections 279/337/304 A of Indian Penal Code, 1860 (IPC). It may be mentioned here that as per the said FIR, and the evidence that came to be gathered during inquiry into the claim case, all the three riders were in the age group of 18, all class-mates studying together in the same educational institution.

2. Two accident claim cases, one (MACP 764A/2008) seeking compensation for the injuries suffered by Amit Kumar (first respondent in MAC Appeal No. 763/2013), and the other (MACP 765A/2008), brought by the parents of deceased Pradeep Kumar, they being first and second respondents in MAC Appeal No. 762/2013 (collectively, the claimants), were instituted on 06.11.2006 and clubbed for inquiry before the tribunal.

3. By judgment dated 25.02.2013, the tribunal held the first appellant constable Leela Ram Yadav (driver of the truck) to have been negligent in driving giving rise to the cause of action. The tribunal assessed compensation in both the cases and awarded Rs.

1,73,224/- as compensation to Amit Kumar (injured) and Rs. 8,01,000/- as compensation to the parents of deceased Pradeep Kumar, fastening the liability on the third appellant to pay with interest @ seven and a half per cent (7.5%) per annum from the date of filing of the petition till realization.

4. By these appeals, the correctness of the finding on the issue of negligence is questioned on the ground that the motorcycle riders were also responsible in that they had driven the motorcycle in the middle of the road causing the head-on collision, riding unauthorisedly with a third person they not having taken the precaution of wearing helmets, which neglect had resulted in serious injuries being suffered by them. The appellants also questioned the compensation awarded in death case on the ground that the loss of dependency has been worked out on the basis of potential income of Rs. 10,000/- for which there was no basis.

5. During the inquiry, the claimants examined Amit Kumar, the pillion rider (PW-1) to bring on record the version of the sequence of leading to the collision. On the other hand, the first appellant appeared in the evidence (as RW1) to depose facts to the effect that the injured persons were solely responsible for the occurrence. RW1 was categorical in testifying that the riders on the motorcycle were not wearing any helmets and that there were two pillion riders, the motorcycle moving at a high speed.

6. An appraisal of the evidence clearly brings out the element of contributory negligence on the part of the deceased motorcycle rider Pradeep Kumar and also of the injured Amit Kumar who was riding

on the pillion. Though attempt was made initially to conceal the fact that there was a second pillion rider Neeraj, also travelling on the same motorcycle, it was admitted, hesitatingly, during cross-examination by PW-1. All the three persons on the motorcycle were in the age group of 18 years and the rider (deceased Pradeep Kumar) apparently did not hold a valid or effective driving licence and thus were not supposed to be on the road on the motorcycle on his own. The cross-examination of PW-1 further brought out that the motorcycle was moving in an inner lane virtually in the face of the traffic moving in the opposite direction, *i.e.* the lane actually meant for the truck driven by the first appellant. PW-1 conceded that the truck could be seen from some distance but there was no opportunity/space for the motorcycle to be taken to the left side because of presence of other vehicles on the road. While this itself indicates that the motorcycle rider and the pillion riders had contributed to the cause of action, it cannot be said from the fact that the truck driver was also not negligent in that, he should have been at controlled speed and in a position to avoid collision, particularly, when he was in a position to notice oncoming traffic including the motorcycle.

7. In the foregoing facts and circumstances, while the finding of negligence of the first appellant is affirmed, it is held that the victims, injured Amit Kumar and the motorcycle rider deceased Pradeep Kumar had also contributed to the cause, the extent of their contributory negligence being assessed to the extent of twenty five per cent (25%). Deduction to that extent, thus, would be required to be made from the compensation which is determined.

8. The contention of the appellants with regard to the calculation of loss of dependency in the case on account of death of Pradeep Kumar, respecting the basis of notional income being unfounded, is correct. While in the death case, the tribunal has gone by the potential income without any basis, in the corresponding injury claim case of Amit Kumar, the tribunal made assessment about the loss of income due to injuries with the help of minimum wages of Rs. 3760/- per month. Two similarly placed cases have been treated differently without any justification. The loss of dependency in the case of Pradeep Kumar's death is also to be recomputed on the basis of minimum wages of Rs. 3760/- prevalent at the relevant point of time for matriculates.

9. The tribunal opted the multiplier of 14, and rightly so, having regard to the age of the claimant mother. It deducted 50% towards personal & living expenses, and rightly so, it being a case of compensation on account of death of a bachelor.

10. Thus, the loss of dependency is re-calculated as $(3760 \div 2 \times 12 \times 14)$ Rs. 3,15,840/-, rounded off to Rs. 3,16,000/-. It is however, noted that the non-pecuniary damages awarded by the tribunal are unduly low, they being in the sum of Rs. 25,000/- towards loss of love & affection and Rs. 10,000/- each towards loss of estate and funeral expenses. Following the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, Rs. 1,00,000/- is awarded towards loss of love & affection and Rs.25,000/- each is awarded towards loss of estate and funeral expense. Thus, the total compensation in the case of Pradeep

Kumar's death is calculated as (3,16,000 + 1,00,000 + 25,000 + 25,000) Rs. 4,66,000/-.

11. In view of the finding on the issue of contributory negligence as recorded above, however, the claimants in the case of death of Pradeep Kumar will be entitled to receive from the third appellant, a total sum of Rs. (4,66,000 x 3/4) Rs. 3,49,500/-, rounded off to Rs. 3,50,000/- (Rupees Three Lakhs Fifty Thousand Only).

12. Similarly Amit Kumar is held entitled to receive from the third appellant an amount of Rs. (1,73,224 x 3/4) Rs. 1,29,918/- rounded off to Rs. 1,30,000/- (Rupees One Lakh Thirty Thousand only).

13. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*], the rate of interest is increased to nine per cent (9%) per annum from the date of filing of the petition till realization.

14. By similar orders dated 20.05.2015, in each of these appeals, the appellants had been directed to deposit the entire awarded amount with upto date interest with UCO Bank, Delhi High Court Branch, within the specified period as a pre-condition to stay against the execution of the award by the tribunal. While in the case of death of Pradeep Kumar, by the said order in MAC appeal No. 762/2013, Rs. 1,00,000/- each were released to the first and second respondents, by corresponding order in MAC Appeal No. 763/2013, fifty per cent (50%) of the awarded amount was released to the first respondent in that matter. The registry shall now calculate the balance amounts payable to the respective claimants in terms of the awards, as modified

above and refund the excess in deposit with corresponding interest to the appellant.

15. Both appeals are disposed of in above terms.

16. The statutory deposits shall also be refunded.

R.K.GAUBA, J.

SEPTEMBER 05, 2017

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