

\$~R-615

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

Decided on: 01st December, 2017

+ **MAC APPEAL 1079/2012 and CM 17144/2012**

RAJVIR SINGH & ANR. ... Appellant

Through: Mr. Jatinder Kamra, Advocate

versus

RAGHUVVEER SINGH & ORS. Respondents

Through: Ms. Suman Bagga and Ms.
Anjali Chawla, Advocates for
R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The accident claim case (suit no.703/2010), was instituted on 03.10.2007, by the appellants (claimants) seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988, on account of death of their bachelor son, Amit Kumar, in a motor vehicular accident that occurred on 15.09.2007, in the area of Sadiq Nagar in Delhi, involving collision between the two vehicles; one being Maruti car bearing registration no.DL-3CF-8654 (car) and, the other, truck bearing registration no.RJ-32G-1927 (truck). As a result of the said collision, Sarabjeet Singh @ Monu, driver of the car also died. The deceased Amit Kumar, on account of whose death the claim case was filed, was travelling with him in the front seat of the car besides the

driver. It is stated that Gaurav Kapoor (PW-3) was also a passenger in the car at the relevant point of time. It is undisputed that the car was heading from North to South direction on a road which is divided by a central verge. It is also not disputed that the truck was in the carriage way on the other side of the central verge meant for movement of traffic from South to North. In the claim case before the tribunal, the driver, owner and insurer of the truck were impleaded as the first, second and third respondents, in addition to the owner of the car impleaded as the fourth respondent. The said set of parties have also been impleaded as the respondents in the appeal in the same order. The claimants had pleaded that it was a case of composite negligence.

2. The Motor Accident Claims Tribunal (Tribunal), by judgment dated 01.05.2012, however, held that the accident had occurred solely due to the negligence on the part of the car driver. It awarded compensation but fastened the liability on the fourth respondent (owner of the car) to pay, there being no insurance cover taken out in its respect.

3. By the appeal at hand, the claimants reiterate that it was a case where the liability should also have been fastened on the truck driver and, consequently, the insurer of the truck (third respondent) called upon to pay.

4. Having heard the learned counsel on both sides, this court finds no merit in the appeal.

5. The learned tribunal has dealt with the issue at length in (paras 14 to 18, 21 and 22 of) the impugned judgment which needs to be extracted as under :-

“14. In the instant case the petitioner has examined PW-3 Sh. Gaurav Kapoor. He was travelling with the deceased in the same car. He has stated that on 15.09.2007 at about 1.30/2.00 AM he was going on the service road of Greater Kailash. When he was in process of taking U-Turn after giving indicator, a speeding truck bearing no.RJ32 G 1927 came from behind and hit his car. As a result, Amit who was sitting beside the driver of the Esteem car died on the spot. He stated that Sarabjeet Singh @ Monu was driving the car who also breathed last on the spot. He stated that the accident took place due to the high speed of the truck and he too received injuries in the accident. He denied that the truck was stationary on the opposite side of the road and it was the Esteem car which first hit the divider and then went underneath the truck which was parked across the road.

15. In this case an Untrace Report after investigation U/s. 173 Cr. PC was filed by the SHO. He had got the spot and the vehicles photographed and mechanically inspected. His investigation revealed that Monu was driving the Maruti car no.DL 3C F 8654 in a rash and negligent manner who after breaking the divider came on the other side of the road from where the truck was coming. It hit the truck resulting in the death of Monu and Amit and injuries on the passengers sitting in the car. Status report was filed by the SHO inter-alia that the persons (injured) who were travelling in the car had stated to the I.O. that when their car reached near Moolchand Flyover J.B. Tito Marg, the car driver lost his control over the car and it jumped over the central verge and hit the truck which was coming from the other side on his right carriage way. Due to which the car got damaged badly and they all sustained

injuries. It was stated that the accident had occurred due to rash and negligent driving of Monu, the car driver.

16. CW-1, I.O. SI Janak Lal was examined. He stated that on receipt of information about the accident, he went to the spot and reached there at 1.30 AM. He found the car and the truck in accidental condition. He got the spot photographed and seized the vehicles. On enquiry, he came to know that the car had come from the side of Moolchand hospital for Sadiq Nagar. The boys in the car were under the influence of liquor. Near the office of Jal Board, the car broke the railing of the central verge and went on the other side. A truck had come from the opposite side on its correct lane and it struck against the car. He stated that the investigation revealed that the car driver was at fault. He placed on record the site plan Ex. CW1/A prepared during the investigation. He was confronted with a site plan mark CW1/B which was also placed with the file who after seeing stated that it was not a correct plan but a rough plan. He denied that the site plan Ex. CW1/A was not a correct plan and he made it after thought to favour the truck driver.

17. I have seen the photographs of the place of accident from the file summoned which go to show that there was a head on collision and there were skid marks of the truck on the road. The car after jumping the central verge had come on the other side of the road from where the truck was coming. The car was badly damaged. The photographs are in line with the site plan Ex. CW1/A prepared by the IO. In this case statements of the witnesses were recorded who had stated that the deceased Monu was driving the car in a rash and negligent manner. He lost control over the car and hit the divider and turned the car to the right

side. The car went on the other lane and struck with a truck which was coming from the opposite direction.

18. The site plan, photographs and the report U/s. 173 Cr. PC is contrary to the deposition made by PW-3. PW-3 has stated that when the car was taking a U-turn the speeding truck which was coming from behind hit the car. Photographs and the other documents show that there was a head on collision and the deceased driver was not taking any U-turn. Although a suggestion was given by the counsel for insurance company that the truck was stationary on the opposite side but this suggestion was also contrary to the facts as the facts and circumstances show that the truck was coming from the opposite direction and it was in motion at the time of accident.

x x x

21. In the present case, two vehicles are involved in the accident but the facts and circumstances of the case show that the driver of the Esteem car was negligent. Thus, it cannot be said to be a case of contributory negligence as to apportion the amount proportionate to the responsibility of the owner and the driver of one vehicle and that of the other.

*22. For the foregoing reasons, I am of the view that the accident had occurred due to rash and negligent driver of Esteem car bearing no.DL-3CF-8634 by the deceased Monu resulting in the death of Amit Kumar. It has come on record that the Esteem car was owned by respondent no.4. However, it was not insured. Thus, the respondent no.4 is vicariously liable to compensate the petitioners. In the case of **Yashpal Luthra Vs. United India Insurance Company Ltd., III (2010) ACC 130** it was held that the*

occupants of the offending vehicle are entitled to claim compensation against the insured / insurer of the said car. In the present case as is evident from the record the esteem car was not insured.”

6. In the opinion of this court the learned tribunal has correctly read and appreciated the evidence to reach appropriate findings. During the course of hearing, the counsel for the claimants showed to the court four photographs of the scene of occurrence, photocopies whereof were submitted by him for record. The said photographs also speak volumes about the negligence on the part of the car driver, there being no negligence whatsoever on the part of the truck driver. It can be clearly seen that the car ended up with wheels on both sides of the central verge. There is no explanation offered for such position of the car.

7. The appeal and the pending application are, therefore, dismissed.

DECEMBER 01, 2017

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R.K.GAUBA, J.