

\$~15 to 20

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

Decided on: 07th September, 2017

+ MAC.APP. 540/2015

RELIANCE GENERAL INSURANCE CO LTD Appellant

Through: Mr. A.K. Soni, Advocate

versus

DILRAJ KAUR & ORS

..... Respondents

Through: Mr. Navneet Goyal, Adv. for R-1
to 5

+ MAC.APP. 58/2016

DILRAJ KAUR & ORS

..... Appellants

Through: Mr. Navneet Goyal, Advocate

versus

RELIANCE GENERAL INS CO LTD
& ORS

..... Respondents

Through: Mr. A.K. Soni, Advocate for R-1

+ MAC.APP. 984/2015

RELIANCE GENERAL INSURANCE CO LTD Appellant

Through: Mr. A.K. Soni, Advocate

versus

NEELAM KAUR & ORS

..... Respondents

Through: Mr. Navneet Goyal, Advocate for
R-1 & 2

+ MAC.APP. 53/2016

NEELAM KAUR & ANR Appellants

Through: Mr. Navneet Goyal, Advocate

versus

SATISH KUMAR YADAV & ORS Respondents

Through: Mr. Amol N. Suryavanshi, Adv
for R-3 /insurance company

+ MAC.APP. 1029/2015

RELIANCE GENERAL INSURANCE CO LTD Appellant

Through: Mr. A.K. Soni, Advocate

versus

USHA RANI & ORS Respondents

Through: Mr. Navneet Goyal, Advocate for
R-1 & 2

+ MAC.APP. 631/2016

USHA RANI & ANR Appellants

Through: Mr. Navneet Goyal, Advocate

versus

RELIANCE GENERAL INSURANCE CO LTD
& ORS

..... Respondents

Through: Mr. A.K. Soni, Advocate

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

JUDGMENT (ORAL)

1. On 02.08.2013 Daljeet Singh who was driving a car bearing registration no.DL-4C-AD-0897 (car) from Sonapat in Haryana towards Delhi carrying along as passengers, besides others, Sarabjeet Singh and Dinesh Kumar. The car had reached near Sukhdev Dhaba at Murthal, Sonapat on GT Road at about 4.30 -4.45 p.m. when it came to collide from behind against a truck bearing registration no.HR-69-3944 (truck) stationary in the middle of the road. Daljeet Singh, car driver and the said two named passengers, Sarabjeet Singh and Dinesh Kumar, suffered injuries, each dying in the consequence. Three accident claim cases were instituted before the Motor Accident Claims Tribunal (Tribunal), one, (suit no.345/2013) by the mother and father of the deceased car driver Daljeet Singh, his wife Ranjeet Kaur @ Rajni Hajra having been impleaded as proforma respondent no.4 before the tribunal in the said case; second, (MACT no.180/2013) by the wife, son, parents and sister of deceased Sarabjeet Singh; and third, (suit no.298/2013) by the mother and father of deceased Dinesh Kumar, the last being a bachelor. In each of the said three claim cases Satish Kumar Yadav son of Hari Nandan Yadav, driver of the truck and Satish Kumar son of Shyam Lal, owner of the truck and Reliance General Insurance Co. Ltd. (insurer) of the truck were impleaded as party respondents. Each of the said claim cases were put to inquiry

and decided by separate judgments of the respective tribunals, the decision in the case of claim on account of death of Sarabjeet Singh having been rendered on 06.04.2015 and the decisions in the other two cases having been rendered by the same tribunal on 17.10.2015. Noticeably, in the judgment whereby the tribunal decided the claim case of Neelam Kaur and others on account of death of Daljeet Singh (car driver), a finding was returned that he was also negligent, contributory negligence on his part having been assessed at thirty per cent (30%). The compensation in each case was determined and the insurer of the truck was called upon to pay the same with interest at the rate of nine per cent (9%) p.a. to the respective claimants, the direction to such effect in the case of claim on account of death of Daljeet Singh being restricted to seventy per cent (70%) on account of the element of contributory negligence.

2. Both the insurer of the truck and claimants in each case, feeling aggrieved, have come up with these appeals which have been taken up and heard together since they arise out of the same background facts, some of the questions being common.

3. The appeals of the insurer of the truck (MACA 540/2015, 984/2015 and 1029/2015) are pressed on common ground that the element of contributory negligence should have been factored in even in the claim cases on account of the death of Sarabjeet Singh and Dinesh Kumar.

4. *Per contra*, the claimants in the case on account of death of Daljeet Singh have argued on the basis of their cross appeal (MACA 53/2016) that the finding on the question of contributory negligence is

based on incorrect reading of the evidence and that the truck driver only was responsible since he had left the truck parked in the middle of the road, abandoned without any caution sign.

5. The Tribunal by the judgment in the claim case on account of death of Daljeet Singh has found the truck driver responsible for the accident by the following reasoning :-

“...On the basis of testimony of PW3 Mandeep (who was one of the occupants of the car), it can be safely inferred that the truck no.HR 69 3944 was parked in the middle of the road without any indication on a highway which itself is a negligent act and in all probability led to the unfortunate accident. The duty lay with the driver of the stationary truck while parking the same in the middle of the road on a highway to ensure that proper indications or safety measures were taken to reflect to the approaching traffic that the truck was stationary. However, unfortunately, no steps were taken in this regard which points out to clear negligence on the part of respondent no.1. In the facts and circumstances, I am of the considered opinion that the accident took place due to negligence parking of truck no.HR 69 3944”

6. In the same judgment, the tribunal considered the question of contributory negligence on the part of the car driver apportioning the liability thus :-

“...In the present case the fact cannot be ignored that the accident had taken place in a broad day light and deceased Daljeet Singh was expected to drive at a reasonable speed even if on a highway. The fact that the car struck a stationary truck from the back side and in fact stuck underneath the truck in the centre reflects that the car was at an excessive speed which could not be

controlled by the deceased which contributed in the unfortunate accident, though the primary negligence was on the part of the driver of the truck no.HR 69 3944 in parking the same without any indication, as already discussed above. The same is corroborated from testimony of PW-3 who clarified that he had seen the truck at a distance of 50 paces and the car had undergone beneath the truck. Further, there were skid marks at the spot of the accident spread over 40 paces which reflects that the car driven by deceased Daljeet Singh was at an excessive speed. In the facts and circumstances, I am of the opinion that though the accident had resulted due to negligent parking of truck no.HR 69 3944 but at the same time deceased Daljeet Singh himself contributed to the accident as the vehicle was also driven by him at an excessive speed and the negligence is apportioned as 30% on the part of deceased Daljeet Singh and 70% on the part of respondent no.1 in negligently parking the truck no.HR 69 3944...”

7. This court has perused the evidence which was led and found that the tribunal has appreciated the evidence correctly. There is no dispute now that the truck driver was negligent in that he had left the vehicle stationary in the middle of the road without taking any pre-cautions to signify to the other road users about his vehicle having broken down or rendered immobile. There is also no doubt, as is borne out from the evidence, as to neglect on the part of the car driver in taking proper pre-cautions. The accident had occurred in broad day light. The car driver was moving on the highway. He would have noticed the truck from a sufficient distance and therefore, there is no reason why he could not avoid the collision. As noted by the tribunal in the judgment in the para extracted above, the skid marks left behind

by the car reflect the excessive and uncontrolled speed at which the vehicle was moving.

8. While the finding of contributory negligence on the part of the Daljeet Singh leading to thirty per cent (30%) being deducted from the compensation awardable in the claim case pertaining to him, is affirmed, the insurer of the truck cannot avail the benefit of this finding in the other two cases for the reason it was a case of composite negligence and the claimants in those cases being third parties, it was a matter of their choice as to who to proceed against. Noticeably, neither the owner of the car nor its insurer were impleaded at any stage of the proceedings before the tribunal in such cases. It is too late in the day to now raise the issue on this aspect. The plea of the insurance company to above effect is thus rejected.

9. The computation of compensation in each of these cases is also in question. The same may be taken up one by one.

10. In the claim case on account of death of Daljeet Singh, the contention of the claimants was that he was earning his livelihood as a photographer employed with the photography business of Raj Sachdeva (PW-1) at a salary of Rs.15,500/- p.m.. It was also claimed that he was earning additionally Rs.20,000/- p.m. from business. The Income Tax Returns (IRs) for the assessment year (AY) 2005-2006, 2006-2007, 2007-2008 and 2008-2009 were submitted. These ITRs would show progressive rise in income from initial Rs.73,560/- to Rs.93,256/- on to Rs.1,01,026/- and finally to Rs.1,11,200/-. However, the ITRs for the subsequent years 2009-2010 to 2012-2013 were withheld. Concededly, no evidence was led to prove the

business income. The tribunal, in these circumstances, proceeded to assess the income of the deceased Daljeet Singh at Rs.15,500/- p.m., and rightly so, accepting the word of PW-1. The contention of the claimants that the income of Rs.20,000/- also should have been accepted as part of the earnings cannot be accepted in absence of formal proof.

11. The next contention urged by the claimants, however, relates to the multiplier which must be accepted. It had been proved that the deceased was born on 09.02.1983. He was thus 30 years five months old on the date of the death. The nearest age bracket (26-30) indicates the choice of multiplier should have been 17 rather than 16. [see *Oriental Insurance Co. Ltd. Vs. Rekha Vashisht and Ors.*, MACA 636/2009, decided on 18.02.2016]. The loss of dependency on account of death of Daljeet Singh is thus recalculated as [Rs.15,500/- x 12 x $\frac{2}{3}$ x 17] Rs.21,08,000/-. (Rupees Twenty one lakh and eight thousand only)

12. The claimants are also aggrieved with the award of Rs.1,00,000/- each towards loss of love and affection and loss of consortium to wife and Rs.25,000/- towards funeral expenses. *Per contra*, the insurer submits that award of Rs.1,00,000/- towards loss to estate is excessive.

13. Since the accident had occurred on 02.08.2013, following the dispensation in *Shriram General Insurance Co Ltd v. Usha*, MAC.APP.No.160/2015, decided on 05.05.2016, the awards of Rs.1,50,000/- each towards loss of consortium and loss of love and affection and Rs.50,000/- each towards loss of estate and funeral

expenses would have been more appropriate. Thus, modifying the award of compensation in the case of Daljeet Singh, total compensation payable is determined as [Rs.21,08,000/- + Rs.1,50,000/- + Rs.1,50,000/- + Rs.50,000/- + Rs.50,000/-] Rs.25,08,000/-. Since 70% only is to be paid on account of the element of contributory negligence, the claimants in the said case would be entitled to receive from the insurer of the truck, the total amount of [Rs.25,08,000/- x 70/100] Rs.17,55,600/-, rounded off to Rs.17,56,000/- (Rupees Seventeen Lakh Fifty six thousand only). The apportionment of the award in favour of the different claimants as determined by the tribunal shall remain undisturbed.

14. The claimants in the cases of compensation on account of deaths of Sarabjeet Singh and Dinesh Kumar have pressed their cross appeals only to seek revised non-pecuniary damages.

15. Following the above dispensation, suitable correction is made in each of the said cases. In the case on account of death of Sarabjeet Singh, similar awards under the non-pecuniary heads of damages as ordered above for the claimants on account of death of Daljeet Singh are granted in place of the non-pecuniary heads of damages awarded by the tribunal. This would mean a net increase in the award in that case by [Rs.4,00,000/- (-) Rs.3,35,000/-] Rs.65,000/- (Rupees Sixty five thousand only). The compensation on account of death of Sarabjeet Singh is thus increased to [Rs.15,36,344/- + Rs.65,000/-] Rs.16,01,344/-, rounded off to Rs.16,02,000/-. (Rupees Sixteen Lakh and two thousand only)

16. Similarly in the case of death of Dinesh Kumar, awards of Rs.1,50,000/- on account of loss of love and affection and Rs.50,000/- each on account of loss to estate and funeral expenses are granted. This would result in increase in the award in the said case by Rs.25,000/- (Rupees twenty five thousand only), raising it to [Rs.9,57,108/- + Rs.25,000/-] Rs.9,82,108/-, rounded off to Rs.9,83,000/- (Rupees Nine Lakh and eighty three thousand only).

17. The awards in each case shall carry interest as levied by the tribunal.

18. The insurance company in each case of these appeals had been directed to deposit the awarded amount with interest and out of such deposits, some portions were released by interim orders passed earlier, the remainder having been kept in fixed deposits. The balance to which the claimants are entitled, if any, shall now be released. The excess in deposit, if any, shall be refunded to the insurance company. In case the insurance company is liable to pay more sum in terms of the modified awards, it shall be obliged to deposit the same with the tribunal within 30 days making it available to be released to the claimants.

19. The statutory deposits of the insurance company shall be refunded.

20. The appeals are disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 07, 2017

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