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

Decided on: 28th July, 2017

+ MAC.APP. 402/2015
THE NEW INDIA ASSURANCE CO LTD Appellant
Through: Mr. Pankaj Seth, Adv.

versus

RAM CHANDER BAITHA & ORS Respondents
Through: Mr. S.D. Wadhwa, Adv. for
Claimants.
Mr. R.A. Iyer, Adv. for
Mr. Gautam Narayan, ASC for
GNCTD.

+ MAC.APP. 581/2017
RAM CHANDER BAITHA & ANR Appellant
Through: Mr. S.D. Wadhwa, Adv.

versus

ATUL KUMAR & ORS (THE NEW INDIA ASS. CO LTD)
..... Respondent
Through: Mr. Pankaj Seth, Advocate for
Insurance company.

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

JUDGMENT (ORAL)

1. On 11.11.2006 Nandan, son of the appellants in MAC APP.581/2017, they being the first and second respondents in MAC APP.402/2015 (hereinafter referred to as “the claimant”) was driving a

motorcycle bearing registration No.DL-3SAL-7049, going from Govindpuri to Kalkaji temple with one rider on the pillion. The motorcycle struck against the garbage loaded trolley of a tractor bearing registration No.UP-11L-1835 (the offending vehicle), it being stationary in the middle of the road at Ravidas Marg in Giri Nagar area. The collision resulted in both riders on the motorcycle suffering injuries, each of whom died in the consequence. While the parents of the pillion rider instituted accident claim case (MAC case no.546/2007) before Motor Accident Claims Tribunal (the Tribunal) at Ghaziabad, U.P. they being the residents of that city, the claimants herein being the parents of Nandan instituted accident claim case (Suit No.628/2014) before the Motor Accident Claims Tribunal (the Tribunal) in South-East District of New Delhi on 13.12.2013. In each of the said claim cases, the driver Atul Kumar, owner Lalit Walia and New India Assurance Company Limited, being the insurer of the said tractor were impleaded as respondents.

2. The Tribunal at New Delhi, by judgment dated 13.03.2015, decided the claim case of the claimants herein returning a finding that the accident had occurred on account of negligence on the part of both the drivers, *i.e.* the motorcycle rider Nandan (the deceased) and Atul Kumar (respondent in these appeals), the negligence on the part of the deceased motorcyclist having been assessed to the extent of 25%. The Tribunal awarded compensation in the total sum of Rs.6,71,544/- with interest @ 9% per annum from 18.03.2014 till realization, denying the benefit of interest for the period 23.02.2011 to 18.03.2014 in terms of

order dated 18.03.2014. The amount of compensation awarded included Rs.1 lacs towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss to estate, the balance being on account of loss of dependency.

3. The insurance company, while contesting had taken the plea that the insurance cover was in respect of tractor and not the trolley and since the trolley had been detached, the tractor moved away, the insurance company could not have been held liable. This plea was rejected by the Tribunal primarily on the reasoning that the trolley was an integral part of the tractor. Thus, the liability was fastened on the insurance company.

4. By its appeal (MAC APP.402/2015), the insurance company submitted that since the findings on facts concerning negligence on the part of the tractor driver were reached primarily on the basis of decision of the tribunal at Ghaziabad by its judgment Ex.PW1/B, the conclusions reached there should have been adopted in entirety. It is pointed out that the tribunal at Ghaziabad, by its decision dated 25.08.2004, had concluded, on appreciation of the evidence that had been led in such inquiry, that the motorcyclist was guilty of contributory negligence to the extent of 50%, in as much as he should have also foreseen the possibility of collision against the trolley stationary in the middle of the road and should have been in a position to make diversion and avoid collision. It is pointed out that the tribunal in the present case has reduced the element of contributory

negligence to the extent of 25% without any further evidence in such regard having been adduced.

5. The learned counsel for the claimants fairly conceded that since the claimants were relying on the judgment of the tribunal at Ghaziabad as the basis for returning finding for claim on principle of fault liability, the conclusions reached in the said judgment should have been adopted in toto including on the element of contributory negligence. There being concededly no evidence led to reduce the assessment of contributory negligence, the findings of the tribunal in the impugned judgment in such regard are, thus, set aside. It is held that the motorcyclist (the deceased) was guilty of contributory negligence to the extent of 50%.

6. The contention of the claimants, by their cross appeal, about inadequacy of non-pecuniary damages on account of loss to estate must be accepted. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala v. Gangalakshamma* (2015) 9 SCC 150, the award under that head is increased to Rs.25,000/-.

7. It is noted that the interest for the period 23.03.2011 to 18.03.2014 was denied, by order dated 18.03.2014, because the claimants had made amendment to the claim petition. It appears that the counsel for claimants was earlier not aware of the particulars or conscious of the need of impleadment of the owner of the tractor which led to the amendment application being moved. Since the proceedings before the tribunal had arisen out of a Detailed Accident

Report (DAR), the tribunal also could have taken the necessary steps by roping in the registered owner as a party respondent. It would be unfair to deny the benefit of interest to the claimants for such reasons. The direction denying the interest for the above mentioned period is, thus, set aside.

8. There is substance in the contention of the insurance company that the trolley was not covered by the insurance policy which had been taken out by the owner in respect of the tractor only. The fact that the trolley was not attached to the tractor at the relevant point of time makes all the difference. Even if the tractor had to be taken away for some repairs, there was no reason why the tractor should have been left in the middle of the road. Having been detached from the tractor, the trolley by itself could not be covered, by any stretch of reasoning, under the insurance policy. The driver and owner of the tractor have chosen not to appear at the hearing on these appeals. There is no reason why plea of the insurance company for recovery rights should be denied.

9. Thus, the award of compensation computed is increased to (6,71,544/- + 15,000/-) Rs.6,86,544/-, rounded off to Rs.6,87,000/-. Having regard to the conclusions reached above, the claimants will be entitled to fifty percent (50%) of the amount as compensation with corresponding interest as levied by the tribunal.

10. In terms of the earlier directions, the insurance company had deposited the amount of compensation awarded by the tribunal, out of which 10% had been released to the claimants, the balance kept in

fixed deposit receipts. The registry shall calculate the amount now payable in terms of the modified award and release the balance to the claimants, refunding the excess in deposit to the insurance company.

11. The insurance company is given liberty to take out appropriate proceedings before the tribunal to recover the amount from the respondents Atrul Kumar (driver) and Lalit Walia (owner), the driver and owner of the trolley.

12. Statutory deposit made in MAC Appeal No.402/2015 shall be refunded.

13. Mr. R.A. Iyer, Advocate representing Mr. Gautam Narayan, Additional Standing counsel for Govt. of NCT of Delhi submits that the direction in the order dated 18.05.2017 for the treatment of second respondent Kanti Devi by Delhi State Cancer Institute are being duly complied with. Mr. S.D. Wadhwa, Advocate representing the said party confirms the said fact. The needful shall continue to be done.

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

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R.K.GAUBA, J.

JULY 28, 2017

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