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

Decided on: 5th September, 2017

+ MAC.APP. 577/2017

RAM NIWAS MEENA & ANR Appellants

Through: Mr. Raghuvendra Pandey,
Advocate with Inspector Vipin
Kumar Sharma, SI C.B. Sharma
& SI Bhim Sain, PS New
Usman Pur & Inspector
Rohtash Kumar RI/NE.

versus

NEERAJ KUMAR MISHRA Respondent

Through: Mr. S.N. Parashar, Advocate

+ MAC.APP. 590/2017

RAM NIWAS MEENA & ANR Appellants

Through: Mr. Raghuvendra Pandey,
Advocate with Inspector Vipin
Kumar Sharma, SI C.B. Sharma
& SI Bhim Sain, PS New
Usman Pur & Inspector
Rohtash Kumar RI/NE.

versus

KAUSHALYA DEVI & ORS Respondents

Through: Mr. S.N. Parashar, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Neeraj Kumar Mishra (first respondent in MAC Appeal No. 577/2017) was riding on the pillion of motorcycle bearing registration no. DL 7S BC 5516 (motorcycle), driven by his brother Ranjeet Mishra on 11.05.2012, both moving from the direction of Bhajanpura where they lived during the relevant period towards Laxmi Nagar. At the turning in the area of Shahdara, Shastri Park on GT Road, at about 01.30 p.m., the motorcycle concededly came to be involved in a collision with bus bearing registration no. DL 1PC 1630 (the bus) driven by constable Ram Niwas Meena (first appellant in these appeals), it being a vehicle registered in the name of the second appellant in both these appeals (a functionary of Delhi police). Due to the impact, both persons riding on the motorcycle fell down and suffered injuries, they being shifted to Shastri Park Hospital, Govt. of NCT of Delhi where Ranjeet Mishra was declared to be brought dead while Neeraj Kumar Mishra having extensive injuries was found to be unfit for making a statement. The intimation about the collision reached the police station at New Usman Pur vide DD No. 24, logged at 2.28 p.m. on 11.08.2012, it having been routed through the police control room (PCR). The local police official ASI Om Prakash proceeded to the scene of occurrence and also visited the hospital and collected the medico legal records and, on the basis of observations of the scene, registered FIR No. 129/2012 taking it to be a case involving

offences punishable under Sections 279/337/304A of Indian Penal Code, 1860 (IPC). Two claim cases came to be instituted seeking compensation on 02.06.2012, one, by Neeraj Kumar Mishra (MACT No. 213/2012 – MACT New No. 14349/2015) and, the other, by the wife and other members of the family dependent on deceased Ranjeet Mishra (MACT No. 214/2012 – MACT New No. 14387/2012), they being first to fifth respondents (collectively the claimants) in MAC Appeal No. 590/2017. Both the cases were clubbed for inquiry and were decided by common judgment dated 27.01.2017 by the tribunal holding the bus driver (first appellant in these appeals) to be negligent leading to the mishap giving rise to the cause of action and compensation awarded in each case, fastening the liability jointly and severally on the two appellants.

2. By these appeals, the findings on the question of negligence on the part of first appellant are questioned. It is also submitted that the evidence showed that the deceased Ranjeet Kumar Mishra and the injured Neeraj Kumar Mishra were also held guilty of negligence, they having contributed to the cause of action since they did not wear helmets on their respective heads while riding on the motorcycle.

3. Submissions on both sides have been heard. The record of inquiry before the tribunal has been perused.

4. It appears that during the inquiry before the tribunal both sides took contradictory stands with regard to the collision, the claimants' case being that the motorcycle had been hit by the bus from behind, the latter vehicle having come at a very high speed without giving any caution sign and violating the traffic rules, moving in a zig-zag

manner. On the other hand, the appellants putting in contest pleaded that the bus was moving at slow speed on the left side of the road and that it is the motorcycle which had came from behind and had hit the right side rear portion of the bus resulting in the collision and as a result both the riders of the motorcycle suffered injuries, one of them dying in the process. In order to substantiate the respective contentions, the pillion rider, Naresh Kumar Mishra, appeared as PW-1 for and on behalf of the claimants, on the strength of his affidavit (Ex.PW-1/A), while the first appellant constable Ram Niwas Meena appeared as witness for the defence (R1W1), on the strength of his affidavit (Ex.R1W1/A). Additionally, both sides relied on the record of investigation of the corresponding police case referred to above, the appellant, particularly placing reliance on the mechanical inspection report of the bus (page 475 of the record of the tribunal in MACT 214/2012) it indicating slight scratches on the right rear side of the body of the bus having been noticed by the mechanical inspector on 14.05.2012.

5. Having perused the evidence of both the above-mentioned witnesses, this court finds that while the claimant's witness (PW-1), concededly an eye witness since he was riding on the pillion of the motorcycle, has been consistent and in *sync* with the version set out in the claim cases affirming that the motorcycle had been hit from behind by the bus with a forceful impact, the first appellant, appearing as R1W1, was not entirely truthful in his deposition. He referred to the bus crossing a speed breaker near traffic light at Dharampura which is not even noticed in the site plan (page 471 of the tribunal's record)

prepared immediately after the occurrence by the investigating officer during the course of investigation. The first appellant also testified that his bus was moving on the extreme left side of the road *i.e.* the lane meant for slower traffic. This, however, was contradicted by the above statement which indicated that blood stains had been found in the middle of the road which would mean the collision had taken place not in the left side slower lane but in the middle one. The tribunal's record includes photographs of the scene (pages 531-551) but these photographs have clearly been taken after the motorcycle had been shifted to side of the road. Nonetheless, they do show the presence of the bus, not on the extreme left lane, but in the inner lane thereby belying the version of R1W1.

6. If the motorcycle had struck the bus from the rear side, the injuries would be only on account of fall. In contrast, the post-mortem examination report respecting the dead body of Ranjeet Mishra (pages 481-487 of the tribunal's record) reveal as many as 17 injuries all over the body. What stands out is that in the view of the autopsy doctor, death had occurred on account of hemorrhagic shock as a result of injury to head and multiple internal organs produced by blunt force impact. The extent and nature of injuries, and their situs, affirm that the theory of PW-1 of the motorcycle having been hit by bus from behind with force making both the riders fall down and being wounded.

7. It, however, must be noted in this very context that the entire record of investigation does not indicate, not even remotely, presence of any helmet either of the rider Ranjeet Mishra or of the pillion rider

Naresh Kumar Mishra having been found either at the scene or on their person. No injury on account of impact of helmets on their respective heads if worn at the relevant point of time has been noticed either in the MLC or by the autopsy doctor. In these circumstances, mere word of PW-1 that both the riders were sporting helmets cannot be accepted. A finding must be returned that both were riding on the motorcycle without taking the precaution of wearing helmets.

8. In above facts and circumstances, while the finding of the tribunal holding the bus driver responsible for the collision cannot be questioned, it must be concluded that both the riders of the motorcycle had also contributed to the cause for the serious injuries suffered by each of them in that they did not take precaution of wearing the helmets on their respective heads. The element of contributory negligence, in the facts and circumstances, is assessed to the extent of twenty five per cent (25%). Deduction to that extent from the compensation awarded by the tribunal will have to be made. Ordered accordingly.

9. Thus, both appeals are partly allowed. The compensation determined by the tribunal in the two cases shall be paid after deducting twenty five per cent (25%) on account of contributory negligence.

10. The appellants have deposited the entire awarded amount with upto date interest in terms of the earlier order. The tribunal shall release seventy five per cent (75%) of the amount, thus deposited, to the respective claimants in terms of the impugned judgment, refunding the excess to the appellants.

11. Both the appeals are disposed of in above terms.
12. The statutory deposits shall be refunded.

R.K.GAUBA, J.

SEPTEMBER 05, 2017

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