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

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Date of Decision: 8th March, 2017

+ **MAC.APP. 723/2015**

RAJNI & ORS.

..... Appellants

Through: Mr. Anshuman Bal, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Vivekanand Mishra, Adv. for
Respondents No.1 and 2.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.29,32,776/- has been awarded to the appellants. The appellants seek enhancement of the award amount.
2. On 25th August, 2012 at about 02:10 p.m., Naveen Kumar Singh was going on his motorcycle near Swatantra Bharati Karyalaya, Gopinath Bazar, Delhi Cantt when an army truck bearing No.11C092076H (332) took a left turn towards Swatantra Bharati Karyalaya and hit the motorcycle which resulted in the death of Naveen Kumar Singh.
3. The deceased was aged 23 years at the time of the accident and was survived by his parents and two sisters, who filed the claim before the Claims Tribunal. The deceased was working as LDC with

Engineer Stores Depot of Indian Army at Delhi Cantt. and was earning Rs.18,355/- per month. The Claims Tribunal took the income of the deceased as Rs.18,355/- per month, added 50% towards future prospects, deducted 1/3rd towards his personal expenses and applied the multiplier of 18 to compute the loss of dependency as Rs.39,64,680/-. The Claims Tribunal awarded Rs.1 lakh towards loss of love and affection, Rs.1 lakh towards loss of estate and Rs.25,000/- towards funeral expenses. The total compensation was computed as Rs.41,89,680/-. The Claims Tribunal held the deceased contributory negligent to the extent of 30% and deducted 30% from the aforesaid compensation to compute the net compensation as Rs.29,32,776/-.

4. The appellants have challenged the impugned award on the ground that the deceased was not contributory negligent and, therefore, the deduction on account of contributory negligence be set aside.

5. The appellants examined the eye witness Arun Singh as PW-2, who deposed that he was sitting on the pillion of the motorcycle being driven by the deceased at the time of the accident and the army vehicle was running ahead of the motorcycle in the middle of the road. The deceased was in search of the space with a view to overtake the army vehicle and got space on left side of the truck but in the meantime, the truck took a left turn and hit the motorcycle from the front wheel of co-driver side due to which the deceased came underneath the front wheel of the vehicle.

6. The respondents examined Sunil Yadav, driver of the truck, as RW-1, who deposed that he took left turn after giving left indicator

but the motorcycle driven by the deceased tried to overtake the offending vehicle from the left side at a high speed through a narrow gap between the footpath and the main road and while doing so, the deceased collided his motorcycle with the left front wheel of the truck.

7. The Claims Tribunal held the deceased and the driver of the truck to be contributory negligent to the extent of 30% and 70% respectively on the ground that the deceased was overtaking the army truck on a single road from the left side and the overtaking from the left side was not permissible as per law.

8. The law with respect to the contributory negligence is well settled. Contributory negligence connotes a failure of the victim to take reasonable care for his own personal safety in the circumstances prevailing at the time of the accident, such that he is blameworthy to the extent that he contributed to his own injury. A person is guilty of contributory negligence if he ought to have objectively foreseen that his failure to act prudently could result in hurting himself and failed to take reasonable measures to guard against that foreseeable harm. Contributory negligence is a partial defence that reduces the quantum of damages payable to plaintiff if he fails to safeguard his own interest.

9. In ***Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak***, (2002) 6 SCC 455, the Supreme Court defined the principle of contributory negligence as under:-

“8.....The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as

'negligence.' Negligence ordinarily means breach of a legal duty to care, but when used in the expression "contributory negligence" it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an "author of his own wrong."

9. Subject to non-requirement of the existence of duty, the question of contributory negligence is to be decided on the same principle on which the question of defendant's negligence is decided. The standard of reasonable man is as relevant in the case of plaintiff's contributory negligence as in the case of defendant's negligence. But the degree of want of care which will constitute contributory negligence, varies with the circumstances and the factual situation of the case. The following observation of the High Court of Australia in *Astley Vs. Austrust Ltd.* (1999) 73 ALJR 403 is worthy of quoting:

"A finding of contributory negligence turns on a factual investigation whether the plaintiff contributed to his or her own loss by failing to take reasonable care of his or her person or property. What is reasonable care depends on the circumstances of the case. In many cases, it may be proper for a plaintiff to rely on the defendant to perform its duty. But there is no absolute rule. The duties and responsibilities of the defendant are a variable factor in determining whether contributory negligence exists and, if so, to what degree. In some cases, the nature of the duty owed may exculpate the plaintiff from a claim of contributory negligence; in other cases, the nature of the duty may reduce the plaintiff's share of responsibility for the damage suffered; and in yet other cases the nature of the duty may not prevent a finding that the plaintiff failed to take reasonable care for the safety of his or her person or property. Contributory negligence focuses on the conduct of the plaintiff. The duty owed by the defendant, although relevant, is one only of many factors that must be weighed in determining whether the plaintiff has so conducted itself that it failed to take reasonable care for the safety of its person or property."

(Emphasis supplied)

10. In ***Municipal Corporation of Greater Bombay v. Laxman Iyer***, (2003) 8 SCC 731, the Supreme Court defined the contributory negligence as an act or omission on the part of the plaintiff who materially contributed to the damage. The relevant portion of the said judgment is reproduced hereunder:-

“6.....Where an accident is due to negligence of both parties, substantially there would be contributory negligence and both would be blamed. In a case of contributory negligence, the crucial question on which liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequence of other's negligence. Whichever party could have avoided the consequence of other's negligence would be liable for the accident. If a person's negligent act or omission was the proximate and immediate cause of death, the fact that the person suffering injury was himself negligent and also contributed to the accident or other circumstances by which the injury was caused would not afford a defence to the other. Contributory negligence is applicable solely to the conduct of a plaintiff. It means that there has been an act or omission on the part of the plaintiff which has materially contributed to the damage, the act or omission being of such a nature that it may properly be described as negligence, although negligence is not given its usual meaning. (See Charlesworth on Negligence, 3rd Edn. Para 328). It is now well settled that in the case of contributory negligence, courts have power to apportion the loss between the parties as seems just and equitable.”

(Emphasis supplied)

11. In ***Sudhir Kumar Rana v. Surinder Singh***, (2008) 12 SCC 436, the Supreme Court defined contributory negligence as under:-

“6....A contributory negligence may be defined as negligence in not avoiding the consequences arising from the negligence of some other person, when means and opportunity are afforded to do so. The question of contributory negligence would arise only

when both parties are found to be negligent.

7. The question is, negligence for what? If the complainant must be guilty of an act or omission which materially contributed to the accident and resulted in injury and damage, the concept of contributory negligence would apply. ”

(Emphasis supplied)

12. In ***Pawan Kumar v. Harkishan Dass Mohan Lal***, (2014) 3 SCC 590, the Supreme Court explained the principle of contributory negligence as under:-

“8. Where the plaintiff/claimant himself is found to be a party to the negligence the question of joint and several liability cannot arise and the plaintiff's claim to the extent of his own negligence, as may be quantified, will have to be severed. In such a situation the plaintiff can only be held entitled to such part of damages/compensation that is not attributable to his own negligence. The above principle has been explained in T.O. Anthony [T.O. Anthony v. Karvarnan, (2008) 3 SCC 748 : (2008) 1 SCC (Civ) 832 : (2008) 2 SCC (Cri) 738] followed in K. Hemlatha [A.P. SRTC v. K. Hemlatha, (2008) 6 SCC 767 : (2008) 3 SCC (Cri) 34] .

9. Paras 6 and 7 of T.O. Anthony [T.O. Anthony v. Karvarnan, (2008) 3 SCC 748 : (2008) 1 SCC (Civ) 832 : (2008) 2 SCC (Cri) 738] which are relevant may be extracted hereinbelow: (SCC p. 751)

“6. ‘Composite negligence’ refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the

accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is, his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error."

(Emphasis supplied)

13. In ***Asnah bte Ab Rahman v. Li Jianlin***, (2016) SGCA 16, the Singapore Supreme Court defined the principle of contributory negligence as under:-

"Contributory negligence connotes a failure by the claimant to take reasonable care for his own personal safety in all the circumstances prevailing at the time of the accident, such that he is blameworthy to the extent that he contributed to his own injury. A person is guilty of contributory negligence if he ought to have objectively foreseen that his failure to act prudently could result in hurting himself and failed to take reasonable measures to guard against that foreseeable harm."

14. Applying the aforesaid principles of contributory negligence to the present case, this Court is of the view that the deceased was

contributory negligent by overtaking the army truck on the left side on a single road which has contributed to the accident. This Court agrees with the Claims Tribunal that the deceased was contributory negligent to the extent of 30%.

15. There is no merit in this appeal, which is hereby dismissed.

MARCH 8, 2017
rsk

J.R. MIDHA, J.

