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

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Date of Decision: 03rd July, 2018

+ MAC.APP. 276/2018

11 VANDNA KUMARI Appellant

Through: Mr. Jatinder Kamra, Adv.

versus

RAMESH & ANR

(THE NEW INDIA ASSURANCE CO LTD) Respondents

Through: Mr. Maibam N. Singh, Adv. for R-2.

+ MAC.APP. 277/2018

12 KAMLA DEVI Appellant

Through: Mr. Jatinder Kamra, Adv.

versus

RAMESH & ANR

(THE NEW INDIA ASSURANCE CO.LTD.) Respondents

Through: Mr. Maibam N. Singh, Adv. for R-2.

+ MAC.APP. 278/2018

**13 JYOTI KUMARI THROUH ITS NATURAL
GUARDIAN JASWANT SINGH** Appellant

Through: Mr. Jatinder Kamra, Adv.

versus

RAMESH & ANR

(NEW INDIA ASSURANCE CO LTD) Respondents

Through: Mr. Maibam N. Singh, Adv. for R-2.

+ MAC.APP. 306/2018 & CM APPL. 11508/2018

14 NARENDER SINGH & ORS Appellants

Through: Mr. Jatinder Kamra, Adv.

versus

RAMESH & ANR

(THE NEW INDIA ASSURANCE CO LTD) Respondents
Through: Mr. Maibam N. Singh, Adv. for R-2.

+ MAC.APP. 307/2018 & CM APPL. 11512/2018

15 NARENDER SINGH

..... Appellant

Through: Mr. Jatinder Kamra, Adv.

versus

RAMESH & ANR

(THE NEW INDIA ASSURANCE CO LTD) Respondents
Through: Mr. Maibam N. Singh, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (ORAL)

1. The appellants have challenged the awards dated 17th February, 2018 whereby the Claims Tribunal dismissed their claim petitions for compensation on the ground that they have failed to prove the rashness and negligence of respondent no.1.

2. On 22nd February, 2017, five persons, namely, Narender Singh, his wife – Neena Singh, his mother – Kamla Devi, his daughter – Vandna Kumari and his niece – Jyoti Kumari were travelling in a car bearing No. DL-3CAG-3734 while coming from Himachal Pradesh to Delhi. The car was being driven by Narender Singh. At about 21:00 hours on 22nd February, 2017, the car was on the national highway near P.S. Shahabad, Kurukshetra, when a truck bearing registration No.HR-63-8954 moving ahead of the car suddenly stopped and the car hit the rear portion of the truck

which resulted in death of Neena and grievous injuries to Narender Singh, Kamla Devi, Vandna Kumari and Jyoti Kumari.

3. The police registered FIR No.0090 dated 23rd February, 2017 at P.S. Shahabad, Kurukshetra under Sections 279/337/338/304A IPC against driver of the truck No.HR-63-8954, Ramesh Kumar.

4. On 16th April, 2017, the police filed the chargesheet under Section 173 Cr.P.C. against Ramesh Kumar under Sections 279/337/338/304A IPC. The appellants placed on record the certified copies of the FIR, chargesheet, site plan and mechanical inspection report of both the vehicles before the Claims Tribunal.

5. On 30th May, 2017, Sub-Divisional Judicial Magistrate, Shahabad framed charges against Ramesh Kumar under Sections 279/337/338/304A IPC.

6. Five claim petitions were filed before the Claims Tribunal, one relating to the death of Neena and four claim petitions relating to grievous injuries suffered by Narender Singh, Jyoti Kumari, Vandana Kumari and Kamla Devi.

7. Respondent no.1, Ramesh Kumar, driver-cum-registered owner of the truck filed the written statement claiming that Narender Singh was driving the car at a very high speed and hit the stationary truck from behind in an attempt to overtake the truck from the wrong side.

8. Narender Singh appeared in the witness box as PW-1 and deposed that on 22nd February, 2017, he was driving car bearing No. DL-3CAG-3734 in which Neena, Kamla, Vandana and Jyoti Kumari were travelling; at about 21:00 hrs, on reaching P.S. Shahabad, Kurukshetra on national highway, all of a sudden and without any cause or cogent reason, truck bearing

registration No. HR-63-8954 moving ahead of the car stopped itself in middle of road without any signal or indicator on flyover. In the cross-examination, PW-1 admitted that he applied the brake when the truck stopped suddenly but the car could not stop and it hit the truck from behind. He denied the suggestion that the truck was parked on the left side of the road due to breakdown. Ramesh Kumar, driver of the truck, did not appear in the witness box to rebut the evidence led by the appellants.

9. Respondent no.2, New India Assurance Company Ltd. did not lead any evidence to rebut the evidence led by the claimants.

10. The Claims Tribunal held that the appellants have failed to prove the rash and negligent driving of respondent no.1. The relevant portion of the award in MAC.APP.276/2018 is reproduced hereunder:

“.....I have considered the submissions alongwith the records. In the claim petition itself, it is noted that the truck bearing No. HR 63 8954 was moving ahead of the car of the petitioner stopped without any indicator and the car struck against the rear portion of the truck leading to injury/ death of the passengers. Sh. Narender Singh i.e. father of injured who was driving the car bearing No. DL 3 CAG 3734 hit the truck in back side; the truck applied the brake and he was coming behind the truck also applied the brake but struck behind the truck and caused the accident. It is noted that the MLC relied by the petitioner Ex PW 2/ 2 does not disclose the nature of the injury at all. The PW1 i.e. Narender Singh during cross examination admitted that car was being driven by him which hit the truck in back side as the truck has applied the brake suddenly and he was driving behind the truck. Even the medical records/ medical bills relied by petitioner in support of claim and contentions are not proved in accordance with provisions of law after taking necessary steps to summons the witnesses.

11. It is argued by ld. Counsel for respondents that, even if the testimony of the PWs is considered alongwith other materials on record and FIR, no negligence of the respondent No. 1 is

proved on record and therefore, respondents are not liable to make any payment. I have considered the submissions and gone through the judgments reported as 2009 ACJ 2719 titled Prasanna Vs. Kerala State Road Transport Corporation; and Lacchu Ram & Others Vs. Himachal Road Transport Corporation (Manu/SC/0059/2014) in support of their contentions. The contentions of the respondents appears to be true. The petition, FIR shows that the truck was going ahead of the car, truck applied the brake and the car coming from behind hit the truck leading to accident. The ratio of the aforesaid judgment relied upon by the respondents regarding negligence of the respondent No. 1 is squarely applicable in the facts of this case.

12. It is established that the standard of proof of negligence in a criminal case and in claim petition U/s 166 of M.V. act are different. From the material on record and from the testimony of the witnesses, it is proved that the respondent No. 1 is not responsible for rash and negligent driving. In view of the ratio laid in Prassana's case (Supra), the vehicle following another vehicle should take into account the eventuality of the vehicle going in front stopping abruptly. This Tribunal does not find any contention regarding grant of recovery rights to insurance company, if any as argued by the petitioner as the liability of the respondent has to be established first for right for recovery, if any.

13. In the case in hand, there is nothing on record to show the negligence of respondent No. 1. In fact the petitioner failed to prove any accident causing injury/death due to the rash and negligent driving of respondent No. 1. Therefore, in view of the material on records and testimony of witnesses, this tribunal is of the considered view that the petitioner has failed to prove that she received injuries in motor accident caused by rash and negligent driving of vehicle No. HR 63 8954 at Kurukshetra on National Highway road going towards Delhi to Himachal on 22.02.2017 at about 9:00 PM by respondent No.1. The issue No. 1 is decided accordingly against the petitioner.”

11. Learned counsel for the appellants urged the following submissions at the time of the hearing:

- (i) The claimants have duly proved the negligence of the truck by examining the driver of the car as well as the occupants of the car who were eye-witness to the accident.
- (ii) The appellants placed on record the certified copies of the documents, namely, FIR, chargesheet, site plan, mechanical inspection report of both the vehicles.
- (iii) Respondent no.1 did not appear in the witness box to rebut the evidence led by the appellants.
- (iv) Respondent no.2 did not to rebut the evidence of the appellants.
- (v) That the findings of the Claims Tribunal holding that there was no negligence on the part of the driver of the truck is not based on any evidence.
- (vi) Adverse inference ought to have been drawn against respondent no.1 for failing to appear in the witness box under Section 114(1)(g) of the Evidence Act.

12. This Court is of the prima facie view that this is a case of contributory negligence in respect of the claim made by Narender Singh who was driving the car and the Claims Tribunal was required to determine the extent of contributory negligence. Reference be made to the following judgments of this Court:-

12.1. In *United India Insurance Co. Ltd. v. Mahima Singh*, 2018 SCC OnLine Del 7269, an accident took place between a car and a gas tanker. The gas tanker going ahead of the car, applied sudden breaks due to which the car collided with the tanker from behind resulting in death of the driver

of the car and an occupant. A claim petition was filed by the legal representatives of the deceased driver of car claiming compensation. This Court held that it is the duty of the driver to maintain a safe distance from the vehicle moving ahead of him and if the driver of the vehicle, who hits the vehicle going ahead of him upon sudden stopping, would be contributory negligent for not maintaining a safe distance from the vehicle moving ahead of him. The relevant portion of the said judgement is reproduced herein below:

“8.....this Court is of the view that the offending vehicle was negligent as it stopped abruptly without any warning or signal or any valid reason but it was also the duty of the deceased to maintain a safe distance from the vehicle moving ahead of him. This Court is of the view that the deceased did not maintain a safe distance between the Gas Tanker and himself and was partly responsible for causing the accident as the deceased failed to maintain a safe distance from the gas tanker going ahead. If the deceased had kept safe distance from the gas tanker and would have exercised due care and caution, the accident could have been avoided. Rule 23 of Rules of the Road Regulations, 1989 specifically stipulates that it is the duty on the driver of a motor vehicle moving behind another vehicle to maintain sufficient distance from that other vehicle to avoid collision in case the vehicle in front suddenly slows down or stops. Rule 23 of Rules of the Road Regulations, 1989 is reproduced as under:-

“Rule 23. Distance from vehicles in front.—The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop.”

9. *In Shrimanti v. Krishna Deva Madiwal, 2005 ACJ 350, the Full Bench of Karnataka High Court considered whether the defense of contributory negligence should be pleaded and whether any evidence needs to be led to establish the contributory negligence on the part of insured/deceased. The Full Bench held that it is not necessary for the Insurance Company to raise a*

specific plea of contributory negligence, provided it has denied the negligence on the part of the offending vehicle, and has claimed that the negligence is squarely of that of the deceased. The Full Bench observed as under:

"It is trite that an argument based on contributory negligence has to be substantiated by the party who advances that argument, but it is equally true that for discharging that burden, the party concerned need not lead evidence. As observed by the Division Bench of this court in Sharada Bai v. Karnataka State Road Transport Corporation, 1988 ACJ 490 (Karnataka), contributory negligence can be-and very often is inferred from the evidence adduced on the claimants' behalf or from the perceptive facts either admitted or found established, on a balance of probabilities in the case. The absence of a specific plea may not therefore be conclusive of the matter nor can the argument that the deceased motorcyclist had contributed to the occurrence of the accident be rejected summarily only because a specific plea in that regard, was not raised in the objections."

10. *Thus, it is not necessary that evidence has to be led by the Insurance Company in order to establish contributory negligence, provided that the perceptive facts are either admitted or found established from the evidence adduced by the claimants, and on the basis of probabilities a reasonable inference can be drawn that the deceased was responsible for the accident. In the present case, this Court is of the view that deceased was contributory negligent and no evidence was necessary in view of the admitted position in the FIR as well as claim petition that the tanker ahead of the deceased's car suddenly stopped but the deceased could not stop his vehicle. The judgments cited by the appellants are in the facts of those cases. So far as the contributory negligence is concerned, this Court has consistently held that the driver of the vehicle who hits the vehicle going ahead of him upon sudden stopping, would be contributory negligent. Reference be made to Bharti Axa Gen Ins Co. Ltd. v. Fareeda, 2017 SCC OnLine Del 12600."*

(Emphasis Supplied)

12.2. In *Rajni v. Union of India*, 2017 ACJ 2837, this Court discussed the principles relating to contributory negligence. The relevant portion of the said judgement is reproduced herein below:

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%."*

(Emphasis Supplied)

13. So far as four occupants of the car are concerned, their case is of composite negligence and the claimants can claim compensation from any of the tortfeasors. In that view of the matter, the dismissal of the claim petitions by the Claims Tribunal is not justified.

14. The appeals are allowed, impugned awards are set aside and the cases are remanded back to the Claims Tribunal for fresh adjudication. The Claims Tribunal shall determine the extent of contributory negligence of Narender Singh and the compensation determined by the Claims Tribunal shall be reduced to the extent of contributory negligence of the Narender Singh. With

respect to the remaining four cases, the claimants are entitled to the compensation against respondent No.2 and the Claims Tribunal shall adjudicate the amount of the compensation to which they are entitled in accordance with the law.

15. Pending applications are disposed of.

16. The parties shall appear before the Claims Tribunal on 09th August, 2018.

17. Learned counsels for the appellant and respondent No.2 have noted down the date of hearing and they undertake to appear before the Claims Tribunal. There is no appearance on behalf of the respondent No.1. The Claims Tribunal shall issue fresh notice to respondent No.1 before hearing the matter.

18. The record of the Claims Tribunal be sent back forthwith.

19. Copy of this judgement be given *dasti* to learned counsels for the parties under signature of Court Master.

JULY 03, 2018
dk/ak

J.R. MIDHA
(JUDGE)