



2023:DHC:9080



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

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Reserved on :1st December, 2023

Pronounced on:18th December, 2023

+ **MAC.APP. 355/2013**

U.P. STATE ROAD TRANSPORT CORPORATION Appellant

Through: Mr. Shadab Khan, Advocate.

versus

RAJBIR SINGH

..... Respondents

Through: Mr. Saurabh Kansal, Mr. Tushar Alok,
Mr. Manish Kumar and Mr. Raghav,
Advocates.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal is under Section 173 of the Motor Vehicles Act, 1988 (“**the Act**”) assailing an award dated 05.01.2013 passed by the Presiding Officer, MACT, Patiala House Courts, New Delhi in Suit No. 191/11/09 titled “**Rajbir Singh v. Mahender Singh & Ors.**”. The Tribunal awarded a total amount of Rs. 1,53,988/- to the respondent/claimant against which the owner of the offending vehicle has come up in appeal.

2. The incident occurred at 12:00 PM on 03.10.2008 when the respondent/claimant was going to Village Chand Hut from Palwal, Haryana

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driving a car bearing registration no. DL-3CY8449 with three other occupants. At this time, the offending bus bearing registration no. UP-81N-9418 (“the offending vehicle”) struck a portion of the car being driven by the respondent, resulting in grievous injuries to all the occupants and resulted in the demise of one Rajpal. It was submitted that the driver fled the scene of the accident after the incident. The respondent/claimant sustained a fracture in the right hand, fracture of the second, third, and fourth ribs of the right side, fracture of the fifth, sixth, and seventh ribs of the left side along with several other grievous injuries.

3. The MACT framed the following issues:

“1) Whether the accident occurred on 3.10.2008 was due to rash and negligent driving of the driver of the offending bus bearing no. UP81N9418?

2) To what amount of compensation is the petitioner entitled to and from whom?

3) Relief.”

4. With respect to the first issue, the MACT was of the *prima facie* view that in view of the testimonies and documents, injuries were sustained as a result of rash and negligent driving of the offending vehicle. With respect to the second and third issue, the MACT awarded compensation of Rs. 1,53,988/- for elements such as medical treatment, pain and suffering, conveyance and



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diet, and loss of income. Tabulation of the compensation awarded is provided as under:

S.No.	Component of Compensation	Amount awarded
1.	Medicines and Medical treatment	Rs. 49,346/-
2.	Pain and suffering loss of Amenities of life	Rs. 50,000/-
3.	Conveyance and Special Diet	Rs. 30,000/-
4.	Loss of Income	Rs. 24,642/-
	Total Compensation	Rs. 1,53,988/-

5. This appeal has been filed by the Appellant/Owner, canvassing the following grounds:

- a. The respondent acted negligently, and the MACT did not consider contributory negligence involved in a head-on collision in this matter.
- b. The MACT has granted excess compensation to the Respondent.

Negligence

6. Counsel for the appellant submits that the MACT erred in holding the bus driver guilty of causing the accident. He states that the respondent/claimant was on the wrong side of the road and driving the car under the influence of liquor. Further, since this collision was head-on, both drivers must be attributed

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contributory negligence. Counsel further contends that no reasoning on the issue of negligence had been provided by the MACT. He relies upon ***Bijoy Kumar Dugar v. Bidya Dhar Dutta*** (2006) 3 SCC 242 wherein it was held:

“12. Adverting to the next contention of the claimants, no doubt the High Court has not dealt with the point in issue. However, we have noticed the reasoning and finding of MACT recorded under Issue 2. It is the evidence of Rajesh Kumar Gupta PW 2 who was travelling in the Maruti car along with the deceased Raj Kumar Dugar on the day of the accident that he also suffered some injuries in the said accident. He stated that while coming from Digboi, the Maruti car being driven by the deceased met with an accident at a place near Kharjan Pol. Before the accident, Raj Kumar Dugar noticed a passenger bus coming from the opposite direction and the movement of the bus was not normal as it was coming in a zigzag manner. The Maruti car being driven by the deceased Raj Kumar Dugar and the offending bus had a head-on collision. MACT has not accepted the evidence of PW 2 to prove that the driver of the offending bus was driving the vehicle at abnormal speed. If the bus was being driven by the driver abnormally in a zigzag manner, as PW 2 wanted the Court to believe, it was but natural, as a prudent man, for the deceased to have taken due care and precaution to avoid head-on collision when he had already seen the bus coming from the opposite direction from a long distance. It was head-on collision in which both the vehicles were damaged and, unfortunately, Raj Kumar Dugar died on the spot. MACT, in our view, has rightly observed that had the knocking been on one side of the car, the negligence or rashness could have been wholly fastened or attributable to the driver of the bus, but when the vehicles had a head-on collision, the drivers of both the vehicles should be held responsible to have contributed equally to the accident. The finding on this issue is a finding of fact and we do not find any cogent and convincing reason to disagree with the well-reasoned order of MACT on this point. MACT has awarded interest at the rate of 10% per annum on the amount of compensation from the date of filing of the claim application till the date of payment. It is a discretionary



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relief granted by MACT and, in our view, the discretion exercised by MACT cannot be said to be inadequate and inappropriate.”

7. Counsel for the respondent contends that the bus driver, had admitted to the fact of the accident, but alleged that the respondent was negligent. He states that the allegation of the respondent being under the influence of liquor is not supported by any evidence. Further, the FIR, registered at the behest of another occupant of the car, states that the bus driver was driving negligently. The same is also supported by the site plan. Accordingly, he submits that fact of involvement of the offending vehicle is admitted, and the FIR proves there was no negligence on part of the respondent. The respondent counsel relied upon ***Renu Bala Paul and Ors. v. Bani Chakraborty Asid Ors***, 1998 SCC OnLine Gau 20 and ***United India Insurance Co. Ltd. v. Deepak Goel***, 2014 SCC OnLine Del 362 to state that under the Motor Vehicles Act, the level of evidence required is less as compared to criminal and civil trials. Additionally, he relies upon ***New India Assurance Co. Ltd. v. Urmila Rani & Ors.***, 2014 SCC OnLine Del 1470 whereby this court held:

“8. Keeping in mind the above facts, the learned Tribunal relied upon the case of National Insurance Company Ltd. v. Pushpa Rana 2009 ACJ 287, wherein the Apex Court observed that the certified copies of the said criminal case record, such as FIR, recovery memo and mechanical inspection report of vehicle are sufficient proof to reach the conclusion that driver was negligent. It was further recorded that proceedings under the Motor Vehicles Act are not akin to the proceedings in a civil suit and hence, strict rules of evidence is not required to be followed in this regard.”



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8. To support this contention, that the statement of the claimant and the FIR is sufficient to prove negligence, respondent's counsel also relies upon *Janabai v. M/S ICICI Lombard* (2022) 10 SCC 512, *Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. Ltd.*, (1997) 2 SCC 745. On contributory negligence, he relied upon a decision of the Hon'ble Supreme Court in *Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak*, (2002) 6 SCC 455.

9. Having considered the submissions of the parties on the issue of contributory negligence, it is imperative to assess the evidence on record in this regard. Respondent's affidavit (PW- 1/A) bears out that he was driving the car along with other occupants, coming from Palwal, Haryana and the accident occurred due to the U.P. Roadways bus being driven by the driver in a rash and negligent manner, coming from the opposite side and collided with the front portion of his car. Not only there were grievous injuries to him and the occupants, but Rajpal also died on the spot. The injuries, as per the MLC, were fracture in the right hand, fractures of the second, third and fourth ribs of the right side as also fractured of the fifth, sixth and seventh ribs of the left side besides other injuries. A disability certificate was filed by the respondent issued by Jai Prakash Narayan Apex Trauma Centre, AIIMS dated 09th May, 2011 as per which he had suffered 5.91% permanent physical impairment in relation to right upper extremity. No doctor was summoned by the respondent in relation to the disability certificate.



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10. In his cross-examination, the respondent confirmed that there was no divider on the road and he had seen the bus at a distance of 500 meters, and there was no vehicle in front of his car. He has categorically denied the suggestion that he was wrongly overtaking another vehicle or that he was negligent. He deposed that the speed of his car was about 30-40 kms per hour at the time of the accident. Besides that, the respondent stuck to his narrative in his cross-examination. A perusal of the FIR which is registered at the behest of Vijender Singh, one of the other occupants in the car also states that the bus driver was coming at fast speed and driving in a rash and negligent way and had a frontal collision with their car whereupon the front portion of car was completely damaged and all of them suffered injuries. A perusal of the sitemap shows the two vehicles on their own sides of the road and, therefore, cannot assist the appellant in their plea of contributory negligence in that the respondent was driving on the wrong side of the road.

11. The evidence of the driver of the bus, on the contrary seems to suggest that it was the negligence of the respondent who was overtaking another car and came on the wrong side of the road and stuck against the bus. Besides he stated that the respondent was under the influence of liquor. There was no evidence on record aside from the mere statement of the driver of the bus that the respondent was under the influence of liquor.

12. In his cross-examination, the driver confirmed that an FIR was registered against him and he in turn had not lodged any complaint that a false case was registered against me. Though, he denied the suggestion that accident



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happened because of his negligence, in the opinion of this Court the MACT was correct in relying upon the testimony of the claimant/respondent.

13. It has been stated by the Hon'ble Supreme Court in **Janabai v. ICICI Lambord Insurance Co. Ltd.**, (2022) 10 SCC 512 that:

“11. We find that the rule of evidence to prove charges in a criminal trial cannot be used while deciding an application under Section 166 of the Motor Vehicles Act, 1988 which is summary in nature. There is no reason to doubt the veracity of the statement of Appellant 1 who suffered injuries in the accident. The application under the Act has to be decided on the basis of evidence led before it and not on the basis of evidence which should have been or could have been led in a criminal trial. We find that the entire approach of the High Court is clearly not sustainable.”

14. In addition, reliance has been placed by the respondent on the decision of a Coordinate Bench of this Court in **New India Assurance Co. Ltd. v. Urmila Rani**, 2014 SCC OnLine Del 1470 where this Court has noted as under:-

“7. As regards the issue of negligence is concerned, admittedly, FIR No. 508/06, under Sections 279/304A IPC & under Section 177 MV Act regarding the accident was registered at Police Station Sahibabad, U.P against the driver of the offending vehicle.

8. Keeping in mind the above facts, the learned Tribunal relied upon the case of National Insurance Company Ltd. v. Pushpa Rana 2009 ACJ 287, wherein the Apex Court observed that the certified copies of the said criminal case record, such as FIR, recovery memo and mechanical inspection report of vehicle are sufficient proof to reach the conclusion that driver was negligent. It was further recorded that proceedings under the Motor Vehicles Act are not akin to the proceedings in a civil suit and hence, strict rules of evidence is not required to be followed in this regard.”



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15. There is no proof on record that any act of the respondent contributed in a substantial and dominant manner to the said accident and the damage caused, which can be described as *negligence*. In this regard, the statement of the Hon'ble Supreme Court in ***Pramodkumar Rasikbhai Jhaveri*** (*supra*) is adverted to as under:

“8. We do not think that these two reasons given by the High Court fully justify the accepted principles of contributory negligence. 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.””

(emphasis added)

16. In this regard, this Court does not find any reason to interfere with the decision of the MACT.

Compensation

17. Counsel for the appellant contended that the claimant was only entitled to a maximum Rs. 5,000/- towards pain and suffering, Rs. 15,000/- towards medical bills, and Rs. 20,000/- towards loss of income since notional income of the claimant would be preferred at Rs. 40,000/- per annum as per Section 163-A of the Act. The counsel contended that the Tribunal has granted an excessive amount keeping in mind contributory negligence on part of the



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claimant. Further, he contended that the claimant failed to prove he will suffer losses due to a disability of 5.91%, and, therefore, is not entitled to any compensation for future loss of income. Appellant's counsel pleads that the interest was awarded as 9% but rather should have been at 6%. The counsel for the appellant relied upon the decision in **Ranjana Prakash v. Divisional Manager and Anr.** (2011) 14 SCC 639 to submit that no cross objection or cross appeal can be considered to enhance the compensation already granted.

18. With regards to the compensation, counsel for the respondent contends that the respondent was awarded meagre compensation, whereby the MACT disregarded his disability as well as disfigurement. With regards to enhancement of the compensation, the counsel contended that as per decisions of this court in **Babu Lal v. DTC** MACA 446/2005 decided on 27.04.2012 and **U.P.S.R.T.C. v. Rajender Singh & Anr.** MACA 528/2008 decided on 17.11.2008, it was held that compensation could be enhanced without cross-objections to make the awarded amount just and fair.

19. Regards compensation, it is noted that the MACT has allowed the reimbursement of medical bills and then in an addition awarded amounts towards pain and suffering as well as conveyance and special diet, in addition to the loss of income. The MACT awarded an amount of Rs.24,642/- towards loss of income calculated as a total of six months of minimum wages at Rs.4,107/-. Even though the respondent has stated in his affidavit that he was drawing a salary of Rs.8,200/- per month including TA and DA while working



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as a driver with Gotu Bath India Private Limited and he had filed a certificate in that regard, he had not led any evidence to prove the said certificate.

20. This Court does not find any reason to interfere with the finding of the MACT considering that Ex. PW-1/5, which is a “*certificate*” issued by one signatory from Gotu Bath India Private Limited is neither proved by the signatory of the said certificate, nor any other document was produced to corroborate the existence of this particular entity or any other identification relating to the signatory thereof. However, considering the nature of injuries which were caused to the respondent, seen in context of the fact that co-occupant Rajpal succumbed to the injuries caused in the accident (which could give some indication of the intensity of the impact), the plea of the appellant that the compensation be reduced deserves to be rejected.

21. Accordingly, decision of the MACT stands confirmed and the appeal is dismissed and disposed of. Pending applications, if any, also stand disposed of.

22. Judgment/Order be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

DECEMBER 18, 2023/mk