



2024:0103:1540



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

% **Judgment reserved on: 10th January, 2024**
Judgment pronounced on: 28th February, 2024

+ **MAC.APP. 14/2011**

SUDERSHAN

..... Appellant

Through: Mr. Sarvesh Bhardwaj,
Advocate alongwith appellant
present-in-person.

versus

KIRAN BAKHLA & ORS

..... Respondents

Through: Ms. Bhakti Pasrija and Mr.
Sonu Mandal, Advocates.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

1. This judgment shall decide the present appeal filed by the appellant under Section 173 of the Motor Vehicles Act, 1988¹, assailing the impugned award dated 22.05.2010 passed by the Presiding Officer, Motor Accident Claims Tribunal, New Delhi,² in MACT No. 747/2003 titled 'Smt. Kiran Bakhla & Anr. v. Shri Sudershan & Ors.', whereby an amount of Rs. 6,57,936/- with interest @ 7.5% per annum was awarded as compensation from the date of institution of claim petition on 24.12.2003 to the petitioner/respondent No.1 for death of her husband, wherein she was made

¹MV Act

² Tribunal



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entitled to 50% of the claim amount, respondent No. 2 was made entitled to 30% of the claim amount and respondent No. 5, for death of his son was made entitled to 20% of the claim amount. The liability to pay compensation was fastened jointly and severally in equal proportion upon the Insurance Company and appellant Mr. Sudershan.

FACTUAL BACKGROUND:

2. Succinctly put, the deceased Sh. Balasius Alwis Bakhla, aged 29 years on the fateful day dated 12.08.2003, met his unfortunate demise when at about 8:35 PM, in an attempt to board a bus from Chirag Delhi Bus Stop to reach his home, he tried to board DTC bus bearing No. DL 1PB 0783³ being driven by Shri Ravi Kumar/ respondent No. 3 in the claim petition, and fell on the ground losing his balance due to sudden motion of the offending vehicle whereafter, he was hit by a RTV bus bearing No. DL 1V 8369⁴ being driven by Sh. Sudershan/respondent No. 1 in the claim petition and the appellant herein. Due to the injuries sustained, the deceased was admitted to AIIMS, New Delhi wherein he succumbed to his injuries.

PROCEEDINGS UNDER THE FIR REGISTERED

3. Pursuant to the fatal accident, FIR No. 414/2003 dated 13.08.2003 under Section 279/304-A of the Indian Penal Code, 1860⁵ and under Section 3/181 of the MV Act was filed at PS Ambedkar Nagar against the drivers of both DTC bus and RTV bus. In the trial before the learned Tribunal, wherein the RTV bus driver was acquitted, the DTC bus driver/appellant herein was convicted for

³DTC bus

⁴RTV bus



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offences under the IPC *vide* judgment dated 15.02.2012. The same was challenged in Criminal Appeal No. 96/2012 whereby the learned District and Sessions Judge observed that the reasoning of the learned Magistrate in acquitting RTV bus driver *vide* judgment dated 09.04.2012 and relieving DTC bus driver of offences under MV Act was unacceptable but that the same could not be re-opened as having attained finality since they were not challenged by way of cross-appeal by the State. Finally, the learned Judge set aside the impugned judgment and order on sentence on the finding that credibility of testimony by PW-5/eyewitness/Sh. Chotey Lal was doubtful, hence, *vide* order dated 31.01.2013, appellant in the instant appeal, Sudershan was acquitted as well.

PROCEEDINGS BEFORE THE LEARNED TRIBUNAL AND THE IMPUGNED ORDER

4. Suffice to state that respondent No. 1 to 5 herein filed a claim petition claiming a compensation to the tune of Rs. 15,00,000/- before the learned MACT. It was found that while the RTV bus was uninsured, the DTC bus was insured with respondent No.6 in the claim petition, i.e., National Insurance Co. Ltd. Furthermore, on the basis of the pleadings by the parties, *vide* order dated 21.02.2006, the learned MACT framed the following issues for its consideration: -

“1. Whether the deceased received fatal injuries in an accident Which took place on 12.8.2003 due to rash and negligent driving of vehicles No: DL-IV 8369 and DL 1P B 0783 driven by respondents No.1(DL 1V 8369) and No.3 (DL 1PB0783), owned by respondents No. 2 and 4 and bus (DL 1PB 0783) insured with respondent No.6? OPP.

⁵IPC



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2. Whether respondent No.6 is not liable to pay compensation on account of the preliminary objections taken by it in its written statement? OPR.

3. Whether petitioners are entitled for compensation? If so, to what amount and against which of the respondents?

4. Relief.”

5. While adjudicating on the above stated issues, the learned MACT observed that the deceased died due to composite negligence and rash driving of both the RTV and DTC bus drivers and found that the claimants were entitled to compensation. Although, quantum of compensation is also half heartedly challenged, the said part of the impugned judgment-cum-award, whereby the appellant has been held guilty of composite negligence, has been assailed primarily on the ground that the learned MACT overlooked the PMT Report (Annexure-A), such that it nowhere suggests that the death of the deceased took place due to being struck or being crushed by the RTV bus; that the said RTV bus was merely standing at the place of the incident and did not cause the accident; that the liability to pay compensation has been wrongly fastened upon the appellant. Alluding to judgment dated 09.04.2012, it was urged that PW-5 was held to be a planted witness, and thus, his testimony cannot be relied upon in the instant matter. Thus, it is prayed that the same be set aside.

6. On filing of the present appeal, the appellant was directed to deposit a sum of Rs. 3,50,000/- with the Registrar General of this Court in terms of the order dated 04.05.2011 without prejudice and on deposit of such amount, this Court *vide* order dated 24.11.2017 directed as under:-

“....



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- (i) Rs. 2,70,000/- be kept in 54 FDRs of Rs. 5,000/- each in the name of respondent no.1 for the period of 1 month to 54 months with cumulative interest.
- (ii) Rs. 50,000/- be kept in FDR in the name of respondent no.2 Master Aditya till he attains majority (the date of birth of respondent no.2 is 01st April, 2004) with cumulative interest.
- (iii) The balance amount, after keeping Rs. 3,20,000/- in FDRs, be released to respondent no.1 by transferring the same to her savings bank account mentioned in para-1 above.....”

ANALYSIS & DECISION:

7. I have heard the learned counsel for the parties and carefully perused the Trial Court Record as well as the materials placed on record in the instant appeal.

8. It is well ordained in the jurisprudence of composite negligence that composite negligence is one where there are two or more tortfeasors who produce the combined impact that results in causing injury to either of the joint tortfeasors or a third person. Reference can be invited to the decision in **T.O. Anthony v. Karvarnan**⁶ wherein it was held:-

“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

⁶ (2008) 3 SCC 748



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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. (Paragraph 6)

9. In view of the aforesaid proposition of law, reverting back to the instant matter, learned counsel for the appellant has sought to take much mileage from the testimony of DW-1 i.e., the conductor of the DTC bus, who was examined in criminal proceedings arising out of FIR No. 414/2003 as also the testimony of PW-5 Chotey Lal, which was found to be not reliable and ultimately lead to the acquittal of both the drivers by the learned Sessions Court *vide* judgment dated 09.04.2012. It would be apposite to refer to the findings recorded by the learned Tribunal while dealing with such challenge, which are as under:

“Though the respondent no.1 have relied upon the testimony of DW-1 who was the conductor of the DTC bus and was examined before the court of learned MM, but the said DW-1 have not been brought into the witness box before this tribunal. Even if we ignore this fact regarding non production of the DW-1 before this tribunal, I could gather nothing in favour of the respondent no.1 in order to relieve him from the allegations of rash and negligent driving. This is because in the entire set of examination of DW-1 before the court of Learned MM, it has not been elaborated in detail by DW-1 as to how the accident occurred. He has simply stated in the middle of his statement that he had not seen the accident. Since he was not examined before this court in length as he was not produced, this court is not in a position to exonerate the liability of the respondent no.1 simply on the basis of permutations and combinations drawn out by the counsel for respondent no.1 from the testimony of DW-1 made before the court of learned MM. (Paragraph 14)

On the flip side of it, I could found a charge sheet making clear and substantive allegations against the respondent no.1 / driver of the RTV as well as the respondent no.3 / the driver of DTC bus. The 10 had also examined the eye-witness Shri Chhotey Lal who was produced by the petitioners before this tribunal. as PW-2. In his testimony on oath before this court, the PW-2 Chhotey Lal specifically admitted that the FIR was registered upon his



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statement only and termed the FIR to be correct. He mentioned in his statement as PW-2 that the deceased was sandwiched between the DTC bus and the RTV. He termed it to be incorrect to suggest that the accident has not occurred due to rashness and negligence on the part of the DTC bus or RTV bus. (Paragraph 15)

During the course of arguments, the learned counsel for respondent no.1 had taken another plea that in the petition it has been mentioned that the deceased was boarding the bus whereas as per the statement of PW-2 Chhotey Lal, the deceased was alighting from the bus. After going through the entire set of the allegations and counter allegations, I may say that this argument can very well be ignored because of the reason that an ordinary public person at the time of accident cannot be expected at a crowded place to see specifically as to whether the deceased was boarding or de-boarding the vehicle. Hence this plea of respondent no.1 stands rejected. The respondent no.1 has not been able to produce any evidence to suggest that in fact the deceased died owing to the fault of the respondent no.3 / driver of the DTC bus and not because of his fault: He simply examined himself as R1W- 1 and has not brought any other independent witness to substantiate his claim before this court that he was not rash and negligent in driving the offending vehicle. (Paragraph 16)

To determine the negligence, I am being guided by the judgment of Hon'ble High Court of Delhi in 2009 ACJ 287, National Insurance Company Limited Vs. Pushpa Rana wherein in the Hon'ble High Court held that in case the petitioner files the certified copy of the criminal record or the criminal record showing the completion of the investigation by the police or the issuance charge sheet under section 279/304 A IPC or the certified copy of the FIR or in addition the recovery memo on the mechanical inspection report of the offending vehicle, these documents are sufficient proof to reach to the conclusion that the driver was negligent. It was further held that the proceedings under the Motor Vehicles Act are not akin to the proceedings in a civil suit and hence strict rules of evidence are not required to be followed in this regard. Further, in Kaushnumma. Begum and others v/s New India Assurance Company Limited, 2001 ACJ 421 SC the issue of wrongful act or omission on the part of driver of the motor vehicle involved in the accident has been left to a secondary importance and mere use or involvement of motor vehicle in causing bodily injuries or death to a human being or damage to property would made the petition maintainable under section 166 and 140 of the Act. It is also settled law that the term rashness and negligence has to be construed lightly while making a decision on a petition for claim for the same



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as compared to the word rashness and negligence as finds mention in the Indian Penal Code. This is because the chapter in the Motor Vehicle Act dealing with compensation is a benevolent legislation and not a penal one. (Paragraph 17)

In view of the discussion herein above made, it is clear from the testimony from the witnesses more particularly from the eye-witness / PW-2 Shri Chhotey Lal that the deceased died owing to the composite negligence of the driver of the RTV / respondent no.1 and the driver of the DTC / respondent no.3. The respondent no.3 failed to argue the case and have not lead any evidence to rebut the claim of the petitioners or that of respondent no.1. Therefore, the issue no.1 is decided in favour of the petitioners and against the respondents to the effect that the respondents no.1 and 3 were rash and negligent in the driving of their respective vehicles as a result of which the deceased died. (Paragraph 18)

10. On a careful perusal of the aforesaid reasons given by the learned Tribunal, first things first, no reliance can be placed on the testimony of PW-5 Chotey Lal recorded in the criminal proceedings. Merely because his testimony was not found to be reliable by the learned Sessions Court, it would not amount to issuing estoppel or having a binding effect in the proceedings before the learned Tribunal. There is no gainsaying that the findings in the criminal court of guilt are rendered based on the proof beyond reasonable doubt whereas in the civil proceedings like the instant one, the findings are arrived at based on preponderance of probabilities. Be that as it may, even a bare perusal of the testimony of PW-5 recorded during the criminal proceedings would show that the witness stood his ground that the deceased passenger, who was trying to board the bus fell down all of a sudden, when the driver of the DTC bus started the bus without giving any horn or signal and that he fell down and got hit by a RTV vehicle which was coming from behind, apparently at a fast speed. The main eye witness Chotey Lal was also examined during the course of the



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trial as PW-2, who categorically deposed that a passenger aged about 20 years fell down from the bus as its driver abruptly moved the bus without caring whether all the passengers have boarded or deboarded from the bus and when he fell down another RTV vehicle being driven in a rash and negligent manner ran over the passenger who started screaming on the road. PW-2 was subjected to very searching cross-examination by the learned counsel for the respondents No. 3 and 4 and he was given a definite suggestion that the deceased was rather hit by RTV from behind when he was trying to catch the moving bus. PW-2 categorically stated that the deceased was sandwiched between the DTC bus and that the RTV and the accident had occurred near the rear gate of the DTC bus and the RTV was driven at a fast speed. PW-2 was also cross-examined by the learned counsel for the respondent No.1 (the present appellant) and he stood his ground that the deceased was run over by RTV on falling to the ground so much so stating that the distance between the bus stand and the DTC was about six feet. Incidentally, the appellant was also examined as R1W1 and although in his affidavit filed in evidence, he denied that deceased was hit by RTV driven by him, he was also subjected to a searching cross-examination and there were given suggestions to the effect that the deceased on falling from the offending bus on the ground was crushed by the RTV driven by him. He acknowledged that he had not lodged any complaint against the police or any authority about his false implication in the matter. R1W1 was also cross-examined by the learned counsel for the respondent No.2 and the witness failed to account for any reason for his false implication in the present matter.



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11. Lastly, before parting with this appeal, I do not find any merit in the plea by the learned counsel for the appellant that *post mortem* report would go to suggest that the deceased was not crushed by the RTV. Rather the *post mortem* report No. 348/2003 dated 15.08.2003 conducted at All India Institute of Medical Sciences, New Delhi would show that the deceased has suffered external *ante mortem* injuries in the nature of “lacerated wound of the sized 2.5 cm x 1 cm over occipital region of scalp; abrasion over right elbow joint 2 cm x 1 cm; grazed abrasion over left forearm dorsal aspect 6 cm x 2.5 cm; fractured shaft of humerus right arm with apparent deformity and hematoma in muscular plane besides contusion of right lateral thoracic abdominal wall in an area of 11 cm x 9. The cause of death was opined to be “*shock as a result of multi visceral and bony injuries produced by blunt trauma which could be seen in cases of road traffic accident*”.

12. It is but evident that such injuries could not have been received by a mere fall of the passenger from the moving bus and he was in all probabilities hit, run over or crushed by the offending RTV which was being driven by the appellant. The composite negligence lies in driving the RTV close on the left side of the bus, which was exiting a bus stop and not keeping safe distance from the bus, and thereby, failing to discharge reasonable care and duty casted on the part of the appellant.

13. Before parting with this matter, the learned Tribunal awarded total compensation of Rs. 6,57,936/- to the deceased with interest @ 7.5% per annum including interim award, if any, from the date of



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filing of petition i.e. 24.12.2003 till notice under Order XXI Rule 1 of the Code of Civil Procedure, 1908 was to be given by the insurance company in favour of the petitioners.

14. It is evident from the record that 50% of the amount of compensation with interest has already been deposited by the respondent No.6/insurance company, which has since been paid to the claimants as per the directions of the learned Tribunal.

15. In case any amount remains further due from the appellant as also the insurance company, the respondents No.1 to 3 shall be at liberty to file an appropriate execution application for payment of balance amount of compensation with accrued interest before the learned Tribunal.

16. In view of the foregoing discussion, I find that there is no merit in the present appeal. The present appeal is accordingly dismissed.

DHARMESH SHARMA, J.

FEBRUARY 28, 2024

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