



2025:DHC:483



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 20th January, 2025

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MAC.APP. 535/2024 & CM APPL. 59658/2024

MITHU KALIKOTEY & ORS.

.....Appellants

Through: Mr. S.N. Parashar, Adv.

versus

SHABBIR KHAN & ORS. (UNITED INDIA

INSURANCE COMPANY LTD.)

.....Respondents

Through:

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)****CM APPL. 59659/2024 (exemption from filing certified copies of the annexures)**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

MAC.APP. 535/2024

3. By way of the present appeal, the appellant challenges the award (hereafter '**impugned award**') dated 26.04.2024, passed by the learned Motor Accident Claims Tribunal ('**MACT**'), Saket Courts, New Delhi, and seeks, *inter alia*, the following reliefs:

- "a) The appeal may kindly be admitted and allowed.*
- b) The amount of compensation awarded by the Hon'ble Tribunal by MACT Petition No 456/2019, order dated 26.04.2024 may kindly be enhanced."*

4. During the course of arguments, the learned counsel for



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the appellants challenges the impugned award essentially on the ground that no amount should have been deducted on account of contributory negligence of the deceased.

5. Facts leading to the present appeal are, that on 21.04.2019, the deceased namely– Sh. Bijay Kumar Kalikotey, was crossing the road in front of Kalkaji Mandir, Outer Ring Road, when he was hit by the offending vehicle/ bus bearing No. DL-1PC-7801, being driven by Respondent No. 1, owned by Respondent No 2 and insured with Respondent No. 3. The injured was taken to the Hospital, however, during treatment, he succumbed to his injuries.

6. A claim petition bearing MACT No. 456/2019 was filed by the appellants/ LRs of the deceased, seeking compensation, wherein the learned MACT granted a sum of ₹16,20,416/- as total loss of dependency, after a deduction of 20% towards contributory negligence on part of the deceased and further granted a sum of ₹1,81,500/- under non-pecuniary heads, amounting to a total compensation of ₹18,01,916/-.

7. The learned counsel for the appellants submits that the learned MACT wrongly deducted 20% of the loss of dependency on account of contributory negligence of the deceased, even though the deceased was merely crossing the road when he was hit by the bus, being driven by Respondent No. 1 in a rash and negligent manner.



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8. He submits that the driver of the offending vehicle did not lead any defence in the claim petition before the learned MACT, whereas the appellants duly proved the accident through the evidence of one Sh. Raju Kumar, who was examined as PW-2.

9. He submits that during cross-examination, PW-2 clearly stated that he was present at the spot of the accident and that the accident was caused by the rash and negligent driving of the offending vehicle that jumped the red-light.

10. The learned counsel for the respondents relied on the site plan filed along with the DAR, showing no red-light or zebra crossing at the spot, and argued before the learned MACT that there is contributory negligence of at least 50% on part of the deceased.

11. The learned MACT, while considering the site plan filed along with the DAR, wherein it is evident that there was no red-light or zebra crossing at the accident spot, rather the mark 'A' on the site plan, at which the accident has occurred, was closer to the divider, and apparently a no pedestrian zone, held that although the offending vehicle was being driven in a rash and negligent manner, the contributory negligence of 20% on part of the deceased cannot be over looked.

12. The learned MACT did not rely upon the evidence placed by PW2, and has concluded that his presence is doubtful in as much as he is not mentioned as a witness in the



chargesheet. As per the chargesheet, an effort was made to search for eye-witnesses, however no witness was found at the spot of the accident. It is also important to highlight that the statement of PW2 contradicts the site plan filed along with the DAR, regarding the presence of a red-light at the accident spot. Consequently, it has been appropriately disregarded.

13. The Hon'ble Apex Court in ***Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak : (2002) 6 SCC 455***, discussed the scope of contributory negligence where an accident has taken place due to the negligence of both parties. The relevant portion of the judgement reads as under:

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 the defendant's negligence is decided. The standard of a reasonable man is as relevant in the case of a plaintiff's contributory negligence as in the case of a 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 v. 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)

14. This Court in *The New India Assurance Co. Ltd. v. Sunita Devi & Ors.*: 2022/DCH/004626, while dealing with cross appeals filed by the Insurance Company and the claimant, with regard to the contributory negligence attributed to the deceased, held as under:

7. Perusal of the site plan also shows that the place of accident was a busy main road and on both the sides of the road there are established colonies. There is no doubt that the rider of the offending vehicle has to be more vigilant and attentive while riding the vehicle. However, it cannot be lost sight of the fact that a duty is also cast upon a pedestrian, and he should use due care and caution while crossing the road and it is his duty to look out for oncoming traffic. Whenever a pedestrian is crossing over a roadway at any place other than which is meant for pedestrian crossing, they cannot claim any specific precedence and the responsibility for causing the accident will have to be shared by the pedestrian along with the vehicle driver. PW-2/Sh. Narender Kumar, who was an eyewitness to the incident, categorically stated in his evidence that ‘At the time of accident the traffic was going on and the deceased was crossing the road without taking any care.’ In view of this, it cannot be said that it was only the driver of the vehicle in question who was solely responsible for the accident. Accordingly, this Court is in agreement with the finding of the learned Claims Tribunal with regard to attributing 10% contributory negligence to the deceased.

(emphasis supplied)

15. The site plan clearly shows that the deceased was crossing the road and the accident occurred in the middle of the road, where he has sustained injuries and succumbed to the



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same. Therefore, it cannot be said that there was no negligence on part of the deceased.

16. In view of the above, I find no infirmity in the impugned order. The present appeal is dismissed in the aforesaid terms. Pending application also stands disposed of.

AMIT MAHAJAN, J

JANUARY 20, 2025