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

% *Judgment delivered on:10th March, 2014*

+ **MAC.APP. 521/2012**

PUSHPA & ORS. Appellants

Represented by: Mr.Amit Kumar Pandey,
Advocate.

Versus

S GURBAKSH SINGH & ORS. Respondents

Represented by: Mr.A.K.Soni, Advocate for
Respondent No.5/Insurance
Company.

**CORAM:
HON'BLE MR. JUSTICE SURESH KAIT**

SURESH KAIT, J. (Oral)

1. The instant appeal is preferred against the impugned award dated 25.07.2011, whereby the learned Tribunal has granted compensation for an amount of Rs.6,04,850/- with interest at the rate of 7.5% *per annum* from the date of filing of the claim petition till realization of the amount (except for the period not specifically allowed).

2. While deciding the issue of negligence, the learned Tribunal has opined that the deceased was also negligent in driving the Maruti Van No.DL2C AC 0641 and accordingly apportioned 50% negligence upon the deceased and 50% on the driver of the offending Bus No.DL1PB 0652.

Accordingly, directed the respondent No.5/Insurance Company to pay 50% of the total compensation, i.e., Rs.3,02,450/- with interest as noted above in favour of the appellant.

3. Brief facts of the case are that on 21.05.2005, Shri Jai Narayan Gupta, the deceased was driving the Maruti Van No.DL2C AC 0641 and one Shri Shyam Shreshtha was sitting in the said Van. When they reached near Nirman Vihar Bus Stop, Vikas Marg, New Delhi, due to sudden application of breaks by the driver of the Bus No.DL1PB 0652, it collided with the said Bus, as a result of which both of them received injuries, however, the deceased suffered fatal injuries.

4. Learned counsel appearing on behalf of the appellants submits that PW1 Smt. Pushpa Devi, wife of the deceased, deposed that on 21.05.2005, the deceased alongwith Shri Shyam Shreshtha was returning from Patparganj and proceeding towards Darya Ganj in Maruti Van No.DL2C AC 0641. When they reached near Nirman Vihar Bus Stop, Vikas Marg, New Delhi, the driver of an ongoing Bus No.DL1PB 0652, applied sudden breaks, due to which, they collided with the same.

5. PW2 Shri Shyam Shreshtha deposed that on 21.05.2005, he was in Maruti Van No.DL2C AC 0641 and the deceased was driving the said vehicle. A Bus No.DL1PB 0652 was being driven at a high speed and the driver of the said Bus negligently applied sudden breaks, resultantly, vehicle in which they were travelling collided with the Bus as it was behind the said Bus. He further deposed that the accident took place because of rash and negligent driving of the driver of the said Bus. He immediately made a

complaint to the police.

6. Learned counsel for the appellant further submits that ASI Suresh Pal, IO of the case was examined as R3W1, who registered the FIR on the complaint of Shri Kishanpal, Conductor of the Bus No.DL1PB 0652 against deceased Shri Jai Narayan Gupta. The chargesheet could not be filed because FIR was being made against the deceased. Accordingly, a cancellation report Ex.R3W1/1 was filed therein. He also proved the statement of Shri Kishanpal as Ex.R3W1/2 and stated that he had also recorded statement Ex.REW1/3 of the deceased Jai Narayan Gupta, wherein the deceased had specifically stated that when he reached near Bus Stop of Madhuban Chowk, driver of the Bus No.DL1PB 0652 applied sudden breaks. He tried to control the vehicle, however, failed to do so. He further stated that Shri Shyam Shreshtha was also travelling with him, who also got injured in the said accident, accordingly, action be taken against the culprit.

7. During his cross-examination, ASI Suresh Pal stated that he had not recorded the statement of PW2 Shri Shyam Shreshtha, who was also injured in the accident in question.

8. Learned counsel submits that though IO had admitted that Shri Shyam Shreshtha was also travelling in the Maruti Van, despite that he did not record his statement and lodged the FIR against the deceased on the statement of Shri Kishanpal, Conductor of the offending Bus, who stated that the Bus was stationed at the Bus Stop Nirman Vihar, as it was mechanically out of order and the Maruti Van No.DL2C AC 0641 hit the said Bus from behind. He further stated that neither the driver nor any

passenger was inside the said Bus.

9. Learned counsel further submits that in para 13 of the impugned award, the learned Tribunal has recorded that there was a gross contradiction in the statement of Shri Kishanpal, who lodged the FIR. PW2 has stated that the driver of the Bus No. DL 1PB 0652 applied sudden brakes and accident was caused because of negligence of respondent No. 1.

10. R3W1, ASI Suresh Pal, IO of the criminal case recorded the statement of deceased which shows that the driver of the Bus applied the brakes and the deceased could not control the van and it collided with the Bus.

11. In view of the facts discussed above, the learned Tribunal has opined that the driver of the Bus No. DL-1PB-0652 applied sudden brakes and that driver of the Maruti Van No. DL-2CAC-6041 could not control the vehicle and hit the Bus from behind. The material placed on record show that there was negligence on the part of driver of Bus bearing no. DL-1PB-0652 but at the same time there was negligence on the part of deceased also who did not maintain proper distance from the Bus to avoid any accident in case of sudden application of brakes by the driver of the Bus. Further recorded, statement of deceased Ex. R3W1/3, as recorded by R3W1, IO of the criminal case, shows that deceased could not control the Maruti Van. Thus, it was the duty of the driver of the bus not to apply sudden brakes unless warranted by the circumstances. No such circumstances have come forth in the present case necessitating the application of sudden brakes. It was further recorded that it was also the duty of the vehicle following the other vehicle to maintain proper distance from the vehicle plying ahead to avoid any

accident in case of sudden application of brakes by the driver of the vehicle ahead. Thus, the learned Tribunal apportioned the contributory negligence 50% each of the driver of the Bus and the driver of Maruti Van, i.e., the deceased.

12. Learned counsel for the appellants submits that neither statement of deceased Ex.R3W1/3 shows that he was at fault nor PW2 Shri Shyam Shreshtha stated that the deceased was at fault. Despite that, the learned Tribunal has apportioned 50% liability upon the deceased.

13. Learned counsel further argued that in paras 4 and 5 of the claim petition, the appellant has specifically stated that the deceased was working as a driver with M/s Visan Minpro & Trading Company, 3833, Pataudi House, Daryaganj, New Delhi, and was earning Rs.3,250/- per month. The appellants failed to produce his employment and the salary earned by him, therefore, the learned Tribunal has assessed his monthly income as Rs.3,044/- applicable to an unskilled person at the relevant time.

14. Learned counsel for the appellants submits that the deceased was working as a driver and admittedly died in the accident, while driving the Maruti Van, as noted above. Thus, this fact itself proves that the deceased was a driver. Accordingly, the learned Tribunal ought to have considered the salary of the deceased as per the Minimum Wages Act, 1948, applicable to a skilled person at the relevant time.

15. He has prayed to this Court that salary of the deceased may be considered as Rs.3,468/- as per the minimum wages applicable to a skilled person at the relevant time and the compensation amount may be enhanced.

16. Learned counsel also pointed out that at the time of the accident, the age of the deceased was 50 years, however, the learned Tribunal has added 50% in the actual income of the deceased towards future prospects. He fairly conceded that keeping in view the age of the deceased and the settled law, the claimants are entitled for enhancement of 30% of the actual income of the deceased towards future prospects.

17. Learned counsel further submits that the compensation granted by the learned Tribunal on account of non-pecuniary damages like Rs.10,000/- for loss of love and affection, Rs.10,000/- for loss of consortium and Rs.5,000/- for funeral expenses is also on a very lower side.

18. He submitted that on the date of the accident, the deceased left behind seven dependants, including his wife, three daughters, two sons and widow mother, who died during the pendency of the claim petition. Keeping in view the nature of dependency, the learned Tribunal ought to have granted compensation on account of non-pecuniary damages on a higher side.

19. On the other hand, learned counsel appearing on behalf of the respondent No.5/ Insurance Company submitted that PW2, Shri Shyam Shreshtha was not travelling in the Maruti Van with the deceased. He was a planted witness. Had he been travelling with the deceased, he would have made the complaint against the driver of the offending Bus and would have got recorded his statement, whereas the FIR was lodged on the statement of the Conductor of the Bus.

20. Learned counsel further submits that PW2 was of the opinion that the deceased was at fault, therefore, he did not come forward and made any

complaint against lodging of the FIR against the deceased. Since the deceased himself was negligent as he hit the Maruti Van in the Bus which was going ahead, therefore, the learned Tribunal has assessed 50% contributory negligence on the part of the deceased. Moreover, as per the statement of PW2, he asked the deceased to apply the brakes properly, however, he failed to do so.

21. Learned counsel further submits that the appellants have failed to prove the employment and avocation of the deceased with the Establishment mentioned above, therefore, the learned Tribunal has assessed the income of the deceased as Rs.3,044/- per month as per the minimum wages applicable to an unskilled person on the date of the accident and submitted that on this issue no interference is required from this Court.

22. Learned counsel for the respondent No.5/Insurance Company further submitted that so far as the non-pecuniary damages are concerned, keeping in mind the facts and circumstances of the case, the learned Tribunal has sufficiently granted the compensation on these counts. Hence, on this issue also no interference is required from this Court.

23. I have heard the learned counsel for the parties and have perused the record.

24. Testimony of PW1, Smt. Pushpa Devi, widow of the deceased has established that deceased left behind widow wife, three daughters and two sons. PW-1 specifically deposed that on 21.05.2005, her husband alongwith Shri Shyam Shreshtha was returning from Patparganj when they met with an accident as noted above.

25. PW2, Shri Shyam Shreshtha, in his evidence, has specifically stated that the driver of the offending Bus was negligent as he had applied sudden brakes due to which the Maruti Van in which they were travelling, could not be controlled by the deceased and accordingly collided with the Bus. He further deposed that the statement of the deceased was recorded by the police. He had also received injuries in the accident. However, the IO of the criminal case lodged the FIR against the deceased, wherein a cancellation report was filed thereafter.

26. R3W1, ASI Suresh Pal, IO of the case, has also deposed that Shri Shyam Shreshtha was travelling in the Maruti Van and received injuries. However, he did not record his statement.

27. On the issue of contributory negligence, testimonies of PW2 and R3W1 suggest that the offending Bus, going ahead of Maruti Van, which was being driven at a high speed, rashly and negligently by its driver, who applied sudden brakes, in consequence of the same the deceased could not apply the brakes of Maruti Van, which was behind the said Bus due to which it hit the said Bus.

28. Keeping in view the manner in which the accident had taken place, I am of the opinion that the driver of the Maruti Van No.DL2C AC 0641, i.e., the deceased, was not at fault as in his statement Ex.R3W1/3, he deposed that driver of the offending Bus had applied immediate brakes, however, he tried his level best, but could not stop the van, resultantly the accident in question occurred. Moreover, no suggestion was put forth to any witness that he was driving the Maruti Van negligently by the Insurance Company.

29. So far as the avocation of the deceased is concerned, case of the appellants/claimants throughout was that the deceased was working as a driver with the Establishment noted above. In his statement Ex.R3W1/3, the deceased himself stated that he was working as a driver and PW2, Shri Shyam Shreshtha also deposed that the vehicle was being driven by the deceased. Moreover, no contrary evidence has been led by the respondent No.5/Insurance Company. Therefore, there was no occasion before the learned Tribunal not to consider the monthly income of the deceased applicable to a skilled person as per the Minimum Wages Act, 1948.

30. Therefore, as per the Minimum Wages Act, 1948, the minimum wages applicable to a skilled person at the relevant time was Rs.3,468.90/-. Hence, in view of the above, I take the monthly income of the deceased as Rs.3,470/-.

31. As the issue of future prospects is concerned, keeping in view the age of the deceased, i.e., 50 years at the time of the accident, and the settled position of law, future prospects is reduced to 30%.

32. So far as the non-pecuniary damages are concerned, the deceased left behind seven dependants, i.e., wife, three daughters, two sons and widow mother, who expired during the pendency of the claim petition. The deceased was working as a driver and maintaining his large family. Therefore, considering all the facts and circumstances of the case and following the dictum of *Rajesh and Ors. Vs. Rajbir Singh and Ors. 2013 (6) SCALE 563*, I enhance the compensation on account of loss of love and affection to Rs.1,00,000/-, for loss of consortium to Rs.1,00,000/- and for

funeral expenses to Rs.25,000/-

33. Accordingly, the compensation amount comes as under:

Sl. No.	Heads of Compensation	Compensation granted by Tribunal	Compensation granted by this Court
1.	Loss of dependency	Rs.5,69,842/-	Rs.5,62,972.8
2.	Loss of love and affection	Rs. 10,000/-	Rs.1,00,000/-
3.	Loss of estate	Rs. 10,000/-	Rs. 10,000/-
4.	Loss of consortium	Rs. 10,000/-	Rs.1,00,000/-
5.	For funeral expenses	Rs. 5,000/-	Rs. 25,000/-
	TOTAL	Rs.6,04,842/- (rounded off to Rs.6,04,850/-)	Rs.7,97,972.8 (rounded off to Rs.7,97,980/-)

34. Accordingly, the total compensation is assessed at Rs.7,97,980/-.

35. Hence, the compensation is enhanced to Rs.1,93,130/- (Rs.7,97,980/- - Rs.6,04,850/-).

36. The enhanced compensation amount shall carry interest @ 7.5% *per annum* from the date of filing of the claim petition till realization of the amount.

37. I note, vide judgment dated 25.07.2011, the learned Tribunal directed the respondent No.5/Insurance Company to deposit 50% of the awarded amount, i.e., Rs.3,02,450/- inclusive of interim compensation with interest at the rate of 7.5% *per annum* (except for the period not specifically allowed) from the date of filing of the petition till its realization.

38. Since the finding of the learned Tribunal qua contributory negligence on the part of the deceased has been set aside, therefore, the respondent No.5/Oriental Insurance Co. Ltd. is directed to deposit the balance compensation amount of Rs.4,95,530/- [Rs.7,97,980 – 3,02,450] with interest at the rate of 7.5% *per annum* from the date of filing of the claim petition till realization of the amount (except for the period not specifically allowed) with the Registrar General of this Court within a period of six weeks from today, failing which, appellants/claimants shall be entitled for penal interest @ 12% *per annum* on account of delayed payment.

39. On deposit, the Registrar General is directed to release the amount in favour of the appellants/claimants proportionately in terms of the award dated 25.07.2011 passed by the learned Tribunal.

40. In view of the above, the appeal is allowed.

SURESH KAIT, J.

MARCH 10, 2014
sb/RS