

CIVIL APPEAL No. OF 2009
(Arising out of SLP(C) No. 18196 of 2007)

... **Appellant(s)**

ISLAMUDDIN

... Respondent(s)

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

Heard.

Leave granted.

This is an appeal against the order passed by a learned Single Judge of the Delhi High Court allowing the appeal filed by the respondent who had filed a claim petition claiming compensation on the ground that he had sustained injuries on account of vehicular accident which took place on 03.12.2002 near G.T.Road, Flyover, Shahdara, Delhi. Learned MACT, Karkardooma Court, Delhi fixed the amount payable as compensation to be Rs. 3,00,598/-. But deducting 40% for the alleged contributory negligence of the claimant, ultimately the amount payable by the present appellant to the claimant was fixed at Rs. 1,80,358/- (approximately). In appeal filed by the claimant, the High Court by the impugned judgment held that the reasons indicated by the MACT for making deduction on

account of alleged contributory negligence were not sufficient for the purpose of making a deduction.

In the present appeal, it is stated by learned counsel for the appellant-Corporation that MACT categorically indicated reasons as to why it held that there was contributory negligence on the part of the respondent leading to the accident in question.

There is no appearance on behalf of the respondent in spite of service of notice.

We find that the High court has discarded the view indicated by MACT on the ground that the evidence of the driver who was examined shows about the contributory negligence cannot be given any preference over the evidence of the claimant. That was not the only ground on which MACT had directed deduction for contributory negligence. It was observed that though the place of accident was indicated, the site plan did not plan other relevant details.

In the peculiar facts of the case, we are of the view that there was contributory negligence on the part of the claimant. Considering the nature of the accident we held that the liability of the Corporation shall be Rs. 2,35,000/- with interest @ 6% from the date of accident. It is stated that nearly Rs. 2,22,000/- had already been deposited. The balance amount payable on the basis of present order shall be deposited with MACT within six weeks.

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The respondent shall be permitted to withdraw the amount on such terms as the MACT shall stipulate.

The appeal is allowed to the aforesaid extent. No costs.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
((ASOK KUMAR GANGULY)

New Delhi,
January 23, 2009.