

CASE NO.:
Appeal (civil) 3164 of 2008

PETITIONER:
MANAGING DIRECTOR B.M.T.C.

RESPONDENT:
UNION OF INDIA & ANR.

DATE OF JUDGMENT: 30/04/2008

BENCH:
A.K.MATHUR & ALTAMAS KABIR

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NO.3164 OF 2008
(Arising out of SLP(C) No.12854 of 2006)

Leave granted.

This appeal by special leave is directed against the judgment of the High Court dated 31st May, 2005 in M.F.A. No.5166 of 2002 whereby the learned Single Judge set aside the order passed by the MACT Court and allowed the appeal preferred by the Union of India through the Officer Commandant Army School of Mechanical. The learned Single Judge reversed the judgment of the Claims Tribunal and awarded a compensation and apportioned it to 50% \026 50% holding the appellant herein responsible for this accident on the basis of contributory negligence.

We have heard learned counsel for the parties and perused the record.

The brief facts which are necessary for the disposal of this appeal are that on 30th January, 1994 at

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about 7.20 p.m. in the evening the applicant Bistal Seff was driving the three tons capacity Swaraj Mazda vehicle bearing registration No.92D-90-299 KST on Bangalore Bellary Road near Canara Bank bus stop at Hebbala i.e. at a distance of about half a kilometer from Hebbala Police Station. He was driving the vehicle at the speed of about 45 K.M. per hour. It is alleged by the claimant that the vehicle MEF 1543 driven by the respondent (appellant herein) overtook the claimant's vehicle and suddenly stopped on the road without giving any signal. Therefore, the respondent herein could not stop the vehicle in time and dashed against the vehicle of the appellant. It is alleged that the driver of the appellant herein was responsible for this accident. He claimed compensation against the appellant in a sum of Rs.1,40,773/- and expenses of Rs.16,400/- as labour totalling Rs.1,57,173/-. The claim was contested by the appellant \026 respondent and the Claims Tribunal after considering the evidence on record came to conclusion that the claimant's claim is without any basis as the claimant was responsible for the accident and not the appellant \026 respondent. The M.A.C.T. Court after considering the relevant documents, i.e. the charge sheet (Exh.P-2), the Inquest Report (Exh. P-4), the

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sketch (Exh. P-3), report of the Motor Vehicle Inspector (Exh.P-5) came to the conclusion that it is the claimant-respondent herein who was

responsible for this accident. The Claim Petition was dismissed.

Aggrieved against this, the claimant filed an appeal before the High Court. The learned Single Judge of the High Court without adverting to the facts and the reasons given by the MACT Court apportioned the claim of both and held them contributory negligent and directed that for the claim of Rs.1,57,173/- both the appellant and respondent shall contribute to the extent of 50% i.e. compensation in the sum of Rs.78,587/- with interest of 6% per annum from the date of filing of petition till the payment is made.

Aggrieved against this order, the respondent (non claimant) has filed the present appeal.

After hearing learned counsel for both the parties and perusing the record, we fail to understand the reason given by the learned Single Judge of the High Court for making the case of contributory negligence. In fact on the finding recorded by the MACT Court it is more than apparent that the appellant's vehicle was supposed to stay at the bus stand and that the bus was standing there, the

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claimant who was driving the vehicle in rash and negligent manner came and dashed on the appellant's bus on rear side. This version has been fully substantiated by the Claims Tribunal on the basis of the relevant documents, i.e. the charge sheet (Exh.P-2), the Inquest Report (Exh. P-4), the sketch (Exh. P-3) and the report of the Military Vehicle Inspector (Exh.P-5). On the basis of all these facts, the MACT Court came to the conclusion that it is military's vehicle which collided against the appellant's vehicle and responsibility for this unfortunate accident is on claimant. Consequently, the view taken by the MACT Court appears to be justified as it is based on the evidence. Learned Single Judge of the High Court allowed the appeal without adverting to the facts and the finding recorded by the MACT Court. Therefore, the view taken by the High Court that there is a contributory negligence is without any reason whatsoever.

Consequently, we set aside the order of the learned Single Judge of the High Court and allow this appeal and dismiss the claim.

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Any observation made in this case pertains to the decision of this case only and will not prejudice the criminal case of the respondent, if it is pending in the Trial Court.