



2025:DHC:4535



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 28.05.2025

+ **MAC.APP. 88/2020, CM APPL. 6699/2020, CM APPL.
6700/2020 & CM APPL. 9729/2024**

PUSHPANJALI DEVI & ORSAppellants

versus

**ARJUN RAI & ORS (SHRIRAM GENERAL
INSURANCE CO LTD)**Respondents

Advocates who appeared in this case:

For the Appellants : Mr. Pankaj Gupta & Mr. R.S. Roy, Advs.

For the Respondents : Ms. Niyati Jadaun, Adv. for R3

**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

1. The present petition is filed against the award dated 07.03.2019 (hereafter '**impugned award**') passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Saket Courts, New Delhi in MACT No. 75697/2016.

2. By the impugned award, the learned Tribunal calculated total compensation in favour of the petitioners to the tune of ₹16,18,800/-,



and awarded 60% of the calculated amount, that is, ₹9,71,280 to the petitioners as compensation along with 9% interest per annum from the date of filing of the petition till its realisation. Out of the total compensation amount, 40% was deducted on account of contributory negligence. Aggrieved by the deduction of compensation on account of contributory negligence led to filing of present appeal.

3. The brief facts of the present case are that on 09.10.2015, Sonu Kumar (hereafter '**the deceased**') was travelling to his workplace when the driver of the offending bus bearing No. JH-17F-9950, while driving the bus in a rash and negligent manner, hit from behind as a result of which the deceased fell down on the road and sustained grievous injuries on his head and body. The deceased, during the course of the treatment, succumbed to his injuries.

4. FIR was registered and the chargesheet was filed against Respondent No. 1 under Sections 279/304A of the Indian Penal Code, 1860 ('**IPC**').

5. PW-2 Pameshwari Ray, claiming to be the eye-witness of the accident, deposed that when he was going to sell milk on his bicycle at about 08:10 am, and was in the process of delivering milk to a tea seller, Respondent no. 1 while driving the offending vehicle in a rash and negligent manner forcibly hit the deceased from behind as a result of which the deceased fell down, sustained grievous injuries, and died on the spot. He deposed that the accident occurred solely on account of the rash and negligent driving of the offending vehicle.

6. On the other hand, R2W2 Laddu Chaudhary deposed that he



was present at the spot at the time when the accident took place. He stated that the accident occurred due to the negligence of the deceased himself. He stated that the deceased suddenly came from the left side to the right side owing to which Respondent No. 1 lost control and the accident took place.

7. The learned Tribunal considered the testimony of PW-2 Pameshwari Ray who deposed that the accident occurred due to the negligence of the driver as the driver hit the deceased from behind. The learned Tribunal further considered the testimony of R2W2 Laddu Chaudhary, the eye witness of Respondent No. 2 who deposed that the accident occurred due to the negligence of the deceased himself.

8. It was noted that the names of both the witnesses were not in the criminal record as had been filed by the petitioners. The learned Tribunal consequently noted that if the Tribunal ought to consider the testimony of PW-2, it is also supposed to consider the testimony of R2W2. It was noted that the petitioner had failed to file complete charge sheet so as to enable the tribunal to look into the evidence or the site plan or any other aspect of the accident.

9. The learned Tribunal, in these circumstances, noted that it had no option but to consider the testimonies of the witnesses of both sides and to conclude that the deceased too contributed in the accident. The contributory negligence of the deceased was consequently assessed at 40%.

10. The learned counsel for the petitioner submitted that the learned



Tribunal erred in passing the impugned award. He submitted that the learned tribunal erred in deducting 40 percent of the compensation amount towards contributory negligence. He submitted that the learned Tribunal deducted the compensation amount towards contributory negligence without adducing any reason. He submitted that the learned Tribunal, without any basis, considered the testimony of R2W2 who was known to the driver, and made deduction in compensation towards contributory negligence.

11. The learned counsel for Respondent No. 3/Insurance Company submitted that the learned Tribunal rightly made deduction in compensation on account of contributory negligence. She submitted that the accident occurred on account of the deceased suddenly coming to the right side from his left side. She submitted that the version of the driver was also supported by the testimony of R2W2. She consequently submitted that the present appeal be dismissed.

12. It is trite that in order to establish contributory negligence, some act or omission that materially contributed to the accident ought to be attributed to the person against whom the same is alleged. The Hon'ble Apex Court in ***Prem Lal Anand v. Narendra Kumar : (2024) 9 SCC 441*** while delineating the standard of contributory negligence observed as under:

10. In Municipal Corpn., Greater Bombay v. Laxman Iyer [Municipal Corpn., Greater Bombay v. Laxman Iyer, (2003) 8 SCC 731 : 2004 SCC (Cri) 252] , this Court discussed the concept of negligence and its types i.e. composite and contributory, in the following terms : (SCC pp. 736-37, para 6) "6. ... Negligence is



omission of duty caused either by an omission to do something which a reasonable man guided upon those considerations, who ordinarily by reason of conduct of human affairs would do or be obligated to, or by doing something which a prudent or reasonable man would not do. Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. Negligence is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. The idea of negligence and duty are strictly correlative. Negligence means either subjectively a careless state of mind, or objectively careless conduct. Negligence is not an absolute term, but is a relative one; it is rather a comparative term. No absolute standard can be fixed and no mathematically exact formula can be laid down by which negligence or lack of it can be infallibly measured in a given case. What constitutes negligence varies under different conditions and in determining whether negligence exists in a particular case, or whether a mere act or course of conduct amounts to negligence, all the attending and surrounding facts and circumstances have to be taken into account. It is absence of care according to circumstances. To determine whether an act would be or would not be negligent, it is relevant to determine if any reasonable man would foresee that the act would cause damage or not. The omission to do what the law obligates or even the failure to do anything in a manner, mode or method envisaged by law would equally and per se constitute negligence on the part of such person. If the answer is in the affirmative, it is a negligent act. Where an accident is due to negligence of both parties, substantially there would be contributory negligence and both would be blamed. In a case of contributory negligence, the crucial question on which liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequence of the other's negligence.... Contributory negligence is applicable solely to the conduct of a plaintiff. It means that there has been an act or omission on the part of the plaintiff which has materially contributed to the damage, the act or omission being of such a



nature that it may properly be described as negligence, although negligence is not given its usual meaning. It is now well settled that in the case of contributory negligence, courts have the power to apportion the loss between the parties as seems just and equitable.”

11. This Court in Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak [Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak, (2002) 6 SCC 455 : 2002 SCC (Cri) 1355] observed : (SCC pp. 458-59, para 9) “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. [Astley v. Austrust Ltd., (1999) 73 ALJR 403 (Aust)] 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.’ ”

13. Consequently, in order to establish contributory negligence some act or omission ought to be attributed to the deceased to show that such act or omission materially contributed to the accident. The learned Tribunal considered the rival depositions of PW-2 Pameshwari Ray, and R2W2 Laddu Chaudhary and noted that the names of both the witnesses were not in the criminal record. The learned Tribunal consequently noted that if it were to consider the testimony of PW-2, it also ought to consider the testimony of R2W2. It was further noted that the petitioners had not filed a complete chargesheet so as to enable the Tribunal to look into any other aspect of the accident. Consequently, the learned Tribunal deducted 40% of the compensation amount on account of contributory negligence of the deceased.

14. From a perusal of the material on record, this Court does not find any ground to attribute contributory negligence to the deceased *inter alia* for the following reasons. Firstly, the learned Tribunal, while attributing contributory negligence to the deceased, failed to specify any reason to hold the deceased accountable. Merely because the testimonies were conflicting in nature does not translate to mean that it can be presumed that the deceased materially contributed to the accident. Secondly, while both PW2 Pameshwari Ray, and R2W2 Laddu Chaudhary were not named in the record as filed by the petitioners, PW2, admittedly is an independent witness. Contrarily,



R2W2 Laddu Chaudhary was known to Respondent No. 2. The same casts a doubt on the veracity of the case of the respondents.

15. Thirdly, Respondent No. 1 was chargesheeted under Sections 279/304A of the IPC for causing death by driving rashly and negligently on a public way. This Court is further guided by the decision of the Hon'ble Apex Court in ***Ranjeet & Anr. v. Abdul Kayam Neb & Anr : Arising out of SLP (C) No. 10351/2019*** wherein it was reiterated that the filing of the chargesheet was sufficient to prove the negligence of the driver unless the contrary is proved.

16. Consequently, in the opinion of this Court, the petitioners are entitled to the entire compensation amount without any deduction on account of contributory negligence.

17. Respondent No. 3/Insurance Company is directed to deposit the remaining compensation amount before the learned Tribunal within a period of four weeks from date. The learned Tribunal is directed to redetermine the apportionment and manner of release of the compensation amount to the petitioners. The parties are directed to appear before the learned Tribunal on 15.07.2025.

18. The present petition is allowed in the aforesaid terms. Pending applications also stand disposed of.

AMIT MAHAJAN, J

MAY 28, 2025