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**(2017) 03 AHC CK 0053**

**In the Allahabad High Court**

**Case No : First Appeal From Order No. 745 of 2013**

Delhi Transport Corp.

APPELLANT

Vs

Km. Anju Rastogi

RESPONDENT

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**Date of Decision : 21-03-2017**

**Acts Referred:**

**Citation : (2017) 5 ADJ 394**

**Hon'ble Judges : Dr. Kaushal Jayendra Thaker, J.**

**Bench : Single Bench**

**Advocate :** Avinash Swaroop and V.K. Gupta, Advocates, for the Appellant; K.P. Verma, S.C. Srivastava and Vishesh Kumar Gupta, Advocates, for the Respondents; Avinash Swaroop, A. Srivastava and V.K. Gupta, Advocates, for the Appellant

**Final Decision : Allowed**

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## **Judgement**

Dr. Kaushal Jayendra Thaker, J.—These two appeals involve identical questions of facts and law, and are, therefore, disposed of by this common judgment.

2. The aforesaid appeals have been filed by the appellants impugning judgment and order dated 9.7.2001 passed by Sri Jaiveer Singh, XIV Additional District Judge in Motor Accident Claim No. 454 of 1999, (Ram Autar v. Chairman, Delhi Transport Corporation and M/s. Jai Shiv Shanker Tourist Bus Service, Purana Adda (Bus Stand) Ghaziabad.

3. Earlier judgment holding the driver of both the vehicles negligent could not have been given a go by by the Tribunal in subsequent judgment ignoring the earlier view taken by same Tribunal just because Presiding Officer for the different purpose. Hon'ble the Privy Council in its decision rendered in the case of Syed Mohammad Saddat Ali Khan v. Mirza Wiquar Ali Beg, AIR (30) 1943 PC 115 has observed as under :

"In order that a decision should operate as res judicata between co-defendants,

three conditions must exist : (1) There must be a conflict of interest between those co-defendants, (2) it must be necessary to decide the conflict in order to give the plaintiff the relief he claims, and (3) the question between the co-defendants must have been finally decided."

4. This position of law could not be disputed by learned counsel for the respondent Mr. Srivastava and he could not point out that a different view can be taken by the Tribunal than that taken by the earlier Tribunal deciding the issue of negligence. The Tribunal subsequently could not have taken a different view that taken by the earlier Tribunal from the same accident. I am even fortified by the decision of Gujarat High Court in *United India Insurance Co. Ltd. v. Laljibhai Hamirbhai and two others* wherein it held as under :

"6. The limited question, therefore, arises before this Court for consideration is whether the Tribunal could have taken different view on the issue of negligence than the one taken in former proceedings since the bar of res-judicata operated. So far the eligibility of the claimant to receive compensation and the quantum of compensation are concerned, no dispute has been raised by the learned advocates. I have, therefore, concentrated on the sole controversy whether principle of res-judicata could be applied in the present case. Section 11 of the Civil Procedure Code deals with res-judicata. It is as under :

Section 11: Res-judicata No Court shall try any suit or lease in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by such Court."

12. The Apex Court has gone to the extent of observing that even if the principle of res-judicata may not apply in its strict sense, but its principle would certainly be applicable. When the parties who are disputing in subsequent proceedings, are also parties in earlier proceedings under the very Act, the principle of estoppel and rule of constructive res-judicata will come into play, according to the Apex Court."

5. The only focus of this Court is whether the judgment of a coordinate Bench dealing with MACP of the same accident but a different claimant can give a finding of fact i.e. negligence contrary to the one given by the earlier Bench. Though it was brought to its notice.

Both the appeals allowed.

6. The judgment and decree shall stand modified to the aforesaid extent.

7. The amount if deposited here and remitted to the claimants, the appellant shall be entitled to claim from the other tortfeasor by way of recovery rights.