
(2012) 12 DEL CK 0236
In the Delhi High Court
Case No : MAC. APP. 744 of 2005

Smt. Shanti Devi	Vs	APPELLANT
Colleague Travels Pvt. Ltd. and Others		RESPONDENT

Date of Decision : 11-12-2012

Acts Referred:

Citation : (2012) 12 DEL CK 0236

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Manjeet Chawla, for the Appellant;

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appellant Smt. Shanti Devi who is the legal representative of the deceased Hari Ram impugns a judgment dated 19.04.2005 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 1,90,000/- was awarded in favour of the Appellant for the death of her husband Hari Ram who died in a motor vehicle accident which occurred on 22.11.1995. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of composite negligence of the driver of the Bus No. DL-1P-8186 and the driver of the Maruti Van No. DL-2C-1283 in which the deceased was travelling. The Claims Tribunal thus held that there was negligence to the extent of 50% of both the vehicles and directed the Insurance Company to pay the compensation to the extent of 50% being the Insurer of the Bus No. DL-1P-8186.

2. It is urged by the learned counsel for the Appellant that there was no negligence whatsoever on the part of the driver of Maruti Van. Even if, there was any, in case of composite negligence, the victim can seek compensation from any or either of the tortfeasors.

3. I tend to agree with the learned counsel for the Appellant. In this case, PW-1 Shanti Devi and PW-2 Mukesh Kumar were the eye witness of the accident. PW-2

Mukesh Kumar testified that on 22.11.1995 at 12.00 noon he along with his parents and family members were travelling in a Maruti Van No. DL-2C-1283 from Karkoda, District Sonapat, Haryana towards Dakshin Puri, Delhi. When they reached Bawana, a Bus No. DL-1P-8186 came from the side of Bawana at a very fast speed. It was being driven in a rash and negligent manner and hit against the right front portion of the Maruti Van. The Maruti Van over turned resulting in injuries to the occupants. He deposed that Maruti Van was being driven by one Ram Pat. His father succumbed to the injuries. This part of the PW-2's testimony remains unchallenged and un-rebutted. The driver of the Bus did not come forward to contradict the manner of the accident or to rebut the PW-2's testimony. Thus, the Claims Tribunal erred in holding that the accident was caused on account of the contributory negligence of both the vehicles. The driver of the Bus No. DL-1P-8186 was fully to be blamed for unfortunate accident.

4. Moreover, if, there was composite negligence of the two drivers, the deceased was merely occupants of the bus; the legal representatives of the deceased can seek compensation from either of the tortfeasors.

5. I am fortified, in this view, by a report of the Supreme Court in T.O. Anthony Vs. Karvarnan and Others, .

6. The Appeal, therefore, has to be allowed.

7. The amount of compensation is not disputed by the Appellant. It is ordered that the entire compensation shall be paid by the Respondent Insurance Company along with interest @ 9% per annum as awarded by the Claims Tribunal.

8. Fifty percent of the compensation amount has already been deposited and paid to the Appellant. Rest of the compensation shall be payable to the Appellant.

9. The Respondent Insurance Company is directed to deposit the balance compensation along with interest with the Claims Tribunal within six weeks.

10. This accident took place 17 years back, 50% of the enhanced compensation shall be held in fixed deposit for a period of 2 years. Rest shall be release on deposit. The Appellant would be entitled to monthly interest on the amount held in fixed deposit.

11. The Appeal is allowed in above terms. Pending Applications also stand disposed of.