

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on: 3<sup>rd</sup> September, 2013*  
*Judgment delivered on: 17<sup>th</sup> September, 2013*

+ **MAC.APP. 583/2011**

NEW INDIA ASSURANCE CO LTD. .... Appellant  
Through: Ms.Neerja Sachdeva, Advocate.

Versus

MOHINI JHA & ORS ..... Respondents  
Through: Mr.L.K.Tyagi, Advocate for  
Respondent No.7.

**AND**

+ **MAC.APP. 595/2011**

UNITED INDIA INSURANCE CO LTD. .... Appellant  
Through: Mr.L.K.Tyagi, Advocate.

Versus

MOHINI JHA & ORS ..... Respondents  
Through: Ms.Neerja Sachdeva, Advocate  
for Respondent No.9/Insurance  
Company (NIACI).

**HON'BLE MR. JUSTICE SURESH KAIT**

**SURESH KAIT, J.**

1. The present appeals are filed by both the appellants/Insurance Companies against the impugned award dated 21.02.2011, whereby the learned Tribunal has granted compensation for an amount of Rs.27,60,000/- in favour of the respondents/claimants along with

interest at the rate of 8% *per annum* from the date of filing of the petition till realization.

2. It is noted that one common ground is taken in both the appeals that the learned Tribunal has failed in computing the compensation by taking the monthly income of the deceased as Rs.20,000/- without any basis.

3. Learned counsel appearing on behalf of the appellants/Insurance Companies submitted that the learned Tribunal in para 23 of the impugned order has recorded that PW1, widow of the deceased had filed income tax return of the year 2003-04 which shows that income of the deceased was Rs.44,016/- *per annum*.

4. It is further submitted that the learned Tribunal has observed that although the deceased was working with NDTV in the year 2002-03 and 2003-04, his total income showed in the ITR is less than Rs.4,000/- per month. In the ITR for the year 2004-05, the deceased claimed his salary only Rs.92,900/- *per annum*, which means in the year 2004-05, he was earning even less than Rs.8,000/- per month. Therefore, there was no occasion for the learned Tribunal to ignore the said ITRs of the deceased, which were filed by the respondent Nos. 1 to 4/claimants and to compute the compensation by accepting the income of the deceased as Rs.20,000/- per month. Therefore, the impugned order on this account is liable to be set aside.

5. To prove the factum of income of the deceased, the respondent Nos. 1 to 4/claimants have examined PW4 and PW5.

6. PW4 is a witness from NDTV, who has deposed that the deceased was working with NDTV, Delhi from 31.03.2003 to 26.08.2003 on a consolidated salary of Rs.25,000/- per month. In the cross-examination, he deposed that the contract of employment with the deceased was only upto 26.08.2003 and he did not know if the said contract of the deceased was renewed thereafter or not. However, he has proved the record of the salary of the deceased issued by the Incharge of the Finance Department as Ex.PW4/A.

7. PW5 Sh. Surender Nagar, Executive Assistant of Express Trade Tower, Film City, Sector 16, Noida, who deposed that their office had issued a letter to the deceased Ex.PW 3/A which was signed by their Editor-in-Chief and according to the same, the annual package of the deceased was Rs.7.20 lacs *per annum*. The deceased had to join the services w.e.f. 22.08.2005, however, the accident took place on 15.08.2005.

8. The claimants / respondents have placed various documents relating to the income of the deceased including the ITR for the year 2002-03, 2003-04 and 2004-05. Moreover, claimants have proved that the deceased was working in NDTV; and also placed on record the offer letter of an employment to the post of guest coordinator. Importantly, the informant, in FIR no. 345/2005, is the wife of the film Star Govinda. As per the Claim Petition, the deceased was working as a Personal Secretary of the film star Govinda. However, the exact income of the deceased has not been proved. Therefore, the Id Tribunal rightly relied upon a case of ***Oriental Insurance Co. v.***

***Deo Patodi II (2009) ACC 875 (SC)*** and assessed the monthly income of the deceased to extent of Rs.20,000/- per month.

9. Appellant in MAC. Appeal No. 583/2011 titled as ***“The New India Assurance Company Ltd. Vs. Smt. Mohini Jha and Ors.,*** contents that the learned Tribunal has erred in fastening the liability on the owner, driver and insurer of the Qualis Vehicle bearing No. RJ 14-T-7775, in which the deceased was travelling.

10. Learned counsel for the appellant/Insurance Company in the above noted appeal has submitted that the respondent Nos. 1 to 4/claimants were travelling in the Qualis Car along with Ms. Sunita Ahuja, wife of film star Govinda and their children. At about 11.45 a.m. when they crossed the toll plaza, suddenly the truck driven by respondent No.5 came from opposite direction and dashed against the Qualis car. Consequently, the deceased Rishabh Jha sustained serious injuries and other occupants of the car also suffered injuries.

11. He further submitted that a police report was lodged by Ms.Sunita Ahuja in a local police station as noted above against respondent No.5/driver of the truck, which was insured with the United India Insurance Co. Ltd., (appellant in MAC. Appeal No. 595/2011). The chargesheet was also filed against the respondent No.5, i.e., the driver of the truck.

12. He submitted that taking into consideration the facts of the case, the learned Tribunal has erred in establishing negligence upto 50% on

the part of the driver of the Qualis car, which is insured with the New India Assurance Co. Ltd. (Appellant in MAC.A. No. 583/2011).

13. The respondent No. 5 Jamal Khan and respondent No.6 Hanif Khan, driver and owner of the Truck which was insured with the United India Insurance Co. Ltd., have filed their joint written statement taking preliminary objections that rash and negligent driving was on the part of Albert @ Abdul/ driver of Qualis Car and the accident took place only because of his rash and negligent driving as he was driving the vehicle at a very high speed. It is further stated that when the driver applied sudden breaks with full force, the said Qualis Car skidded into opposite lane and collided with the other vehicle, therefore, no rash and negligent driving can be attributed to the respondent No.5, Jamal Khan/driver of the truck.

14. The respondent No.7, i.e., the driver of the Qualis Car, in which the deceased was travelling has also filed the written statement thereby denying all the contentions in the petition and submitted that accident had happened only due to rash and negligent driving of the respondent No.5. He further stated that he was having valid driving license on the date of the accident and there was no mistake or negligence on his part. Therefore, he sought exoneration from paying any claim, being not liable.

15. While appreciating the evidence, Id. Tribunal has held as under:

*“12 The onus of this issue was upon the petitioners & they have to prove that the petitioners are the Legal heirs of the deceased who died in road side accident on 15.8.05*

*due to rash and negligent driving of both the vehicles. To prove the negligence part, the petitioners have examined Sh.Raju Lal Sharma who is stated to be an eye witness and he deposed that he was standing just opposite Kisan Hair Dresser at Devlia Ajmer Road, the offending vehicle no.2 came from Jaipur and was going to Ajmer and offending vehicle no.1 was coming from Ajmer side and proceeding towards Jaipur and both these vehicles were at high speed and both the vehicles collided with each other at the road cut due to which the offending vehicle no.2 turned turtled. He further deposed that one of the person sitting in the offending vehicle no.2 died. In cross examination by the respondent no.6, he deposed that he was at a distance of about 100 ft.from the place of accident. The school children were trying to cross the road and to save the children, the driver of the offending vehicle no.2 turned his cab towards cut and the driver of the offending vehicle no.1 also turned his vehicle towards the cut of the road due to which front portion of the offending vehicle no.2 hit against middle portion of the offending vehicle no.1 . P.W1 Smt.Mohini Jha has deposed on the same lines but she is not an eye witness of the accident. Smt.Sunita, co traveler in the offending vehicle no.2 has not turned up to depose. The Petitioners have not called her for the reason best known to them. There is a cutting of the newspaper on the court file which is corroborative to the evidence given by P.W2. However, none of the person from the office of newspaper has been summoned to confirm this document. The record of the criminal court of the Ld.ACJ in Jaipur has been filed on court file which contained the statement of Smt.Sunita as the complainant, the challan filed against the respondent no.1, the site plan and the postmortem report. The postmortem report confirms the death of the deceased due to the accident and the filing of the chargesheet against the respondent no.1 proves the rash and negligent driving on the part of the respondent no.1.*

13 One more fact as per the deposition of P.W2 is worth observing. P.W2 has deposed in his evidence that the front portion of the offending vehicle no.2 struck against the middle portion of the offending vehicle no.1. Keeping in view this fact, it appears that both the vehicles were coming at fast speed and after seeing the school children on road, they both were unable to control their vehicles. The striking of the offending vehicle no.2 in the middle portion of the offending no.1 also shows that despite applying heavy breaks by the respondent no.4, he could not make his vehicle stop as to bring the same to stand still position so that accident can be avoided. The version of the respondent no.4 also speaks volumes of the fact that he was going/driving the vehicle at a speed which he could not control when he saw the emergent condition i.e. crossing of school children on the road and dashed into the offending vehicle no.1. Breaks are meant for these purposes but in the present case it appears that breaks could not be applied or could not function properly as speed of both the vehicles would have been beyond the controlling & specified limits. The site plan also shows that the offending vehicle no.1 as well as the offending vehicle no.2 both changed their lanes. This fact is again corroborative with the testimony of the P.W2 that there was a cut in the middle of the road and since school children were coming both the vehicles have tried to save the children and turned their vehicles towards the cut of the road which resulted in the accident. Therefore, although the negligence in the investigation has been reported on the part of the driver of the offending vehicle no.1 yet keeping in view the testimony of the P.W1 in para no.13 and keeping in view the site plan, this court is of the opinion that both the vehicles were coming at fast speed and could not control their vehicles when it was required most, and as such they collided with each other which *interalia* means that they both were driving their respective vehicles in rash and negligent manner.”

16. Learned counsels in both the appeals noted above have sought exoneration from any liability to pay the compensation.

17. The learned Tribunal after going through the facts and circumstances of the case has rightly apportioned 50% liability on the appellants by establishing that the accident in question was in consequence of contributory negligence.

18. Therefore, keeping in view the evidence on record, this Court finds no reason to interfere with the findings of the Id. Tribunal.

19. Accordingly, both the appeals are dismissed.

20. Statutory amount be released in favour of the appellants.

**SURESH KAIT, J.**

**SEPTEMBER 17, 2013**

*Sb/jg*