2024 INSC 585

**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NOS. ……. OF 2024**
**(Arising out of SLP(C)Nos.30188-30189/2018)**

PREM LAL ANAND & ORS. … APPELLANT (S)

VERSUS

NARENDRA KUMAR & ORS. …RESPONDENT(S)

# J U D G M E N T

**SANJAY KAROL, J.**

Leave Granted.

**2.** These appeals by special leave are directed against the judgment and order dated 26th October, 2017 of the High Court of Judicature at Allahabad in First Appeal from Order No.341 of 1997 and dated 13th July, 2018 in Civil Misc. Recall Application No.360830 of 2017 in First Appeal from Order No.341 of 1997 between the self-same parties. The appeal to the High Court was filed by the

claimants (appellants herein) against Order dated 8th January, 1997 passed by M.A.C.T./XIVth Additional District Judge, Ghaziabad in Motor Accident Claim No.570 of 1994.

**3.** The claimant-appellant No.1 along with his wife aged about 45 years were travelling by motorcycle and as they were crossing village Mehrauli, on their way to Noida to visit a friend, they were faced with two rashly and speedily driven tractors resulting into an accident, with the claimant sustaining several injuries including a broken jaw and fracture(s) in his leg. Unfortunately, claimant-appellant's wife died on the spot, as a result of the impact of the accident.

**4.** The claimant-appellant and his deceased wife were engaged in business, jointly earning Rs.5,000/- from their business concern, namely, M/s. Sonali Fabrics. It was urged that due to the sudden death of the wife of the deceased, the entire business, which was earning profits, for example, Rs.60,000/- in the year 1994 and Rs.50,000/- in 1993, the income therefrom was lost.

**5.** Hence, the claimant filed a claim for Rs.12,00,000/- before the concerned Motor Accident Claims Tribunal.

**6.** The Tribunal framed five issues in respect of rash and negligent driving; claimants being the legal heirs of the deceased wife, the quantum of her earnings; liability of the insurance company; whether the driver of the offending vehicle had a valid licence; and lastly what relief, if any.

**7.** In regard to contributory negligence, it was held that the claimant and the respondent both were responsible equally. The claimants were held to be legal heirs of the deceased. The driver of the offending vehicle had a valid licence. The final order given by the Tribunal is reproduced hereinbelow :-

> "The Motor Accident Claim of Claimants for the compensation of Rs.12 Lacs is hereby rejected. Claim is decreed against the Respondents Narendra Kumar, Jagbir and M/s United India Insurance Co.Ltd. for the compensation of Rs.1,01,250/- with cost. Claim against the Respondent No.4 Charan Singh is rejected. Claimant shall be entitled to interest @ 12% per annum on the amount of abovesaid compensation e.e.f. 9.10.1994. Respondents are directed to deposit the aforesaid amount in this Court within a period of two months. Failing which the appropriate action according to Law shall be initiated against them for the recovery of amount. In case any interim compensation has already been paid to the Claimants the same shall be adjusted in this amount."

**8.** Seeking enhancement of compensation, the claimant-appellant(s) approached the High Court. *Vide* the impugned order dated 26th October, 2017 the High Court partly allowed the appeal, observing that there is an apparent error in the Tribunal applying multiplier 9 to calculate the compensation whereas, accordingly applied the multiplier as 14. The Tribunal was, therefore, directed to calculate the enhanced compensation, carrying the rate of interest as awarded by the Tribunal.

**9.** Subsequently, Civil Misc. Recall Application No.360830 of 2017 was preferred by the claimant-appellant(s) against the order impugned herein. However, the same was dismissed. It is against both these orders that the claimant-appellant(s) have approached this Court.

**10.** The primary ground on which compensation truncated, in nature was awarded to the claimant-appellant(s), was the finding of contributory negligence returned by the Tribunal. In answering the third issue, the liability of the insurance company to pay compensation, it was observed that the responsibility for the accident could be apportioned to both the claimant-appellant(s) and the respondent at 50% each.

**11**. At this stage, it would be appropriate to consider pronouncements of this Court on contributory negligence.

11.1 In ***Municipal Corporation of Greater Bombay*** v. ***Laxman Iyer & Anr.***[1], this Court discussed the concept of negligence and its types, i.e., composite and contributory, in the following terms :-

> "**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

[1] (2003) 8 SCC 731

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."

(Emphasis supplied)

11.2 This Court in ***Pramodkumar Rasikbhai Jhaveri*** v. ***Karamasey Kunvargi Tak & Ors.***[2] observed :

"**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.* [(1999) 73 ALJR 403] 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

[2] (2002) 6 SCC 455

> 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."
>
> (Emphasis supplied)

**12.** Record reveals that driver of the tractor No.UP 14-A 1933 had maintained slow speed, prompting the claimant-appellant No.1 to overtake, but, however, the driver of the another tractor bearing No.UP 14-B 9603 was rash and negligent in his act, inasmuch as, not only did he overspeed, but also came from the wrong side, resulting in the collusion.

**13.** In the attending facts and circumstances, merely because a person was attempting to overtake a vehicle, cannot be said to be an act of rashness or negligence with nothing to the contrary suggested from the record. Further, it is the claimant-appellant(s) who lost a member of their family. Not only was the claimant-appellant, Prem Lal Anand doing an act which is an everyday occurrence on the road that is overtaking a vehicle, but resultantly suffered extensive injuries himself. That apart, it has also been proved that the offending vehicle was driven rashly and negligently. These two factors taken together lead us to the conclusion that the finding of contributory negligence against the

appellant No.1 was erroneous and unjustified. Consequently, compensation awarded on this count has to be revised.

**14.** A further contention by the claimant-appellant(s) was the misapplication of the multiplier in ***Sarla Verma*** *v.* ***Delhi Transport Corporation***[3]**.** It is argued that the multiplier applicable will be 15, in accordance with the Second Schedule to the Motor Vehicle Act as on 22nd May 2018. The statute as it stands today, does not have a Second Schedule, with the same being omitted on 25th February 2022. The Special Leave Petition in the present matter was filed on 10th October 2018, on which date the Schedule was in force. Therefore, we find force in the submission of the learned counsel for the claimant-appellant(s)

**15.** Another aspect to be considered is the grant of future prospects as per ***National Insurance Co. Ltd***. v. ***Pranay Sethi***[4]. Para 59.4 thereof provides that if the deceased was self-employed or on a fixed salary, considering the age of the deceased, certain percentages as provided have to be added in respect of future prospects. In the present case, the deceased was between the age of 40 and 50 and accordingly, 25% addition is to be made, to the established income. The Tribunal notes the income of the deceased to be Rs.5000/- per month, therefore 25% of 5000 equals Rs.1,250/-. Yearly income as a result would be Rs 6250 x 12 which equals to Rs.75,000/- per year.

[3] (2009) 6 SCC 121
[4] (2017) 16 SCC 680

**16.** Compensation as calculated, in accordance with the above discussion would be 75,000/- (which includes Future Prospects) x 15 (Multiplier) = Rs. 11,25,000/-.

**17.** Hence, the claimant would be entitled to a total sum of Rs.11,25,000/- instead of Rs.1,01,250/- as awarded by the Tribunal, as compensation.

**18.** We clarify that the other directions of the Tribunal shall remain undisturbed except that the rate of interest would be 8% instead of 12%.

**19.** The Appeals are allowed in aforesaid terms. The impugned Award dated 8th January, 1997 titled as ***Prem Lal Anand & Ors***. v. ***Narendra Kumar & Ors.*** in Motor Accident Claim No.570 of 1994 stands modified to the aforesaid extent. Pending applications, if any, are also disposed of.

**…….……J.**
**(C.T. RAVIKUMAR )**

**……J.**
**(SANJAY KAROL)**

**Dated : August 07, 2024;**
**Place : New Delhi.**