

Moot Court Problem, 2018

Smt Aparna Dass, a retired Senior Citizen and aged about 70 years, on 12th October 2016 attended a marriage with her Son Shri Parth in Delhi. After attending the occasion, she asked her driver to come and pick her. Since the driver was on the other side of road, he requested the lady and son to cross the road and catch the car. Though hesitated to cross road due to her bad vision, she somehow agreed to it as traffic on road was heavy her son was right behind her. Suddenly her son realized that he has forgotten his bag inside the banquet hall and he immediately went inside to find his bag. At same time, Smt Arpana Dass tried to cross road by herself.

Rahul and Prem, two youngsters at about 10 p.m. of 24 and 21 years of age, were riding a Bike Hero Honda, wherein Rahul was riding the bike and was holding proper driving license and Prem was his pillion rider. They were late for an interview in MNC hence they touched the speed limit of 60km/H but didn't cross it. After riding the bike for few kilometres, they were crossing the flyover which had a deep slop at the end of it. On the slop, their bike speed limit increased due to slop and reached to 80km/H. suddenly they found an old lady (Mrs. Aparna Dass) came in front of them from the front side of a bus which was standing at bus stop on road. They could not control the bike due to over speed and hit the old lady.

Due to accident, Smt Aparna Dass got unconscious and fell on road. Rahul got several injuries on his head. Prem got some scratches on his arms and legs but he was fine. Being terrified, Prem ran away from the spot leaving behind his friend and old lady. Rahul, though injured, took the lady

to hospital in an auto wherein she was declared dead as per medical report file in D.A.R reflects that the Smt.Aparna Das died due to shock and brain death.

Meanwhile, the son of Smt. Aparna Das also reached hospital and called police and lodges an FIR against Rahul and Prem (F.I.R no 1210/2016). He also filed Motor Accident Claim and claimed a compensation of Rs. 1 Crore on account of her mother's death.

The Motor Accident Claim Tribunal accepted the claim of Shri Parth and awarded him claim of Rs. 50 Lakh on following account:

- Before death, she was a senior citizen and getting a pension of Rs. 30,000 per month from government.
- She was capable of earning in future as she was a qualified teacher and throughout she was working as teacher.
- Rahul and Prem were rash and negligent and over-speeding hence they were liable for the death of Lady and to pay compensation to her legal heirs.
- Merely because the speed increased due to slop does not mean you should lose your control on your speed or let speed of vehicle increased without applying breaks.
- There was no contributory negligence on behalf of Smt Aparna Dass and Rahul and Prem alone were responsible for her death.

Both Rahul and Prem prefer an appeal to Honble Delhi High Court challenging the impugned order. The Honble Delhi High Court allowed

their appeal and reversed the order of MAC Tribunal on following grounds:

- Rahul and Prem were not driving rash and negligent as due to slop at the end of fly over their speed increased.
- There was a foot-over bridge 30 meter away from the spot and deceased did not used the same despite of fact that roads were jam packed with traffic.
- There was no zebra crossing at the spot and she was trying to cross the road without following rules and regulation.
- There was a contributory negligence on the part of deceased lady hence her legal heirs were not entitled to any compensation.
- There was no eye witness to accident, including the son, so it is impossible to fix liability on mere assumption and presumption. etc

Now, Shri Parth the son of deceased Smt Aparna Dass of age 14 year has approached the Honble Supreme Court of India in Special Leave Petition thereby challenging the judgement of Honble Delhi High Court which was pronounced on 20th July 2018.