

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO NO. 713/2003

Judgment delivered on: February 05, 2008

N.D.M.C

..... Appellant.

Through: Mr.Arjun Pant, Advocate.

versus

Mohd. Yusuf & Ors.

..... Respondents

Through: Mr.Islam Khan, Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:

By way of the present appeal, counsel seeks to challenge the impugned award dated 29.05.2003 primarily on two grounds. The

first ground taken by the appellant is that the deceased was a ragpicker and died while entering in garbage dhalao. The second ground taken by the appellant is that there was no negligence on the part of the driver of the said garbage disposal van and no negligence has even been proved on record as merely an FIR was registered against the appellant.

Before dealing with the contentions of the appellant, it would be appropriate to give brief facts of the present case as under:

On 5.2.98 at 10.30 A.M. the deceased Mohd Yasin @ Tinku met with a tragic end as the heavy lid of the garbage dumping carrier no. DL IG 6548 fell upon him due to the rashness and negligence of the driver of the said carrier.

Counsel for the appellant contends that mere registration of FIR is not enough to prove the negligence on the part of the driver of the said vehicle. Counsel also contends that the deceased himself was a wrong doer as he could not have picked the garbage from the Garbage dhalao as the dhalao area is the forbidden area and nobody without the authority of the NDMC is allowed to enter in the said garbage dumping area.

On the other hand Mr. Islam Khan, counsel for the respondent contends that the claim petition which was initially filed under Section 166 of the Motor Vehicles Act was converted into Section 163-A of M.V. Act. Counsel thus contends that it was enough for the respondent to prove the use of the vehicle in question which led to causing death of Mr. Mohd Yasin. Counsel further contends that under the Motor Vehicles Act, registration of FIR against the offending vehicle is a sufficient proof so as to show the involvement of the said vehicle in causing the accident.

I have heard learned counsel for the parties and have perused the record.

Perusal of the award shows that claim petition which was initially filed under Section 166 of the Motor Vehicle Act was subsequently converted into under Section 163-A of Motor Vehicles Act. As per the facts placed on record the driver of the offending vehicle ran away from the place of the accident. FIR No. 132/98 was lodged against the driver of the offending vehicle. The said FIR and other criminal records were duly proved by the respondents i.e. copy of the site plan, superdarinama of the said vehicle and the post mortem

report. Once the claim petition is converted into a petition under Section 163-A of Motor Vehicles Act there is no legal requirement to prove negligence on the part of the driver of the offending vehicle. In this regard the Apex Court observed in **Oriental Insurance Co. Ltd. vs. Meena Variyal (2007)5 SCC 428** as under:-

"27. We think that the law laid down in *Minu B. Mehta v. Balkrishna Ramchandra Nayan* 10 was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section 163-A of the Act providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under sub-section (1) of Section 163-A of the Act, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned. Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section

163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle.

It was sufficient for the respondent to prove use of the offending vehicle in causing the accident. The said documents comprising of FIR and Vakalatnama and post mortem report are sufficient enough to prove that the deceased had died in the said accident in which the said Garbage Van was involved. Merely because the garbage dhalao was a forbidden area, that would not give license to the driver of such vehicle not to take care of his surroundings.

I, therefore, do not find any merit in the appeal.

Dismissed.

February 05, 2008

KAILASH GAMBHIR J.

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