

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

Date of decision: 6th November, 2012

+ **MAC. APP. 422/2005**

UNITED INDIA INSURANCE COMPANY LTD. Appellant

Through: Mr. Pankaj Seth, Adv.

versus

ABDUL RASHID & ORS.

..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant United India Insurance Company Limited takes exception to the judgment dated 23.03.2005 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a Claim Petition under Section 140 and 166 of the Motor Vehicles Act, 1988 (the Act) preferred by the Respondents No.1 and 2 was *suo moto* converted under Section 163-A of the Act and compensation was awarded as per the Second Schedule.
2. It is urged by the learned counsel for the Appellant that if the Claims Tribunal opined that the negligence which is sine qua non to a Petition under Section 166 of the Act was not proved, the Claims Tribunal could not have *suo moto* converted the Petition from the one under Section 166 of the Act to Section 163-A of the Act and award compensation on the basis of the structured formula.

3. In *Deepal Girishbhai Soni & Ors. v. United India Insurance Co. Limited, Baroda*, (2004) 5 SCC 385 the Supreme Court laid down that if in a case the Claims Tribunal on considering the relevant material comes to the conclusion that no case is made out under Section 166 of the Act, it would not be at liberty to award compensation *suo moto* under Section 163-A of the Act. In this view of the matter, the Claims Tribunal could not have converted the Petition from under Section 166 of the Act to under Section 163-A of the Act.
4. Turning to the facts of the instant case, the deceased Mohd. Umar suffered fatal injuries on account of bursting of tyre of vehicle No.HR-55-6804 in which the deceased was travelling. The case is squarely covered by the judgment of the Supreme Court in *Kaushnuma Begum (Smt.) & Ors. v. New India Assurance Co. Ltd.*, (2001) 2 SCC 9; where the Supreme Court applied the rule of strict liability to award compensation where the accident took place because of bursting of the tyre. Paras 10 to 16 of the report in *Kaushnuma Begum* are extracted hereunder:-

“10. Section 165(1) of the MV Act confers power on the State Government to constitute one or more Motor Accidents Claims Tribunals by notification in the Official Gazette for such area as may be specified in the notification. Such Tribunals are constituted for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. Section 175 of the MV Act contains a prohibition that “no civil court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal”.

11. It must be noted that the jurisdiction of the Tribunal is not restricted to decide claims arising out of negligence in the use of

motor vehicles. Negligence is only one of the species of the causes of action for making a claim for compensation in respect of accidents arising out of the use of motor vehicles. There are other premises for such cause of action.

12. Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use, should not the owner be made liable for damages to the person who suffered on account of such accident? This question depends upon how far the rule in Rylands v. Fletcher [(1861-73) All ER Rep 1 : (1868) 3 HL 330] can apply in motor accident cases. The said rule is summarised by Blackburn, J., thus:

“The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default, or, perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient.”

13. The House of Lords considered it and upheld the ratio with the following dictum:

“We think that the true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default, or, perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient.”

14. The above rule eventually gained approval in a large number of decisions rendered by courts in England and abroad. Winfield on Tort has brought out even a chapter on the “Rule in Rylands v. Fletcher [(1861-73) All ER Rep 1 : (1868) 3 HL 330] ”. At p. 543 of the 15th Edn. of the celebrated work the learned author has pointed out that

“over the years Rylands v. Fletcher [(1861-73) All ER Rep 1 : (1868) 3 HL 330] has been applied to a remarkable variety of things: fire, gas, explosions, electricity, oil, noxious fumes, colliery spoil, rusty wire from a decayed fence, vibrations, poisonous vegetation”.

He has elaborated seven defences recognised in common law against action brought on the strength of the rule in Rylands v. Fletcher [(1861-73) All ER Rep 1 : (1868) 3 HL 330] . They are:

- (1) Consent of the plaintiff i.e. volenti non fit injuria.*
- (2) Common benefit i.e. where the source of the danger is maintained for the common benefit of the plaintiff and the defendant, the defendant is not liable for its escape.*
- (3) Act of stranger i.e. if the escape was caused by the unforeseeable act of a stranger, the rule does not apply.*
- (4) Exercise of statutory authority i.e. the rule will stand excluded either when the act was done under a statutory duty or when a statute provides otherwise.*
- (5) Act of God or vis major i.e. circumstances which no human foresight can provide against and of which human prudence is not bound to recognise the possibility.*
- (6) Default of the plaintiff i.e. if the damage is caused solely by the act or default of the plaintiff himself, the rule will not apply.*
- (7) Remoteness of consequences i.e. the rule cannot be applied ad infinitum, because even according to the formulation of the rule made by Blackburn, J., the defendant is answerable only for all the damage “which is the natural consequence of its escape”.*

15. The Rule in Rylands v. Fletcher [(1861-73) All ER Rep 1 : (1868) 3 HL 330] has been referred to by this Court in a number of

decisions. While dealing with the liability of industries engaged in hazardous or dangerous activities P.N. Bhagwati, C.J., speaking for the Constitution Bench in M.C. Mehta v. Union of India [(1987) 1 SCC 395 : 1987 SCC (L&S) 37] expressed the view that there is no necessity to bank on the rule in Rylands v. Fletcher [(1861-73) All ER Rep 1 : (1868) 3 HL 330] . What the learned Judge observed is this: (SCC p. 420, para 31)

“We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order.”

16. It is pertinent to point out that the Constitution Bench did not disapprove the rule. On the contrary, learned Judges further said that “we are certainly prepared to receive light from whatever source it comes”. It means that the Constitution Bench did not foreclose the application of the rule as a legal proposition.”

5. Thus, considering circumstances in which the accident occurred, the negligence for the purpose of Section 165 of the Act was sufficiently proved. Reference may also be made to the report of the Supreme Court in *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530, while holding that in a petition under Section 166 of the Act for award of compensation, the negligence has to be proved on the touchstone of preponderance of probability, in para 15, it was observed as under:-

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof

beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

6. The *observations* of the Supreme Court in *Bimla Devi* were referred with approval in a later judgment in *Parmeshwari Devi v. Amir Chand and Ors.*, (2011) 11 SCC 635.
7. While awarding compensation, the Claims Tribunal declined to believe the deceased's income as ₹4,000/- per month. It took the minimum wages of an unskilled worker as fixed by the Govt. of NCT of Delhi i.e. ₹2700/- per month, deducted one-third towards personal and living expenses and applied the multiplier of 17.
8. It is no longer *res integra* that deduction towards personal and living expenses in case of a bachelor would usually be 50% except where the bachelor had the responsibilities of a widowed mother and younger siblings. (*Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121). The appropriate multiplier has to be as per the age of the deceased or the Claimant whichever is higher. (*U.P. SRTC v. Trilok Chandara*, (1996) 4 SCC 362; and *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176).
9. On the basis of the report of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559; there would be an addition of 30% towards inflation in case of a menial worker even if there is no evidence with regard to the future prospects.
10. The loss of dependency thus comes to ₹2,94,840/- (2700/- + 30% x 1/2 x 12 x 14).

11. The Respondents No.1 and 2 (the claimants) would be further entitled to a sum of ₹25,000/- towards loss of love and affection and ₹10,000/- each towards loss to estate and funeral expenses.
12. Thus, the overall compensation comes to ₹3,39,840/- as against an award of ₹3,69,200/- which cannot be said to be exorbitant or excessive.
13. This accident took place in the year 2002. The Claimants are poor persons. For a paltry amount of ₹30,000/-, I would not like to interfere with the award of compensation of ₹3,69,200/-.
14. The Appeal is accordingly dismissed.
15. By an order dated 20.05.2005, 50% of the award amount was ordered to be released in favour of the Claimants. Rest of the amount shall also be released to them in terms of the order passed by the Claims Tribunal.
16. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company.
17. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 06, 2012

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