

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

Date of decision: 5th July, 2012

+ **MAC.APP. 375/2006**

NATIONAL INSURANCE CO. LTD. Appellant
Through: Ms. Shantha Devi Raman, Adv.

versus

VIJAY LAXMI & ORS. Respondent
Through: Mr. Dharmender Arya, Adv.
with Mr. Abhishek Chopra,
Adv. for R-1 to R-3.
Mr. Rakesh Kakar, Adv. for R-
4 & R-5.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appeal is directed against a judgment dated 19.01.2006 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹13,95,000/- was awarded in favour of Respondents No.1 to 3 for the death of one Suresh Chandra who died in a motor vehicle accident which occurred on 17.05.2004.
2. During the course of arguments, it was pointed out by the learned counsel for the Respondents No.4 and 5 that during inquiry before the Claims Tribunal an application under Section

151 CPC along with Verification Report of the driving licence from District Transport Office, Gaya was placed on record.

3. The learned counsel for the Appellant has given up the plea of fastening liability on the owner and driver of the vehicle.
4. The only ground raised by the learned counsel for the Appellant is that proof of negligence is a *sine qua non* in a Claim Petition under Section 166 of the Motor Vehicles Act (the Act). PW-3 Vijay Kumar examined by Respondents No.1 to 3 did not support the Claimants' version with regard to the negligence of Respondent No.4 in driving truck No.HR-38C-0875. The Respondent No.4 entered the witness box as RW-1 and deposed that he had entered the other carriage way meant for the traffic coming from the opposite direction as the normal carriage way was closed on account of repairs and the traffic was being diverted by the police on the normal carriage way. It is thus argued that there was no negligence in driving the truck on the carriage way meant for the traffic coming from the opposite direction. It was the deceased who was driving his motorcycle in a rash and negligent manner and the accident occurred solely on account of his negligence. Thus, Respondents No.1 to 3 were not entitled to any compensation on account of the fatal injuries suffered by deceased Suresh Chandra in the accident. The Claims Tribunal dealt with the issue of negligence as under:-

*“14. After the decision in **Kaushnuma Begum V. New India Assurance Co. Ltd.**, 2001 ACJ, 421 (SC), the issue of wrongful act or omission on the part of driver of a motor vehicle involved in the accident has been left of secondary importance and the mere use or involvement of the motor vehicle in causing bodily injury or death to a human being or damage to the property would make the petition maintainable u/s 166 & 140 of the Act. Perusal of certified copy of the FIR No. 114/04 lodged with P.DS. Indirapuram under section 279/304 A of the IPC Ex PW 1/B would clearly bring out the use and involvement of the offending truck in collision with the Motor Cycle of the deceased. It is also in evidence that Respondent no. 1 has since been charge sheeted for committing an offence punishable under section 279/304 A of the IPC and the trial is subjudice before the competent Magisterial court. PW 3 did not support the case of the claimant and rather testified that he did not see the accident happening and denied that he made any statement to the police that the truck was being driven in a rash and reckless manner. However, the defence taken by Respondent no. 1 on his written statement and his evidence make one thing very clear that portion of the road in his side was closed and the traffic had been diverted on to the right side of the road and there was no middle divider.*

15. Perusal of certified copy of the site plan Ex PW 1/E would show that the accident occurred almost in the middle of the road. What the claimants are able to show is that the deceased was involved in an accident arising out of the use of truck no. HR-38-C-0875 and it was incumbent upon on the driver the truck to show how the accident occurred. I am afraid except for a bald statement that he was not responsible in causing the accident, nothing much has come in his evidence. In other words, respondent No. 1 fails to lead any evidence which could exonerate him from his complicity and culpability for the accident. The very fact that he was on

the wrong side of the road was demanding that he should have been more careful to give way to the traffic coming from the opposite side.

It may be indicated that the accident occurred in the broad day light in the afternoon and to my mind, Respondent No. 1 had the opportunity to avoid the collision which he could not. I do not see how the deceased could be faulted here when he was driving on its correct side of the road. The very fact that the driver has been charge sheeted for culpable homicide not amounting to murder squarely puts the blame on respondent No. 1.”

5. It may be noticed that Vijay Kumar PW-3 is the author of the FIR No.221/2004, Police Station Indrapuri. He informed the police that the accident was caused as the truck (the offending vehicle) had entered the carriage way from wrong side and was being driven in a rash and negligent manner by its driver. Although, PW-3 Vijay Kumar when examined during inquiry before the Claims Tribunal did not support the version as given in the FIR, but he could not give any reason as to how he signed the complaint Ex.PW-1/D, on the basis of which the FIR was registered.
6. Secondly, Respondent No.4, driver of the offending truck took the plea that the traffic was diverted by the traffic police to the carriage way meant for the traffic coming from the opposite direction as the left side of the road was under repair. No witness from the PWD department nor any witness from the traffic police was produced to show that the carriage way was under repair on the day of the accident. Even when the carriage

way meant for a vehicle is closed and the driver enters other carriage way, the driver of a such vehicle is expected to take extra care and caution as the traffic coming from the opposite direction would hardly know that the carriage way on the other side had been closed and the traffic from the opposite direction would also come on the same carriage way.

7. It is well settled that in a Claim Petition under Section 166 of the M.V. Act negligence has to be proved only on touchstone of preponderance of probability.
8. In *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530, the Supreme Court held that in a Petition under Section 166 of the Act, the Claimants were merely to establish their case on the touchstone of preponderance of probability and holistic view is to be taken while dealing with the Claim Petition under the Motor Vehicles Act. Para 15 of the report is extracted hereunder:

“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.”

9. The report in *Bimla Devi (supra)* was relied on by the Supreme Court in its latest judgments in *Parmeshwari v. Amir Chand*,

(2011) 11 SCC 635 and Kusum Lata v. Satbir, (2011) 3 SCC 646.

10. In view of the foregoing discussion, it was proved that the accident was caused on account of rash and negligent driving of truck No.HR-38C-0875 by Respondent No.4.
11. The Appeal is devoid of any merit; the same is accordingly dismissed.
12. 50% of the compensation deposited was ordered to be released in favour of the Claimants. Rest of the compensation lying deposited shall be released in terms of the order passed by the Claims Tribunal.
8. The statutory amount of ₹25,000/- shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

JULY 05, 2012

vk