

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

Date of decision: 14th August, 2012

+ **MAC. APP. 790/2011**

CHANDAN PRAKASH & ANR. Appellants
Through: Mr. J.P. Sengh, Sr. Adv. with
Ms. Zubeda Begum, Adv.,
Mr. Sumeet Batra, Adv.,
Ms. Ankita Gupta, Adv.

versus

VIDYA DEVI & ORS. Respondents
Through Mr. Jitender Kumar, Adv.

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. This Appeal is directed against a judgment dated 25.05.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹13,97,340/- was awarded for the death of Ramesh who died in a motor vehicle accident which occurred on 9.01.2000.
2. A Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (the Act) was preferred by the legal representatives of deceased Ramesh alleging that on the fateful day, that is, on 09.01.2000 at about 6:42 P.M. Ramesh was riding a bicycle and was hit by a Swaraj Mazda, a Light Passenger Vehicle No.DL-1V-1496 which was driven by the First Appellant (Chandan Prakash) in a rash and negligent manner. It was

alleged that the deceased was working in MTNL and was getting a salary of ₹8765/- per month.

3. On appreciation of evidence, the Claims Tribunal found that the accident was caused due to rash and negligent driving of the earlier said Swaraj Mazda which was driven by the First Appellant in a rash and negligent manner, compensation as stated earlier, was awarded.
4. It is urged by the learned counsel for the Appellants that in a Claim Petition under Section 166 of the Act proof of negligence is a *sine qua non* for award of compensation. In this case no evidence whatsoever was produced by the Respondents No.1 to 5 (the Claimants) to establish that the Swaraj Mazda was involved in the accident or that the accident occurred on account of rash and negligent driving by the First Appellant. No eye witness was produced by the Claimants. RW-2 Subhash Gupta who was cited as a prosecution witness in the criminal case under Section 304-A IPC was categorical that the accident has taken place with a bus bearing some number starting with DLP.
5. It is contended that the reply to the notice under Section 133 could not have been taken into account to fasten the liability on the Appellants as the same was obtained by IO of the criminal case under duress. It is argued that otherwise also, reply to the notice under Section 133 was only a statement under Section 161 Cr.P.C. and was not sufficient to hold the First Appellant liable for the accident. Reliance is placed on a judgment passed by the learned Single Judge of this Court in *Ram Kishan v. The State*, ILR (1989) II Del 409.

6. The Claims Tribunal dealt with the evidence adduced by the Claimants at length and concluded as under:-

“23. In the present case FIR was registered by the police on receipt of the information regarding the accident, though no eye witness was found at the spot as such the number and particular of the offending vehicle and the name of the driver were not recorded in the FIR but during the course of investigation notice u/s 133 was served upon respondent no.2 which is Ex.PW4/D. Reply to the notice was given by respondent no.2 stating therein that on the date and time i.e. 09.01.2000 at about 6.20 PM. Respondent No.1 had taken the vehicle for heating. The driver of the vehicle was sent to the police station, he had signed the reply Ex.PW4/D stating therein that on 09.01.2000 at about 6.20 PM he had taken Swaraj Mazda vehicle no.DL-1V-1496 for heating and he was driving the vehicle on that date and time. Thus, it has been proved that the offending vehicle belonging to respondent no.2 driven by respondent no.1 was involved in the accident. Thus, even though eyewitness did not support the version of petitioners but in view of the investigation carried out by the police and reply filed by the owner and driver to the notice u/s 133 of the Act and on completion of investigation respondent no.1 was chargesheeted. Thus, the involvement of vehicle in question driven by respondent no.1 was proved. In this regard it is pertinent to note that a criminal offence has to be proved beyond reasonable doubt but proceedings before Tribunal are more of an enquiry and same standard of proof is not required for assessing civil liability.”

7. A criminal case as FIR No.10/2000 was registered in Police Station Parliament Street on the basis of a DD No.10-A. The IO reached the spot of accident and found the injured at the gate of Shastri Bhawan. No eye witness was available at the spot at the time of the accident. During investigation Subhash Gupta, who was examined as RW-2 before the Claims Tribunal appeared before the IO and made statement that the

accident was caused by Swaraj Mazda No. DL-1V-1496. It is true that the said Subhash Gupta did not support the prosecution version in the criminal case and was declared hostile. He was not produced as a witness by the Claimants as they were aware that he was not going to speak the truth. On the other hand, he was produced by the First Appellant as RW-2. He exonerated the First Appellant on two counts. First, he stated that the same bus with the number DLP was involved in the accident and second, that the First Appellant was not the driver of the bus.

8. The First Appellant himself entered the witness box as R1W1. In his examination-in-chief by way of Affidavit dated 26.02.2009 he testified that on 09.01.2000, that is, on the alleged date and time of the accident he was not driving the vehicle DL-1V-1476 Swaraj Mazda. Hence, there was no question of involvement of his vehicle in the accident. In his cross-examination, the First Appellant, however, admitted that on 09.01.2000 he took out the vehicle from the Parliament Annexe at 6:15/6:20 P.M. He stated that he parked it back within five minutes. He admitted that he refused to take part in the TIP as the police had shown him to a number of persons.
9. Thus, the First Appellant's version that he was not driving the vehicle at the time of the accident itself was negated in the cross-examination.
10. Further, a notice under Section 133 of the Act was served upon the owner of the vehicle, that is, Rajya Sabha Secretariat through its official on 17.01.2000. A plea has been taken that reply to this notice was dictated by the IO of the case and given under duress. A perusal of the notice Ex.PW-4/D reveals that the notice was received in GA Section by diary No.103 of 17.01.2000. Thus, it was not personally served on Narender

Singh, Under Secretary, Rajya Sabha Secretariat. Its reply was given on 10.02.2000, that is, after about 20 days of the receipt of the notice in the Secretariat. It is unbelievable that an Under Secretary to the Govt. who had nothing personal in the criminal case would be coerced to write any reply to the notice that the First Appellant was driving the vehicle No.DL-1V-1476 at the time of the accident. Not only this, the First Appellant himself also made an admission that he was driving the vehicle Swaraj Mazda at the time of the accident, at the bottom of the reply given by the Under Secretary.

11. The Appellant did not make a whisper as to the circumstances under which reply to the notice under Section 133 of the Act was given by them. *Ram Kishan* (supra) simply lays down that reply to the notice can only be treated as a statement under Section 161 Cr.P.C. which is not a substantive piece of evidence. The judgment in *Ram Kishan* was rendered in a criminal case under Section 279/304-A IPC. Admission can be used against the maker under Section 23 of the Evidence Act. The Appellant did not try to explain that admission.
12. It is urged by the learned counsel for the Appellant that even if Swaraj Mazda was involved, there was no evidence of rashness or negligence on the part of the First Appellant and thus, the Appellants could not have been made liable to pay the compensation. The solitary eye witness turned hostile in the criminal case. He was, therefore, not examined by the Claimants. Rather, he came to the witness box at the behest of the First Appellant and supported the Appellant's version that Swaraj Mazda was not involved in the accident, which I have held above is false and involvement of Swaraj Mazda is established. It is, therefore, evident that

RW-2 Subhash Gupta wanted to help the First Appellant by stating that Swaraj Mazda was not involved in the accident. Since the involvement of the vehicle was proved and the Claimants were not in possession of any other evidence, it was for the first Appellant to explain the circumstances under which the accident occurred. His act of fleeing from the spot after causing the accident itself speaks volumes for his conduct.

13. It is well settled that in a Petition under Section 166 of the Act negligence has to be established on the touchstone of preponderance of probability.
14. 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 are required to prove negligence on test of preponderance of probability and a 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.”

15. 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.
16. Following *Bimla Devi*, *Parmeshwari* and *Kusum Lata*, I hold that the culpable negligence on the part of the First Appellant was established.
17. The conclusion reached by the Claims Tribunal cannot be faulted.

18. The Appeal is devoid of any merit; it is accordingly dismissed.
19. The compensation deposited shall be released in favour of the Claimants in terms of the order passed by the Claims Tribunal.
20. The statutory deposit of ₹25,000/-, if any, shall be refunded to the Appellants.
21. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 14, 2012

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