

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

Date of decision: 6th September, 2012

+ **MAC APP. 2/2012**

MANVENDRA PAL SINGH & ORS. Appellants
Through: Mr. V.S. Chauhan, Adv. with
Mr. G.P. Singh, Adv.

versus

MOHD. SABIR & ORS. Respondents
Through: Mr. Pankaj Seth, Adv. for R-3.

+ **MAC APP. 227/2012**

NATIONAL INSURANCE COMPANY LTD Appellant
Through: Mr. Pankaj Seth, Adv.

versus

MANVENDRA PAL SINGH & ORS. Respondents
Through: Mr. V.S. Chauhan, Adv. with
Mr. G.P. Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two Appeals arise out of a common judgment dated 04.11.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹17,50,000/- was awarded in favour of legal representatives of the deceased Lalitaksh Singh Lakra, who died in a motor vehicle accident which occurred on 03.09.2009.

2. MAC APP.2/2012 wherein the Claimants are seeking enhancement of the compensation was listed for today, whereas MAC APP.227/2012 filed by the Insurance Company for reduction of the compensation and for setting aside the impugned award on the ground that there was no negligence on the part of the insured vehicle or in any case, there was contributory negligence on the part of the deceased was listed for 10.09.2012.
3. The file of MAC APP.227/2012 was summoned and I have taken up both the Appeals for disposal.
4. In order to prove negligence, the Claimants examined PW-1 Manvendra Pal Singh (the deceased's father). The Claims Tribunal referred to his testimony and opined that a criminal case was registered against the driver of the bus, referred to *Basant Kaur & Ors. v. Chattar Pal Singh & Ors.*, 2003 ACJ 369 MP (DB); *National Insurance Company Limited v. Pushpa Rana*, 2009 ACJ 287, and opined that the accident was caused on account of the rash and negligent manner of the driver of bus No.DL-1PB-3827.
5. It was admitted by PW-1 Manvendra Pal Singh in his cross-examination that he was not an eye witness to the accident. Thus, the manner of accident stated by PW-1 was only hearsay evidence.
6. 'Negligence' is failure to take proper care, a reasonable man would have done under the circumstances. There may be cases where an inference of negligence could be derived from the manner in which the accident takes place. For instance, where a motor vehicle goes up the pavement and strikes against a pedestrian or where the tyre of a motor vehicle bursts; it loses control and collides against a pedestrian or where the said vehicle

on turning turtle causes injuries to the passengers; or when a motor vehicle moving on a bridge collides against a railing and falls into a Canal. In such cases, the principles of strict liability as laid down in *Rylands v. Fletcher* [1861-73] All E.R. 1 would be applicable. The applicability of the principle of *res ipsa loquitur* was explained by the Supreme Court in *Pushpabai Purshottam Udeshi & Ors. v. Ranjit Ginning & Pressing Co. (P) Ltd. & Anr.*, AIR 1977 SC 1735. It was observed that in certain situations there is hardship caused to the Plaintiff to prove the manner of the accident. In such cases applying the principles of '*res ipsa*' the onus to prove how the accident happened, would shift on the defendant. In *Pushpabai Purshottam Udeshi & Ors.*(*supra*) the Supreme Court observed:-

"6. The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident "speaks for itself" or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the Law of Torts (15th Ed.) at p. 306 states : "The maxim res ipsa loquitur applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused". In Halsbury's Laws of England, 3rd Ed., Vol. 28, at page 77, the position is stated thus: "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising

from them is that the injury complained of was caused by the defendant's negligence, or where the event charged a negligence 'tells its own. story' of negligence on the part of the defendant, the story so told being clear and unambiguous". Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part....."

7. In *Minu B. Mehta and Anr. v. Balkrishna Ramchandra Nayan and Anr.*, 1977 (2) SCC 441; it was held that proof of negligence is essential before a person or his master can be held liable to pay the compensation. A plea was raised before the Supreme Court that use of a motor vehicle is enough to make the owner liable to pay the compensation. The contention was repelled and it was held as under:-

"23. The Indian Law introduced provisions relating to compulsory insurance in respect of third party insurance by introducing Chapter VIII of the Act. These provisions almost wholly adopted the provisions of the English law. The relevant sections found in the three English Acts Road Traffic Act, 1930. the Third Parties (Rights against Insurers) Act, 1930 and "the Road Traffic Act, 1934 were incorporated in Chapter VIII. Before a person can be made liable to pay compensation for any injuries and damage which have been caused by his action it is necessary that the person damaged or injured should be able to establish that he has some cause of action against the party responsible. Causes of action may arise out of actions for wrongs under the common law or for breaches of duties laid down by statutes. In order to succeed in an action for negligence the plaintiff must prove (1) that the defendant had in the circumstances a duty to take care and that duty was owed by him to the plaintiff, and that (2) there was a breach of that duty and that as a result of the breach damage was suffered by the plaintiff. The master also becomes liable for the conduct of the servant when the servant is proved to have acted negligently in the course of his employment. Apart from it in common law the master is not liable for as it is often said that

owner of a motor car does not become liable because of his owning a motor car.

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27. This plea ignores the basic requirements of the owner's liability and the claimant's right to receive compensation. The owners' liability arises out of his failure to discharge a duty cast on him by law. The right to receive compensation can only be against a person who is bound to compensate due to the failure to perform a legal obligation. If a person is not liable legally he is under no duty to compensate anyone else. The Claims Tribunal is a tribunal constituted by the State Government for expeditious disposal of the motor claims. The general law applicable is only common law and the law of torts. If under the law a person becomes legally liable then the person suffering the injuries is entitled to be compensated and the Tribunal is authorised to determine the amount of compensation which appears to be just. The plea that the Claims Tribunal is entitled to award compensation which appears to be just when it is satisfied on proof of injury to a third party arising out of the use of a vehicle on a public place without proof of negligence if accepted would lead to strange results.

28. Section 110(1) of the Act empowers the State Government to constitute one or more Motor Accidents Claims Tribunals for such area as may be specified for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death or bodily injury to persons. The power is optional and the State Government may not constitute a Claims Tribunal for certain areas. When a claim includes a claim for compensation the claimant has an option to make his claim before the Civil Court. Regarding claims for compensation therefore in certain cases Civil Courts also have a jurisdiction. If the contention put forward is accepted so far as the Civil Court is concerned it would have to determine the liability of the owner on the basis of common law or torts while the Claims Tribunal can award compensation without reference to common law or torts and without coming to the conclusion that the owner is liable. The concept of owner's liability without any negligence is opposed to the basic principles of law. The mere fact that a party received an injury arising out of the use of a vehicle in a public place cannot justify fastening liability on

the owner. It may be that a person bent upon committing suicide may jump before a car in motion and thus get himself killed. We cannot perceive by what reasoning the owner of the car could be made liable. The proof of negligence remains the linch pin to recover compensation. The various enactments have attempted to mitigate a possible injury to the claimant by providing for payment of the claims by insurance.

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30. A person is not liable unless he contravenes any of the duties imposed on him by common law or by the statute. In the case of a motor accident the owner is only liable for negligence and on proof of vicarious liability for the acts of his servant The necessity to provide effective means for compensating the victims in motor accidents should not blind us in determining the state of law as it exists today."

8. In para 37 of the report, the Supreme Court referred to a Division Bench judgment of the Madras High Court in *M/s. Ruby Insurance Company Limited v. Govindaraj*, AAO Nos. 607/1973 and 296/1974 delivered on 13.12.1976, where it was suggested to have social insurance so as to provide cover for the Claimants irrespective of proof of negligence.
9. In *Oriental Insurance Company Limited v. Meena Variyal & Ors.*, (2007) 5 SCC 428, the three Judges Bench decision in *Minu B. Mehta* (supra) was relied upon. It was held that to claim compensation under Section 166 of the Motor Vehicles Act (the Act), the proof of negligence on the part of the driver of the vehicle was a *sine qua non*. The owner becomes vicariously liable for the act of his servant and the Insurer on account of the contract of insurance becomes liable to indemnify the owner. It was observed that in a Petition under Section 163-A of the Act, negligence or default on the part of the owner or driver of the vehicle was not required to be proved. At the same time, it has to be kept in mind that proof of

negligence as required in a Claim Petition under Section 166 of the Act, is not the same as in a criminal case i.e. “beyond reasonable doubt”, but as per the preponderance of probability.

10. In *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530, while holding that in a Claim 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.”

11. It cannot be laid down as a proposition of law that registration of a criminal case against the driver of the vehicle by itself would be sufficient to draw an inference of negligence. As stated earlier, there may be cases, considering the manner of the accident, where such an inference could be drawn in the absence of any rebuttal from the driver and the owner.
12. In the instant case, the deceased was travelling in bus No.DL-1PB-3827. As per the Claimant’s case, he was standing at the rear gate of the bus and the accident took place while the driver overtook another parked bus in a rash and negligent manner, as a result of which the deceased banged against the stationary bus resulting in fatal injuries. The Appellant Insurance Company denies negligence and pleads contributory

negligence. There were eye witnesses cited in the criminal case. The Claims Tribunal while holding inquiry under Section 168 of the Act was under obligation to ask the Claimants to produce eye witnesses or *suo moto* summon the eye witness/witnesses and other material evidence with regard to the manner of the accident.

13. In this view of the matter, the impugned judgment cannot be sustained. The same is accordingly set aside and the case is remanded back to the Claims Tribunal with the direction to hold further inquiry into the aspect of negligence and to decide the Petition afresh including the finding on quantum of compensation.
14. Both the Appeals are disposed of in above terms.
15. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company.
16. Parties are directed to appear before the Claims Tribunal on 30.10.2012.
17. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

SEPTEMBER 06, 2012
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