

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

+ MAC.APP. No.419/2010

% Judgment reserved on: 4th March, 2013
Judgment delivered on: 7th March, 2013

NEW INDIA ASSURANCE CO LTD. Appellant
Through: Ms. Shalini Upadhyay, Advocate.

Versus

DAYAL SINGH & ORS. Respondents
Through: Mr.Amit Kumar Pandey,
Advocate for Respondent Nos. 1
and 2.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The present appeal has been preferred against the impugned award dated 24.04.2010, whereby the learned Tribunal has awarded a total compensation of Rs.3,75,000/- with interest @ 7.5% *per annum* including interim award, if any, from the date of filing the petition till issuance of notice under Order 21 Rule 1 CPC.

2. Learned counsel appearing on behalf of the appellant/Insurance Company has submitted that since the claim petition filed before the learned Tribunal was under Section 166 of the Motor Vehicles Act, 1988, therefore, the claimants were supposed to prove the rash and negligent act of the driver of offending vehicle.

3. She further submitted, an eye witness is required to examine to prove the act of rashness and negligence; however, no such witness has been produced by the claimants in this regard. But the learned Tribunal has relied upon the criminal record only.

4. In support of her case, learned counsel has relied upon a case of ***Minu B. Mehta Vs. Balkrishna Ramchandran Nayan, AIR 1997 SC 1248*** , wherein the Supreme Court has held that burden of proving negligence and proof of such negligence, and fault of the driver is distinguishable ‘in fault liability’ proceedings U/s 166 of M.V. Act, compared to ‘no fault liability’ proceedings u/s 140 & 163A of M.V. Act.

5. The same view has also been taken by the Apex Court in the case of ***Deepal Girishbhai Soni Vs. United India Insurance Co. Ltd., AIR 2004 SC 2107***.

6. She further submitted that the learned Tribunal has erred in awarding Rs.75,000/- towards non-pecuniary damages without any base.

7. On the other hand, learned counsel for the respondent Nos. 1 and 2/claimants submitted that the learned Tribunal has rightly awarded the compensation while relying upon the case registered as FIR bearing No. 355/2006 for the offences u/s 279/304A IPC. Further submits, during the investigation of the said case the respondent could give all the particulars of the offending vehicle to the investigating officer. Thereafter, the investigation has been completed, arraying the driver of

the offending vehicle as accused. In the above context, the allegations levelled against the driver of the maruti car are having no significance.

8. It is submitted by the counsel for the respondent that Id. Tribunal has relied upon the supplementary statement by which he could produce the correct number and make of the offending vehicle.

9. He further submitted that one eye witness, namely, Surender Pal Singh, whose statement was recorded by the police U/s 161 Cr.P.C., also named the driver of the offending vehicle bearing No. DL1M 1098, an Eicher Container as real culprit.

10. I have heard the learned counsel for the parties.

11. Learned Tribunal while coming to the conclusion has relied upon a case titled as ***National Insurance Company Limited Vs. Smt. Pushpa Rana & Ors., 2009 ACJ 287***, decided by this Court on 20.12.2007, whereby it has been held that the certified copy of the criminal record or the criminal record showing completion of the investigation by the police or the issuance of charge sheet under Sections 279/304-A IPC or the certified copy of the FIR or in addition the recovery memo and the mechanical inspection report of the offending vehicle, these documents are sufficient proofs to reach the conclusion that the driver was negligent.

12. The settled law is that the roving inquiry is not required to prove the rashness and negligence on the part of the driver as it was held in ***Kaushnumma Begum & Ors. Vs. New India Assurance Company Limited, 2001 ACJ 421 SC***, that the issue of wrongful act or omission

on the part of driver of the motor vehicle involved in the accident has been left to a secondary importance and mere use or involvement of motor vehicle in causing bodily injuries or death of a human being or damage to property would make the petition maintainable under Sections 166 and 140 of the Act.

13. No doubt, in the fault liability proceedings the parameters pertains to the proof of negligence are different from the no fault liability proceedings. In the fault liability proceedings, the negligence need to be proved by the claimants / respondents. In the present case, it is also important to note that the driver of the offending vehicle has not appeared as a witness, who would be the best witness. In fact, ld. Tribunal proceeded against the driver as ex-parte. Apart from the above legal and factual positions, I am guided by the case of ***Bimla Devi v. Himachal Road Transport Corporation & ors. (2009) 13 SCC 530***, wherein Apex Court has held as under: -

“14. The learned Tribunal, in our opinion, has rightly proceeded on the basis that apparently there was absolutely no reason to falsely implicate the respondent Nos. 2 and 3. Claimant was not at the place of occurrence. She, therefore, might not be aware of the details as to how the accident took place but the fact that the First Information Report had been lodged in relation to an accident could not have been ignored. Some discrepancies in the evidences of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the principle underlying burden of proof in terms of the

provisions of Section 106 of the Indian Evidence Act as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by the respondent Nos. 2 and 3.

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.

16. The judgment of the High Court to a great extent is based on conjectures and surmises. While holding that the police might have implicated the respondents, no reason has been assigned in support thereof. No material brought on record has been referred to for the said purpose.”

14. Significantly, the evidence produced by the respondents/claimants has not been rebutted either by the driver or owner of the offending vehicle, therefore, the learned Tribunal has rightly relied upon the evidence produced by the respondents/claimants.

15. In view of the above position, while relying upon the police record and the statement of Surender Pal Singh recorded U/s 161 Cr.P.C., the learned Tribunal has come to the conclusion that an Eicher Truck bearing No. DL1M 1098, the offending vehicle was involved in the accident. Resultantly, the claimants / respondents had proved the negligence on the part of the driver.

16. With regard to non-pecuniary damages, the deceased was a child of six years at the time of the accident. The post-mortem report of the said child has already been placed on record for ascertaining the compensation. The learned Tribunal has relied upon a case MAC Appeal No. 13/07, titled ***National Insurance Company Limited Vs. Farzana & Ors.***, decided by this Court on 14.07.2009. In the said case, this Court has laid down the principles for ascertaining the compensation on account of the death of minor child and held that the learned Tribunal is to take into consideration the notional income as mentioned in the Second Schedule and a multiplier of 15 is to be applied in terms of the Second Schedule.

17. The notional income as per the Second Schedule of non-earning person is Rs.15,000/- *per annum*. Therefore, the notional loss comes out to be Rs.15,000 X 15 = Rs.2,25,000/-.

18. Consequently, relying upon the said settled law, the learned Tribunal has granted compensation of Rs.3,75,000/- to the respondents/claimants on account of death of their child.

19. In view of above discussion and legal position, I do not find any discrepancy in the judgment passed by the learned Tribunal.

20. Finding no merit in the appeal, the same is accordingly dismissed.

21. Since, the appeal filed by the appellant has been dismissed by this Court, the statutory amount of Rs.25,000/- shall be released in favour of the appellant.

22. Consequently, Registrar General of this Court shall release the compensation amount with interest accrued thereon in favour of the respondents / claimants in terms of the order dated 24.04.2010 passed by the Id. Tribunal.

23. No order as to costs.

SURESH KAIT, J.

MARCH 07, 2013

sb/jg