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

% *Judgment delivered on: 24th January, 2014*

+ **MAC.APP.No.750/2006**

THE UNITED INDIA INSURANCE CO. LTD. Appellant
Represented by: Mr.K.L.Nandwani, Advocate.

Versus

DEEPAK GOEL & ORS. Respondents
Represented by: Mr. Nitinjaya Chaudhary and
Ms. Sushma, Advocates for
Respondent No.1.

**CORAM:
HON'BLE MR. JUSTICE SURESH KAIT**

SURESH KAIT, J. (Oral)

1. Present appeal is preferred against the impugned award dated 11.07.2006, whereby the learned Tribunal has granted compensation for a sum of Rs.9,26,415/- with interest at the rate of 6% *per annum* in favour of the respondents/claimants from the date of filing of the claim petition, i.e., 19.02.1996 till realization of the amount.
2. The present appeal is filed by the appellant/Insurance Company only on the ground that the negligence has not been proved by the claimant, despite, the learned Tribunal has awarded compensation.

3. Learned counsel appearing on behalf of the appellant/Insurance Company submitted that the claimant had not examined any eye witness to prove negligence on the part of respondent No.3, i.e., driver of the offending vehicle. Although FIR No.603/95 was registered against the said respondent No.3 at P.S. Singhani Gate, Ghaziabad and thereafter a chargesheet was filed for offences punishable under Sections 279/304-A of the Indian Penal Code (hereinafter referred to as 'IPC'), however, the learned Judicial Magistrate vide judgment dated 30.07.2003 acquitted the respondent No.3 on the ground that the eye witness had not seen the driver causing the accident.

4. Learned counsel further submitted that the claimant had filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'MV Act') and not under Section 163-A MV Act. In a claim petition filed under Section 166 MV Act, it was the bounden duty of the claimant to prove that the respondent No.3 was rash and negligent in driving the vehicle at the time of accident, whereas, in a claim petition filed under Section 163-A MV Act, the accident is to be proved, however, negligence of the driver is not required to be proved.

5. He submitted that in the present case also, negligence on the part of the respondent No.3 had not been proved despite that the learned Tribunal held respondent Nos. 2 and 3, i.e. owner and driver of the offending vehicle, responsible for the accident and directed the appellant/Insurance Company, being insurer of the offending vehicle, to pay the compensation amount.

6. To strengthen his arguments, learned counsel has relied upon a case decided by the Full Bench of the Supreme Court titled as '**Minu B. Mehta & Anr. Vs. Balkrishna Ramchandra Nayan & Anr., (1977) 2 SCC 441,**

wherein it has been observed that merely a party received an injury arising out of the use of a vehicle in a public place cannot be the reason for fastening liability on the owner. The proof of negligence remains the linchpin to recover compensation. The concept of owner's liability without any negligence is opposed to the basic principles of law.

7. Thereafter, the law settled by the Apex Court in the above noted case was relied upon by the Division Bench of the Apex Court in the case of ***Oriental Insurance Co. Ltd. Vs. Meena Variyal & Ors. (2007) 5 SCC 428.***

8. While concluding the arguments, learned counsel for the appellant/Insurance Company has submitted that in the present case negligence has not been proved, therefore, the impugned order dated 11.07.2006 be set aside or in the alternative case be remanded back to the learned Tribunal to be decided afresh under Section 163-A of MV Act.

9. On the other hand, learned counsel appearing on behalf of the respondent No.1/claimant has submitted that on 18.08.1995 at about 12.45 pm, when Dr. Asha Gupta was going to her residence from her dispensary towards Tri Junction, Ghaziabad, she was hit by a bus bearing No.PAB 3325, being driven rashly and negligently by its driver, i.e., respondent No.3, who brought the bus on the extreme edge of the road and struck against Dr.Asha Gupta. On account of forceful impact from behind, she was thrown on the road and her head was crushed under the front wheel of the bus, due to which she died at the spot.

10. It is important to note that respondent Nos. 2 and 3, i.e, owner and driver of the offending vehicle, were proceeded *ex parte* before the learned

Tribunal. Therefore, none has rebutted the accident and negligence on the part of the driver while driving the offending vehicle.

11. Learned counsel further submitted that for the offence committed by the respondent No.3, an FIR No.603/95 was registered at P.S. Singhani Gate, Ghaziabad. The police investigated the case and thereafter filed the chargesheet under Sections 279/304-A IPC against the respondent No. 3.

12. It is not in dispute that vide judgment dated 30.07.2003, learned Judicial Magistrate acquitted the respondent No.3 only on the ground that the eye witness had not seen the driver as he fled away from the spot after causing the accident.

13. Learned counsel further submitted that the fact remains that accident was caused by the vehicle in question and neither the appellant/Insurance Company nor the respondent Nos. 2 and 3, i.e., owner and driver of the offending vehicle had rebutted that the vehicle bearing No.PAB3325 was not involved in the accident; and respondent no. 3 was not driving the vehicle on the date and time of the accident.

14. To strengthen his arguments, learned counsel has relied upon a case of ***National Insurance Co. Ltd. Vs. Pushpa Rana & Ors., 2009 ACJ 287***, decided by this Court on 20.12.2007, wherein it is observed that if the claimant was able to prove the criminal case on record pertaining to involvement of the offending vehicle, whereby the criminal records showing completion of investigation by the police and filing of chargesheet under Sections 279/304-A IPC against the driver have been proved, then the

documents mentioned above are sufficient to establish the fact that the driver was negligent in causing the accident.

15. On the same analogy, learned counsel has relied upon the cases of ***Ranu Bala Paul & Ors. Vs. Bani Chakraborty & Ors., 1999 ACJ 634***, decided by the High Court of Judicature at Gauhati, Agartala Bench and ***Basant Kaur & Ors. Vs. Chatarpal Singh & Ors., 2003 ACJ 369***, decided by the High Court of Madhya Pradesh, Indore Bench.

16. Learned counsel further submitted that in the present case, a criminal case was lodged against the respondent No.3/driver, who fled away from the spot and the offending vehicle was impounded from the spot itself. The police investigated the case fully and thereafter filed the chargesheet under Sections 279/304-A IPC against the respondent No.3 and that the respondent No.3 was acquitted only on the ground that eye witness did not support the prosecution case.

17. He submitted that acquittal in a criminal case would not affect the trial going on in the accident case for the reason that in the criminal case and civil case as well strict proof of liability is required, whereas in the accidental cases, the claimants have to establish that a particular vehicle was involved in the accident being driven by its driver rashly and negligently.

18. On perusal of the impugned award, it is clear that the learned Tribunal had opined that the claimant is not required to prove the negligence at all. It is to be bear in mind that the claim petition was decided under Section 166 MV Act where the negligence has to be proved. The claimants have to prove negligence of the driver of the offending vehicle in a claim petition

filed under Section 166 of MV Act, therefore, I do not agree with the findings given by Ld. Tribunal.

19. Be that as it may, criminal case bearing FIR No.603/95 was registered against the respondent No. 3/driver at P.S. Singhani Gate, Ghaziabad. The police investigated the case and thereafter filed the chargesheet under Sections 279/304-A IPC against the said driver. The claimants have proved both the documents noted above before the learned Tribunal. Acquittal of the driver/respondent No.3 by the learned Judicial Magistrate vide its judgment dated 30.07.2003 would not have any adverse affect on the claim petition for the reason, he was acquitted only on the ground that eye witness had not seen the driver of the offending vehicle as he fled away from the spot. Neither any document had been placed on record nor any witness had been examined by the owner or Insurance Company to prove that the respondent No. 3 was not driving the bus bearing No.PAB 3325 on 18.08.1995 at about 12.45 pm. Moreover, respondent Nos. 2 and 3 were proceeded *ex parte* before the learned Tribunal, and they did not place any defence before the learned Tribunal. Thus, the learned Tribunal while deciding the claim petition had relied upon the FIR, chargesheet and the statements of the claimants.

20. In deciding the accident cases, the Tribunals or the Courts bear in mind the caution struck by the Apex Court that a claim before the Motor Accidents Claims Tribunal is neither a criminal case nor a civil case. In a criminal case in order to have conviction, the matter is to be proved beyond reasonable doubt and in a civil case the matter is to be decided on the basis of preponderance of evidence, but in a claim petition before the Motor

Accidents Claims Tribunal, the standard of proof is much below than what is required in a criminal case as well as in a civil case. Undoubtedly, the enquiry before the Tribunal is a summary enquiry and, therefore, does not require strict proof of liability.

21. Nonetheless, in a case, where FIR is lodged, chargesheet is filed and specially in a case where driver after causing the accident had fled away from the spot, then the documents mentioned above are sufficient to establish the fact that the driver of the offending vehicle was negligent in causing the accident particularly when there was no defence available from his side before the learned Tribunal. Thus, the claimants have prove negligence of the driver of the offending vehicle.

22. In view of the above discussion, I do not find any merit in the instant appeal. The same is accordingly dismissed.

23. Consequently, the Registry of this Court is directed to release the statutory amount in favour of the appellant/Insurance Company and the remaining compensation amount in favour of the respondent No.1/claimant on taking necessary steps by him.

SURESH KAIT, J.

JANUARY 24, 2014

Sb/jg