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

Date of decision 21.08.2014

+ **MAC.APP. 876/2012 & CM No.13901/2012**

NEW INDIA ASSURANCE CO LTD Appellant

Through **Mr.Ganesh Pandey, Adv.**

versus

SHEHZADI YASMEEN & ORS Respondents

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present appeal is filed seeking to impugn the Award dated 4.6.2012. The claim petition was filed under section 166 and 140 of the Motor Vehicles Act, 1988. Subsequently the claim petition was amended and converted as one under section 163A of the Motor Vehicles Act, 1988.

2. The brief facts are that the deceased Sohail Ahmed Khan was a private contractor of a bus on DTC route. On 27.01.2003 near Bus stand Nehru Place the deceased stopped a bus to talk with the driver regarding the timing since the route of both the buses was the same. There was a difference of timing of five minutes between the two buses on the same route but the driver of the other bus i.e. respondent No.5 would often delay his bus. It is stated that respondent No.5 responded to the gesture in a fury and crushed the deceased under his bus resulting in multiple injuries. He was declared brought dead in the hospital. FIR under section 302 IPC was registered at the police station against respondent no. 5.

3. The Tribunal concluded that despite the fact that this was a case of murder, a petition under section 163A of the Motor Vehicles Act would be

maintainable. The Tribunal awarded a sum of Rs.4,59,000/- to the claimants on account of loss of dependency, Rs.10,000/- for loss of love and affection, Rs.10,000/- for funeral expenses, Rs.10,000/- for loss of estate and Rs.10,000/- for loss of consortium i.e. total of Rs.4,99,000/-.

4. Learned counsel appearing for the appellant submits that this was a clear case of murder and not an accident and hence he submits that provisions of the Motor Vehicles Act would not apply. He relies upon judgment of the Supreme Court in the case of *Rita Devi & Ors. vs. New India Assurance Company Ltd. & Anr.*, AIR 2000 SC 1930 (MANU/SC/0312/2000).

5. Sections 140 (1) and 163 A of the Motor Vehicles Act, 1988 reads as follows:-

“140. Liability to pay compensation in certain cases on the principle of no fault. (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.”

163 A Special provisions as to payment of compensation on structured formula basis.- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.”

6. The issue would be as to what would be an ‘accident’ inasmuch as Section 163 A states that the owner of the vehicle/authorised insurer is liable in the case of death or permanent disablement due to accident arising out of

the use of the motor vehicle.

7. The decision of the Supreme Court in the case of *Rita Devi & Ors. vs. New India Assurance Co. Ltd. & Anr.* (*supra*) appears to be the only judgment of the Supreme Court dealing with the facts which somewhat are similar to the facts of the present case. In that case the deceased was a driver of an auto rickshaw. The vehicle was engaged by some unknown passengers. Later on, the dead body of the driver was found but the auto rickshaw was not traced out. The Supreme Court held as follows:-

“10. The question, therefore, is can a murder be an accident in any given case? There is no doubt that 'murder', as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The differences between a 'murder' which is not an accident and a 'murder' which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killings is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

.....

14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the auto rickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto rickshaw and in the course of achieving the said object of stealing the auto rickshaw, they had to eliminate the driver of the auto rickshaw then it cannot but be said that the death so caused to the driver of the auto rickshaw was an accidental murder. The stealing of the auto rickshaw was the object of the felony and the murder that

was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of the auto rickshaw.”

8. ***Shivaji Dayanu Patil v. Vatschala Uttam More, AIR 1991 SC 1769***

is a case where a collision took place between a petrol tanker and a truck at around 3 am. The petrol tanker overturned on the road and fell on its left side away from the highway. As a result of the overturning, the petrol leaked from the tanker and at about 7:15 am an explosion took place resulting in a fire. Number of persons suffered burn injuries and few succumbed to their injuries. The question was as to whether this incident could be said to be an accident arising out of the use of motor vehicle. The Supreme Court in para 33 held as follows:-

“33. In the context of motor accidents the expressions "caused by" and "arising out of" are often used in statutes. Although both these expressions imply a causal relationship between the accident resulting in injury and the use of the motor vehicle but they differ in the degree of proximity of such relationship. This distinction has been lucidly brought out in the decision of the High Court of Australia in *Government Insurance Office of N.S.W. v. R.J. Green's*, case (1965 (114) CLR 437) (supra), wherein Lord Barwick, CJ has stated:

Bearing in mind the general purpose of the Act I think the expression 'arising out of' must be taken to require a less proximate relationship of the injury to the relevant use of the vehicle than is required to satisfy the words 'caused by'. It may be that an association of the injury with the use of the vehicle while it cannot be said that that use was causally related to the injury may yet be enough to satisfy the expression 'arise out of

as used in the Act and in the policy. (p.433)”

On those facts, the Supreme Court held that the explosion of the fire was due to an accident arising out of the use of a motor vehicle.

9. The Chattisgarh High Court in *Puran and Ors. vs. Suraj Patel and Anr., III (2003) ACC 656, (MANU/CG/0059/2002)* in paragraph 5 held as follows:-

“5. In the Motor Vehicles Act, word "accident" has not been defined. But in the absence of a definition of the word accident in Motor Vehicles Act, which was beneficial legislation, a liberal interpretation should be given so as to achieve the objects of the Act. The object of the Motor Vehicles Act and the Workmen's Compensation Act is to provide compensation to the victims of the accidents. The only difference between the two enactments is that so far as the Workmen's Compensation Act is concerned, it is confined to workmen as defined under that Act while the relief provided under Chapters X to XII of the Motor Vehicles Act is available to all the victims of accidents involving a motor vehicle. Section 167 of the Motor Vehicles Act under which supports this conclusion, it is open to the claimants either to proceed to claim compensation under the Workmen's Compensation Act or under the Motor Vehicles Act. A perusal of the objects of the two enactments clearly establishes that both the enactments are beneficial enactments operating in the same field, hence judicially accepted interpretation of the word "death" in the Workmen's Compensation Act is certainly applicable to the interpretation of the word "death" in the Motor Vehicles Act also.”

10. In the case of *The Oriental Insurance Company vs. Raja Ram Dhobi & Ors., MANU/BH/0417/2006; 2007 (2) PLJR 138* the facts were that one day prior to the occurrence some quarrel had taken place among the boys and the bus driver had threatened the boys with dire consequence. On the next date the bus driver was found to be driving the bus in a rash and negligent manner. In the meantime, he saw the boys coming from the

opposite direction and the driver of the bus with intention to kill them dashed the boys as a result of which two boys died instantaneously and three sustained injuries. The Patna High Court held as follows:-

“3. ...The question, therefore is, can a murder be an accident in any given case? There is no doubt that "murder", as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for the killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a "murder" which is not an accident and a "murder" which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.”

In these facts the High Court concluded as follows:-

“6. It is true that the applicants have not brought any evidence of eye-witness on record regarding the alleged occurrence and, therefore, the question will be - whether the principle of 'res ipsa loquitor' will apply or not. I am of the view that for arriving at the conclusion that the driver was driving the vehicle very rashly and negligently, the principle of 'res ipsa loquitor' will apply in the case because of the fact that sufficient materials have come on record that in the accident altogether three persons had lost their lives and several others had sustained grievous injuries. Thus, the nature of the occurrence speaks itself that the driver was driving the vehicle very rashly and negligently....”

11. The Allahabad High Court in the case of *The National Insurance Co. Ltd. Lko. Through The Manager vs. Smt. Manju Devi & Ors., MANU/UP/0659/2011; 2011 (89) ALR 596* in para 16 held as follows:-

“16. There appears to be no doubt from the evidence on record

that the incident occurred because of failure of axle. Accident is an unplanned event frequently resulting in bodily injury, property damage or both. In law, it is a casualty or unforeseen event usually capitalised by suddenness or external force or violence...”

In these facts the High Court concluded as follows:-

17. ...The aforesaid proposition of law has been affirmed by the Division Bench in the case of *Manjula Devi Mishra (supra)*. In the case of *Manjula Devi Mishra (supra)*, the Division Bench further ruled that a claim petition may be entertained for compensation in respect of accident involving the death of, or bodily injuries to persons where the accident is caused by the use of the motor vehicle or the use of the motor vehicle contributes, whether by itself or along with some other joint tort-feasors, to the accident.

12. This High Court in the case of *DTC. & Ors. vs. Meena Kumari & Anr. MANU/DE/0502/2010; 2011 ACJ 1211* was dealing with an accident arising out of a bomb blast in a DTC bus which resulted in a death. This court held that the claim petition under Section 163 A of the MV Act was maintainable. This Court relied upon the decision of the Jammu & Kashmir High Court as follows:-

“(v) National Insurance Co. Ltd. v. Shiv Dutt Sharma 2004 ACJ 2049 (J&K)

Two sets of claims were made in this case; one relating to the accident in a bus and the other relating to an accident where bullets of terrorists killed the passengers of a bus. The Jammu and Kashmir High Court held as under:

43. On the basis of the judicial pronouncements and the material which has come on the record, it is concluded:

(i) That a passenger travelling in a bus when he suffers from an injury on account of bomb explosion or on account of any other activity

including terrorist activity, he would be well within his rights to claim compensation. This view is spelt out from the decision given by the Supreme Court of India in Shivaji Dayanu Patil v. Vatschala Uttam More 1991 ACJ 777 (SC) and the latter decisions noticed above;

(ii) That even if a person is not actually in the vehicle and is standing outside and suffers an injury, even in that case Supreme Court of India has allowed compensation in Shivaji Dayanu Patil v. Vatschala Uttam More 1991 ACJ 777 (SC). Therefore, merely because some of the victims were taken out of the bus and thereafter shot dead, would not make any difference;

(iii) That the material which has come on the record justified the grant of the compensation and the quantum thereof is accordingly sustained.”

This Court concluded as follows:-

“9. Following the aforesaid judgments, it is held that the accident in question arose out of the use of the motor vehicle and, therefore, the claimants are entitled to compensation under Section 163-A of the Motor Vehicle Act.”

13. I now come to the facts of this case. For a better look at the facts reference may be had to the relevant portion of the FIR. The English translation of the statement on the basis of which the FIR is based reads as follows:-

“Sh.Shamshad, S/o Sh.Sher Mohammad, R/o Village Chikta, Police Station Salempur, District Bulandshahr (U.P.), Age 24 years made his statement as under:-

“I reside at the aforesaid address and work as a conductor at the Bus bearing registration no.DL-IPB-2696 in Delhi. Our aforesaid bus plies at route No.534 from Mehrauli to anand Vihar. Bus No. DL-IPB-5035 plies on the same route at the

interval of 5 minutes. Our bus bearing registration No. DL-IPB-2696 follows bus no.DL-IPB-5035 after 5 minutes. But Dabloo, the driver of Bus no. DL-IPB-5035 drives his bus later than his time table cutting into our time in order to take more passengers regarding which there had been an altercation between Sonu @ Sohail Mohommad, the contractor of our bus and Dabloo. Sonu had asked Dabloo driver to drive his bus on time. But today in the evening running at 6.10 PM, Dabloo, the driver of bus no.DL-IPB-5035 had been driving his bus 5 minutes later than his fixed time cutting into our time. At 6.15 P.M. when our bus reached Nehru Place bus stand after crossing Paras flyover, I saw that Sonu @ Suhail the contractor of our Bus had stopped bus no.DL-IPB-5035 and an altercation between him and driver Dabloo was going on. In the meantime our driver Harender parked our bus parallel to his and seeing the same I alighted from the bus in order to help Sonu that in the meanwhile Dabloo while saying "I will finish you today" ran his bus no.DL-IPB-5035 on Sonu @ Suhail and ran away with his bus from there. With the intention to kill Sonu, Dabloo drove his bus on him due to which Sonu seriously got injured and collapsed on the road in the unconscious position....."

Attested
Sunil Kumar Mittal
I/C PP, Nehru
Place
27.01.2003
P.S.Kalkaji, New
Delhi."

14. The above facts show that it does not appear to be a case of murder simplicitor. There was some dispute pertaining to the time of running of the other bus. The bus driver of the offending vehicle was often deliberately trying to delay his bus and this resulted in a loss of passengers to the deceased. To sort this out, the deceased confronted the driver of the offending vehicle. He appears to have taken it amiss and appears to have decided to teach the deceased a lesson. It appears that the intention of the driver was only to teach the deceased a lesson. While trying to teach a lesson

to the deceased, his act resulted in the death. The act of the driver of the offending vehicle cannot be termed to be a case of murder simplicitor. It was neither pre-planned nor pre-meditated. The facts and circumstances of the death of the deceased show it is covered under Section 163 A of the M.V. Act.

15. There is hence no merit in the appeal and no grounds are made out to interfere in the award. The appeal is dismissed.

16. As per the interim order dated 14.08.2012 the appellant had deposited the entire award amount in court. The same was directed to be kept in UCO Bank, Delhi High Court Branch in a fixed deposit. On 28.02.2013 directions were passed to release 60% of the amount in favour of the respondents/claimants.

17. The balance amount now lying deposited in the Court/UCO Bank Delhi High Court Branch along with all accumulated interest be released to the respondents/claimants.

18. Statutory amount deposited by the appellant at the time of filing of the appeal be released to the appellant.

JAYANT NATH, J.

AUGUST 21, 2014

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