

\$-3

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

Decided on: 13th February, 2015

+ **MAC.APP. 291/2006**

THE NATIONAL INSURANCE. CO. LTD Appellant
Through Mr. P.K. Seth, Advocate

versus

DINESH TIWARI & ORS. Respondents
Through None

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The present appeal is directed against judgment dated 3rd December, 2005 whereby compensation of Rs. 10,06,120/- (including interim sum of Rs. 50,000/-) was awarded in favour of Respondents no. 1 to 4 for the death of V.P. Tiwari, who died on account of fatal injuries suffered in a motor vehicles accident which occurred on 12th January, 1995. The deceased succumbed to injuries on 21st January, 1995. During enquiry before the Claims Tribunal, evidence was led to show that the deceased was getting a salary of Rs. 8230/- per month at the time of his accident.

2. The Claims Tribunal took the salary with future prospects as Rs. 11,115/-, deducted 1/3rd towards personal expenses and adopted a multiplier of 11 to compute the loss of dependency. After adding notional sums towards non-pecuniary damages, compensation of Rs. 10,06,120/- was awarded. The following contentions are raised on behalf of the Appellant:-

(i) The Claims Tribunal did not return any finding on negligence on part of the driver of the offending bus as required in a petition under Section 166 of the Motor Vehicles Act, 1988. Proof of negligence was *sine qua non* for grant of compensation; and

(ii) No deduction towards income tax was made. The Claims Tribunal erred in taking the average salary of the deceased as Rs. 11,115/- per month.

3. I have the Trial Court record before me. Unfortunately, the Claims Tribunal did not advert to the question of negligence at all. It simply went to refer to a report in the Times of India regarding the accident and proceeded to award the compensation. It may be noted that negligence is mandatorily required to be proved is a claim for compensation for a motor vehicular accident under Section 166 of the Motor Vehicles Act, 1988.

4. If two vehicles are involved in an accident, the driver of one of them may be negligent or both of them may be negligent. Similarly, in a case of a pedestrian, he himself may be solely responsible or may

have contributed to the accident along with the driver of the offending vehicle.

5. Of late, some of the Claims Tribunal do not discuss the issue of negligence at all and hold the driver of the offending vehicle liable simply on account of registration of a criminal case against him. The registration of a criminal case subject to some exception may be taken as sufficient proof of involvement of vehicle in the accident but not as a proof of negligence of the driver.

6. Reference can be made to the decision of this Court given on 24th February, 2012 in MAC Appeal No. 479/2007 titled ***M.C.D. vs. Sureshi Devi***. Relevant paras 7 to 10 of the same are extracted as under:-

7. *'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 strike against a pedestrian; or the tyre of a motor vehicle bursts, it loses control and collides against a pedestrian or the said vehicle turning turtle causing injuries to the passengers, or when a motor vehicle moving on a bridge collided 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 situation there is hardship for 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.....”

8. *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.

x x x x x x x x x

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.

x x x x x x x x x x

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.”

9. In para 37 of the report, the Supreme Court referred to a Division Bench judgment of 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 to provide cover for the Claimants irrespective of proof of negligence.

10. *In Oriental Insurance Company Limited v. Meena Variyal & Ors., (2007) 5 SCC 428, the three Judges Bench decision in Menu B. Mehta (supra) was relied. It was held that to claim compensation under Section 166 of the Motor Vehicle 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 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 “the preponderance of probability”.*

7. Since in the present case the Claims Tribunal did not go into the question of negligence at all, this Court has to determine whether negligence could be inferred from the facts and circumstances of the case or not.

8. First of all, perusal of the site plan prepared in the criminal case, FIR No. 14/1995 would reveal that one of the carriage way on Bahadurshah Zafar Marg was closed for traffic. Bahadurshah Zafar Marg is divided into two carriage ways. There seems to be some construction work going on in one of the carriage ways on the date of accident and the road was hence, partially closed. From the site plan placed on record, it can be inferred that the bus entered Bahadurshah Zafar Marg from Kotla Road and dashed against the two-wheeler

driven by the deceased. A photograph of the accident report reported in Times of India has also been placed on record which depicts that the scooter is under the left front wheel of the bus and has broken into two parts. Thus, on the basis of the material placed on record and applying the principle of *res ipsa loquiter*, it can very well be said that there was culpable negligence on the part of the driver of the bus.

9. It may also be noted that in a petition under Section 166 of the Motor Vehicles Act, 1988, negligence is required to be proved on the touchstone of preponderance of probability. (See *Bimla Devi and Ors. vs. Himachal Road Transport Corporation and Ors.* (2009) 13 SC 530)

10. In view of this, negligence is held to be sufficiently established and the Respondents (Claimants) are entitled to compensation.

11. The salary certificate of the deceased V.P. Tiwari who was an employee of DESU is placed on record. He was aged 50 years on the date of his accident. His salary was Rs. 8230/- per month or Rs. 98760/- per annum. There was a liability of income tax of Rs. 5000/- on the income of Rs. 98760/-. Since the deceased was in permanent Government service, the Respondents are entitled to an addition of 30% towards future prospects. Since V.P. Tiwari was aged 50 years, the appropriate multiplier will be 13 as against 11 adopted by the Claims Tribunal. Therefore, loss of dependency comes to Rs. 10,56,367/- (98760 minus 5000 plus 30% multiply 2/3 X 13).

12. The Claimants are further entitled to non-pecuniary damages as well. However, since the Claims Tribunal has awarded only a compensation of Rs. 10,06,120/-, award of this compensation cannot be said to be exorbitant or excessive. The appeal, therefore, has to fail. The same is accordingly dismissed.

13. Statutory amount, if any, deposited shall be released to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

FEBRUARY 13, 2015
sd