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

Decided on: 17th March, 2015

+ **MAC.APP. 626/2013**

U.P. STATE ROAD TRANSPORT CORPORATION

..... Appellant

Through: Mr.Shadab Khan, Advocate

versus

PREMA DEVI & ANR.

..... Respondents

Through: Mr. B.K. Mishra, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The appeal is directed against the judgment dated 17.04.2013 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.22,28,493/- was awarded in favour of Respondents no.1 and 2 for the death of Vikas, who suffered fatal injuries in a motor vehicular accident which occurred on 31.12.2009.

2. The Appellant U.P. State Road Transport Corporation (U.P.S.R.T.C.) challenges the judgment on the aspect of negligence attributed to the driver of the bus no.UP-80-VJ-9676 as also the quantum of compensation awarded by the Claims Tribunal.
3. During the course of arguments, it was pointed out by the learned counsel for the Appellant that the driver, who was facing criminal prosecution under Sections 279/304-A IPC was acquitted in the criminal case and there was no evidence to prove negligence on the part of the Appellant's driver. On the other hand, it has been pointed by the learned counsel for Respondents no.1 and 2 that an application dated 05.05.2011 was moved by Respondents no.1 and 2 to examine Sanmati Kumar and Sagar Kumar, the two eye witnesses. However, the Claims Tribunal without passing any order on the application proceeded to decide the claim petition.
4. I have the Trial Court record before me. It is true that an application was moved for examining Sanmati Kumar and Sagar Kumar on 05.05.2011. The record discloses that the case

was ordered to be put up on 07.05.2011. The application for summoning the witnesses was allowed by an order dated 07.05.2011. Subsequently, by an order dated 01.06.2011, after recording the statement of PW1 Kaushal Kishore, the Claims Tribunal posted the matter for recording statement of the employer of the deceased. But the eye witnesses had not been given up. Also, there was no statement by the counsel for Respondents no.1 and 2 stating that he did not want to examine the eye witnesses.

5. 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.”

6. Again, 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, 1988 (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 on the other hand, 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 the standard 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 only “the preponderance of probability”.
7. It is evident that the Claims Tribunal acted hot-haste and

followed a shortcut method in proceeding to decide the claim petition without giving ample opportunity to Respondents no.1 and 2 to examine their witnesses on an important aspect.

8. The impugned judgment therefore, cannot be sustained; the same is accordingly set aside.
9. The case is remanded back to the Claims Tribunal with direction to give an opportunity to Respondents no.1 and 2 to produce the eye witnesses or any other evidence which may be available with Respondents no.1 and 2 to prove negligence.
10. It goes without saying that the Appellant who was Respondent no.2 before the Claims Tribunal shall be entitled to lead evidence in rebuttal.
11. The Claims Tribunal shall be entitled to deal with all the issues afresh including the quantum of compensation.
12. The amount of compensation lying deposited shall be released to the Appellant forthwith. The amount of compensation, if any, released to Respondents no.1 and 2 shall be subject to the final orders that may be passed by the Claims Tribunal.

13. Parties are directed to appear before the Claims Tribunal on 07.04.2015.
14. The Claims Tribunal shall endeavour to complete the evidence and decide the claim petition within a period of three months from the first date of hearing before the Claims Tribunal.

(G.P. MITTAL)
JUDGE

MARCH 17, 2015
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