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

Date of Decision: 18.05.2016

+ **MAC.APP. 76/2013**

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr. Shoumik Mazumdar, Advocate

versus

KAILASHI & ORS.

..... Respondents

Through: Mr. Krishna Dev Pandey, Adv. for R-1
to 4

Mr. Mr. Raj Kumar Sharma, Adv. for R-6

**CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA**

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 08.09.2008, first to fourth respondents (claimants) instituted an accident claim case (Petition no.806/2010) seeking compensation on account of death of Roop Chand Berwa on 28.08.2008 alleging that he had suffered fatal injuries in a motor vehicular accident involving a water tanker bearing registration no.HR-55B-2614, statedly driven in a negligent manner by Vijay Kumar (5th respondent), the said vehicle being owned by Raj Kumar

(6th respondent) and admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question.

2. The tribunal held inquiry and, by judgment dated 29.09.2012, upheld the case of the appellants about death having occurred due to accident caused by the said vehicle driven in a negligent manner by the fifth respondent. The tribunal, by the same judgment, awarded compensation directing the insurer to pay.

3. By the appeal at hand, the insurer questions the above mentioned finding submitting that no evidence was led to prove the necessary facts. It is noted that the tribunal has reached the said finding only on the basis of a copy of the report under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC) without any evidence having been called in, even though the police had indicated that eye-witness Rudal had been available. The tribunal referred to *Kaushnuma Begum and Ors. Vs. New India Assurance Co. Ltd., 2001 ACJ 421 SC*.

4. A similar contention as urged by the insurer in the appeal at hand was raised in *MACA 165/2013*, titled *New India Assurance Co. Ltd. Vs. Devki and Ors.*, decided on 29.02.2016, wherein this court considered the issue and held as under :-

“..4. The insurance company, feeling aggrieved, came up with the appeal at hand raising questions about the propriety and correctness of the finding of facts concerning the involvement of the offending bus and negligence on the part of its driver. Per contra, the counsel for the claimants submitted that the Tribunal has correctly appreciated the evidence presented before it, referring in this context to the view taken by a learned

Single Judge of this Court in National Insurance Company Ltd. v. Pushpa Rana 2009 ACJ 287. The counsel submitted that since the proceedings under the Motor Vehicles Act are not akin to proceedings in a civil suit, strict rules are not required to be followed. He argued that the certified copies of the record of criminal case such as FIR, mechanical inspection report, post mortem report etc. submitted should be taken, and have been rightly taken, by the Tribunal as sufficient proof to reach the conclusion that the driver was negligent. The counsel also referred to Bimla Devi v. Himachal Road Transport Corporation 2009 ACJ 1725 (SC) to argue that inference of negligence can be drawn on the basis of documentary evidence relating to the criminal case.

5. *It is well settled that in proceedings arising out of a claim petition under Section 166 of MV Act based on fault liability principle, a person cannot be held liable unless he contravenes any of the duties imposed on him by the common law or by the statute. In the case of a motor accident it is imperative that the claimants show by some evidence that the driver of the motor vehicle had been negligent in relation to the said vehicle and thereby had caused an accident resulting in bodily injuries or death or damage to the property so as to be held liable as the principal tort-feasor. The owner's liability arises out of his failure to discharge a duty cast on him by the law, on the principle of vicarious liability. Proof of negligence is necessary before the owner or the insurance company may be held liable for payment of compensation in a motor accident claim case brought under Section 166 MV Act.*

6. *The law to above effect declared in Minu B Mehta v. Balkrishna Ramchanra Nayan (1977) 2 SCC 441 was reiterated by Supreme Court in Oriental Insurance Company Ltd. v. Meena Variyal 2007 (5) SCC 428. It appears there was some confusion raised with regard to these principles on account of view taken in the case of Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai (1987) 3 SCC 234. In Meena Variyal (supra) the Supreme Court clarified as under :*

“On a careful understanding of the decision in Gujarat State Road Transport Corporation (supra) we cannot understand it as having held that in all claims under the Act proof of negligence as the basis of a claim is jettisoned by the scheme of the Act. In the context of [Sections 166](#) and [163A](#) of the Act of 1988, we are persuaded to think that the so called obiter observations in Minu B. Mehta's case (supra) govern a claim under [Section 166](#) of the Act and they are inapplicable only when a claim is made under [Section 163A](#) of the Act. Obviously, it is for the claimant to choose under which provision he should approach the Tribunal and if he chooses to approach the Tribunal under [Section 166](#) of the Act, we cannot see why the principle stated in Minu B. Mehta's case should not apply to him. We are, therefore, not in a position to accept the argument of learned counsel for the respondents that the observations in Minu B. Mehta's case deserve to be ignored.”

7. In Pushpa Rana (supra), the learned Single Judge of this Court holding the case of the claimant as duly proved on the basis of the certified copies of the record of the corresponding criminal case, while dealing with identical contention took note of the judgment in Meena Variyal (supra) but proceeded to observe thus:

“13. The last contention of the appellant insurance company is that the respondents claimants should have proved negligence on the part of the driver and in this regard the counsel has placed reliance on the Judgment of the Hon'ble Apex Court in [Oriental Insurance Co. Ltd. v. Meena Variyal](#) (supra). On perusal of the award of the Tribunal, it becomes clear that the wife of the deceased had produced (i) certified copy of the criminal record of criminal case in FIR No. 955/2004, pertaining to involvement of the offending vehicle, (ii) criminal record showing completion of investigation of police and issue of charge sheet under Section 279/304-A, IPC against the driver; (iii) certified copy of FIR, wherein criminal case against the driver was lodged; and (iv) recovery memo and mechanical inspection report of offending vehicle and vehicle of the

deceased. These documents are sufficient proofs to reach the conclusion that the driver was negligent. Proceedings under Motor Vehicles Act are not akin to proceedings in a civil suit and hence strict rules of evidence are not required to be followed in this regard. Hence, this contention of the counsel for the appellant also falls face down. There is ample evidence on record to prove negligence on the part of the driver.”

8. In the facts and circumstances, this Court finds it difficult to follow the view taken in Pushpa Rana (supra). Since the law declared by the Supreme Court in Meena Variyal (supra) is binding, there is no escape from the conclusion that it is the burden of the claimants in a petition under section 166 of MV Act to prove negligence. Should they find it difficult to prove evidence with regard to negligence, the option to have resort to no-fault liability on the structured formula under Section 163A of MV Act is always available to seek just compensation. The case of Bimla Devi (supra) cannot be an illustration to hold otherwise inasmuch as it is clear from the narration of facts noted therein that an eye witness was available and the conclusion on facts had been reached on the basis of his testimony...”

5. The learned counsel for the claimants now fairly concedes that finding of negligence on the part of its driver could not have been returned without proper evidence having been led. While conceding that the impugned judgment may be set aside, he requests that the matter may be remitted to the tribunal.

6. The appeal is allowed. The impugned judgment is set aside. The matter is remitted to the Tribunal for further inquiry. During the said further inquiry, the claimants shall be entitled to adduce further evidence. Needless to add, the parties which contest shall be entitled to cross-examine such

witnesses and also lead evidence in rebuttal, if any. The parties are directed to appear before the Tribunal for aforesaid further inquiry on 13.07.2016.

7. By order dated 28.01.2013, the insurance company had been directed to deposit the awarded amount with upto date interest with the Registrar General of this court, from which 50% was allowed to be released, balance kept in fixed deposit receipts with UCO Bank, Delhi High Court Branch, New Delhi. The Registrar General shall now take steps to refund the balance lying in deposit with the said bank to the insurance company with statutory deposit, if made. The amount already received by the claimants shall be subject to further directions to be passed by the tribunal in the fresh adjudication in accordance with the conclusions arrived at.

8. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 18, 2016
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