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

Date of Decision: 30.05.2016

+ **MAC.APP. 137/2014**

SHRIRAM GENERAL INSURANCE CO. LTD. .. Appellant

Through: **Mr. P. Acharya, Adv.**

versus

HEERA DEVI & ORS Respondents

Through: **Mr. S.N. Parashar, Adv. for R-1 to 3.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Ram Kishnu, suffered injuries in a motor vehicular accident that occurred on 31.10.2011 in the area of Bhorgarh, main road, Narela, Delhi and died in the consequence. His dependent family members, first to third respondents (claimants) brought an accident claim case (M-26D/12) before the motor accident claims tribunal (tribunal) in the wake of detailed accident report (DAR) submitted by the local police on 21.02.2012 on the basis of evidence gathered during investigation of FIR (First Information Report) No. 547/2011 that had been registered in police station, Narela. In the said proceedings, the claimants alleged that the death had occurred due to accident caused on account of negligent driving of truck bearing registration No. HR 38 G 9040 by Raj Narain Sahni (fourth respondent herein). The

truck was admittedly got insured by Ramji Lal (fifth respondent herein) against third party risk for the period in question with the appellant insurance company (insurer). All the said three parties were impleaded as respondents. The tribunal issued notices in response to which the driver and owner appeared and filed written statement denying the allegations. The tribunal, thus, framed issues, the prime one whereof was meant to address the question as to whether death had occurred due to accident caused on account of negligent driving.

2. By judgment dated 30.10.2013, the tribunal returned a finding accepting the case of the claimants about death having occurred due to involvement of the truck and negligence on the part of its driver. It proceeded to award compensation in the sum of ₹ 11,84,901/- with interest @ 9% per annum in favour of the claimants, directing the insurer to pay.

3. The insurer by the appeal at hand, has raised a number of issues, the prime one being that the finding about involvement and negligence respecting the driving of the truck, is not founded on any evidence. Concededly, the claimants only examined first respondent Heera Devi (widow), appearing as PW-1, she admittedly not being an eye witness to the occurrence. The claimants referred to the DAR to seek the finding of the negligence being returned. This submission was accepted by the tribunal, *inter alia*, observing that in cases of this nature, the proof required was less than that necessary on a criminal charge or even in a civil case.

4. This Court had the occasion to examine, as to whether the finding on question of involvement and negligence of the alleged offending vehicle

could be returned only on the basis of the charge-sheet submitted by the police as seems to have been the view taken by the tribunal with reference to the opinion expressed in *National Insurance Company Ltd. v. Pushpa Rana* 2009 ACJ 287. In MAC appeal No. 165/2013 *New India Assurance Co. Ltd. vs. Devki & Ors.* decided on 29th February, 2016, it was held as under:

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 fairly conceded that evidence in the form of eye witness account of head constable Neeraj and certain co-passengers has been available. While conceding to the prayer for the impugned judgment to be set aside, he requests on behalf of the claimant that they be granted additional evidence with regard to the involvement of the truck and negligence on the part of its driver.

6. Thus, the impugned judgment is set aside. The matter is remitted to the tribunal for further inquiry and fresh adjudication. In the course of further inquiry, the claimants will be entitled to lead additional evidence which, needless to add, would be subject to the right of the parties which contest to cross-examine and also lead evidence in rebuttal. The parties shall appear before the tribunal on 28th July, 2016, for further proceedings.

7. By order dated 11.02.2014, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the

Registrar General within the period specified and on such deposit being made, 70% was directed to be released to the claimants, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court Branch. The balance lying in deposit shall presently be refunded to the insurance company with statutory deposit, if made. The amount already received by the claimants shall be subject to further directions in light of the fresh adjudication to be rendered by the tribunal in accordance with the finding to be returned afresh on the question of involvement of the truck and negligence on the part of its driver.

8. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 30, 2016
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