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

Date of Decision: 29th February, 2016

+ **MAC.APP. 165/2013**

NEW INDIA ASSURANCE CO. LTD.

..... Appellant
Through Mr. Sameer Nandwani, Adv.

versus

DEVKI & ORS.

..... Respondent
Through Mr. S N Parashar, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Mohan Chand Pant suffered injuries in what seems to be an accident involving bus bearing registration No.RJ 27P 4855 (the offending vehicle) on the night intervening 19 and 20.03.2007 in the parking of a private bus stand in a fair organized at Kela Devi within the jurisdiction of District Karoli (Rajasthan). A first information report (FIR) was registered in the local police station on the statement of Manoj Kumar who was conductor on the bus bearing No. DL 1PA 5363 on which the deceased was deputed as the driver, both having gone to Kela Devi fair with passengers. The widow, minor children and mother of the deceased brought a claim petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) before the

Motor Accident Claims Tribunal (the Tribunal) in Delhi seeking compensation.

2. The claim case, registered as MAC petition No.1136/2010, was inquired into after notices to the respondents which included Murari Lal (described as the driver of the offending bus), Pukhraj Mantri (described as the owner of the offending bus), Mahender Kumar Jain (described as superdar of the offending bus) and New India Insurance Company Ltd. (concededly, the insurer of the offending bus). Only the insurance company contested, the other party respondents not even filing a written statement. The Tribunal framed issues, the prime one whereof was as to whether the death had occurred due to rash/negligent driving of the offending bus by its driver.

3. The first claimant (the widow) examined herself as PW-1 and relied upon the certified copies of the record relating to the investigation of the FIR respecting the accident. The Tribunal accepted the said evidence as sufficient to return the finding in favour of the claimants on the said issue and thereafter proceeded to assess the compensation awarding an amount of ₹7,33,370/- with interest at 7.5% thereupon from the date of filing of the petition till realization.

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.

9. It is clear from the perusal of the evidence adduced before the Tribunal, and the view taken thereupon, that the claimants did not examine any witness, whether in the nature of eye witness of the actual occurrence or of the circumstances attending upon the events leading to the death. The

version of the conductor Manoj Kumar in the FIR (Ex.PW1/1) is in the nature of his statement to the police under Section 161 of the Code of Criminal Procedure, 1973 (Cr.P.C.). It is trite that a statement whether made under Section 154 or Section 161 Cr.P.C. cannot be treated as evidence in the strict sense of the term. The said witness, it is conceded, has been available all along and could have been summoned to prove the circumstances. It may be that there is no eye witness available to the actual occurrences wherein the deceased went to sleep on the ground during the night near the Kela Devi fair and on next morning was found having been crushed by the offending bus. But then, the circumstances in which the deceased had retired for the night, and the circumstances in which his dead body was found crushed under the wheels of the said bus at least could have been brought home through evidence which is available. In absence of the witnesses of such circumstances, the principle of *res ipsa locutor* also cannot be invoked on the available material brought before the Tribunal.

10. Faced with above situation, the learned counsel for the claimants fairly conceded that the conclusions on facts reached by the Tribunal cannot be denied. He submitted that since the conductor on whose statement the FIR had been registered has been available, in order not to deny just compensation to the next of kin of the deceased, justice demands that fresh opportunity be given to them to bring the said witness before the Tribunal. The counsel submitted that while the appeal of the insurance company may be allowed, the claimants' case may be remitted to the Tribunal for further inquiry. The counsel for the appellant insurance company submitted that he has nothing to say on this prayer.

11. In view of the above, the impugned judgment and award are set aside. The matter is remitted to the Tribunal for further inquiry in accordance with law in the light of the above noted observations. During the said further inquiry, the claimants shall be entitled to adduce further evidence. Needless to add, the opposite parties are entitled to lead evidence in rebuttal. The parties are directed to appear before the Tribunal for aforesaid inquiry on 22.04.2016.

12. By order dated 19.02.2013, the insurance company had been directed to deposit entire awarded amount with up-to-date interest with UCO Branch, Delhi High Court branch within the period specified, and upon such deposit being made, 60% was allowed to be released to the claimants in terms of the impugned judgment and balance kept in fixed deposit receipt in the name of the first claimant (first respondent). The amount already released to the claimants shall be subject to adjustment against the fresh judgment/award to be passed by the Tribunal in terms of aforementioned directions. The balance lying in fixed deposit receipt, however, is directed to be presently refunded to the insurance company (the appellant) for which the Registrar General shall take requisite steps.

13. The statutory deposit, if made, shall be refunded.

14. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 29, 2016/VLD