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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 18th March, 2016

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MAC.APP. 274/2013

NEW INDIA ASSURANCE CO LTD

..... Appellant

Through: Mr.Pankaj Seth, Adv. with Mr.
Shoumik Mazumdar, Adv.

versus

PARKASH KAUR & ORS

..... Respondents

Through: Ms. (Appearance not given), Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. In accident claim case brought before the motor accident claims tribunal (tribunal), on petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) on the principle of fault liability, registered as MACP. No.698/2010, inquiry was held and by judgment dated 20.12.2012 it was, *inter alia*, concluded that the death of Surender Singh had occurred due to rash or negligent driving of jeep bearing No.RJ 18 C 4812 (the jeep) which was admittedly insured against third party risk with the insurance company. On the assessment made, the tribunal awarded compensation in the sum of Rs.13,47,824/- and directed the appellant to pay the same with interest to the claimants.

2. By appeal at hand, the insurance company has primarily raised the grievance with the conclusion on the issue of negligence on the part of the

driver of the jeep submitted that it is without any material having been furnished in support.

3. It is noted that the tribunal took on record the copies of the proceedings relating to the criminal case as had been registered by the local police and investigated into, which was submitted by the widow who examined herself as PW1. The tribunal accepted the same as good evidence, following the view taken by a learned single judge of this Court in *National Insurance Co. Ltd. v. Smt. Pushpa Rana* (MAC.APP.No.360/2007 decided on 20.12.2007). The insurance company submits that the claimants have not discharged their burden of proving the fault merely by submitting the record of the investigation into the corresponding criminal case.

4. In *New India Assurance Co. Ltd. v. Devki* (MAC.APP.No.165/2013 decided by this Court on 29.02.2016), the following view was taken :

“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. In above view, the learned counsel for the claimants (first to four respondents herein) fairly conceded that the evidence adduced before the tribunal was deficient. While agreeing for the judgment under appeal to be set aside, she submitted that the claimants may be given an opportunity to produce the eye witness who has all along been available.

6. In above view, the impugned judgment is set aside. The matter is remitted to the tribunal for further inquiry into the claim petition. During the further inquiry, the tribunal shall allow opportunity to the claimants to produce the eye witness. Needless to add, the parties which contest shall be entitled to cross-examine the said witness and also be entitled to lead evidence in rebuttal, if any. The parties shall appear before the tribunal for appropriate proceedings on 27.05.2016.

7. By order dated 22.03.2013, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General of this Court within the period specified and out of the same 60% was allowed to be released to the claimants. The balance is lying in fixed deposit receipt with UCO Bank, Delhi High Court branch. The balance amounts in fixed deposit shall be presently refunded to the insurance company with accrued interest along with statutory deposit, if made. The amount already received by the claimants shall be subject to adjustment against the final award to be passed by the tribunal.

8. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 18, 2016
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