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

Date of Decision: 18th May, 2016

+ **MAC.APP. 808/2014 & CM No.14614/2014**

THE ORIENTAL INSURANCE CO. LTD

..... Appellant

Through Mr. J P N Shahi, Adv.

versus

SH. MAIKU @ PAHARI SINGH & ORS

..... Respondent

Through Mr. Om Prakash Gupta, Adv. for R-1
to 4

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Guddu suffered injuries on 15.10.2012 and died in the consequence. An accident claim case (MAC Petition No.638F/12) was filed by the first to fourth respondents (claimants) on 09.11.2012 in the wake of detailed accident report (DAR) (Ex PW1/D) submitted by the police investigating the first information report (FIR No.395/12) which had been registered in Police Station Ghazipur, Delhi. The appellant insurance company (insurer) and one Bhim Singh were impleaded as respondents in the said proceedings taken out on the averments that the death had occurred due to negligent driving of Tata Tempo (LGV) bearing registration no.DL 1LP 8677. The tribunal held inquiry during which the first claimant Maiku @ Pahari Singh

(father of the deceased) appeared as PW1 on the strength of his affidavit (Ex PW1/1) and though not an eye-witness of the incident, he deposed about sequence of events leading to the fatality. On the basis of the DAR, the tribunal, by judgment dated 30.07.2014, returned a finding that the death had occurred due to negligent driving of the said vehicle, referring, *inter alia*, to the judgment of a learned single judge of this Court in *National Insurance Company Ltd. v. Pushpa Rana* 2009 ACJ 287. By the impugned judgment compensation was awarded in favour of the claimants and the insurance company was called upon to pay.

2. By the appeal at hand, the insurance company mainly questions the findings returned by the tribunal on the question of involvement of the offending vehicle and negligence on the part of its driver. It is the contention of the insurer that in the absence of evidence to such effect the finding returned was perverse. It is pointed out that in the DAR (Ex.PW1/D), there is nothing indicated as to how the police had found the aforementioned vehicle to be involved in the collision. It is further pointed out that in the FIR (copy at page 123 of the tribunal's record), the police had come across the dead body lying on the road with the no mention of any vehicle around and no eye-witness to be located at that point of time.

3. Similar contentions were urged before this Court in *New India Insurance Co. Ltd. v. Devki* (MAC.APP.165/2013) decided on 29.02.2016. 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.*

9. The learned counsel for the claimants now fairly concedes that evidence as to involvement of the vehicle and negligence on the part of its driver was not adduced before tribunal. While agreeing that the impugned

judgment cannot be sustained, he requested that the matter may be remitted to the tribunal for further inquiry so that the claimants are not denied the compensation due to them.

10. In the facts and circumstances, the impugned judgment is set aside. The matter arising out of the claim case is remitted to the tribunal for further inquiry during which the claimants will be allowed liberty to lead further evidence particularly on the question of involvement of the vehicle and negligence on the part of its driver. Needless to add, the parties which contest shall be at liberty to cross examine the witnesses and also lead evidence in rebuttal, if any. The parties shall appear before the tribunal on 13.07.2016.

11. By order dated 05.09.2014, the insurance company deposited the entire awarded amount out of which 60% was allowed to be released, the balance kept in fixed deposit receipt. The balance lying in deposit shall be refunded to the insurer with the statutory deposit, if any. The amount already received by the claimants shall be subject to directions of the tribunal in the fresh judgment to be passed, dependent upon the conclusions reached.

12. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 18, 2016
VLD