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

Date of Decision: 04.05.2016

+ **MAC.APP. 330/2015**

THE NEW INDIA INSURANCE CO. LTD. Appellant

Through: Mr.Shoumik Mazumdar, Adv.

versus

SHRI PRABHU NATH PRASAD AND ORS Respondents

**Through: Mr.Amit Kumar Pandey and
Ms.Aparna Sharma, Adv. for R-1.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Pradeep Kumar statedly died in a motor vehicle accident that occurred on 15.09.2012 in the area of Kishan Garh New Delhi. An accident claim case (petition No. 318/2013) was instituted by his father (first respondent) seeking compensation under Sections 166 and 140 of Motor Vehicle Act, 1988 (the M.V. Act) alleging that the deceased was moving on his motorcycle bearing No. DL-4S BU-5370 (motorcycle) when it was hit by a truck bearing No. DL 1L G 0643 (the truck). As per the averments, the truck was driven by the second respondent Laxman Singh in a rash/negligent manner. The truck is stated to be registered in the name of the third respondent and admittedly was insured against the third party risk with the appellant company (insurer) for the period in question.

2. In the claim petition filed on 17.12.2012 the aforementioned driver and owner of the truck with the insurer were impleaded as respondents, the former having filed written statement denying the allegations. The Tribunal put the matter to inquiry by framing issues, the prime one (first issue) being as to whether the accident had occurred resulting in the death of Pradeep Kumar due to rash/negligent driving of the truck. The claimant led evidence at the inquiry by examining himself (PW-2), in addition to the employer of the deceased (PW-1). Admittedly, neither of the two witnesses are eye-witnesses to the occurrence. The claimant also relied on the copy of the First Information Report (FIR) that had been registered by the local police (vide number 289/2012) in police station Vasant Kunj and the documents connected thereto. The Tribunal accepted the same as good evidence of involvement of the truck and negligent driving on the part of its driver, referring in this context to the judgment of this Court in *National Insurance Company Ltd. vs. Pushpa Rana* 2009 ACJ 287 and returned findings in favour of the claimants and proceeded to award compensation by judgment dated 20.01.2014 fastening the liability on the insurance company.

3. The insurer, by the appeal at hand, primarily questions the procedure adopted by the Tribunal in returning a finding respecting involvement of the truck and negligence on the part of its driver. Its submission is that the issue required proper proof and mere reference to the documents relating to the corresponding criminal case registered by the police cannot be sufficient.

4. A similar contention was urged before this court in identical fact-situation in the case of *New India Assurance Co. Ltd. vs. Devki & Ors*, MAC appeal no.165/2013, decided on 29.02.2016. It was argued on behalf of the claimants in the said case that the inference of negligence could be drawn on

the basis of documentary evidence relating to the criminal case, placing reliance on *Bimla Devi v. Himachal Road Transport Corporation*, 2009 ACJ 1725. *Per contra*, the insurance company had argued in the case of *Devki* (supra) that the law laid down by the Supreme Court in *Oriental Insurance Company Ltd. Vs. Meena Veriyal*, 2007 (5) SCC 428, requires the burden of proving the negligence to be discharged by the claimants. This court upheld the said contention of the insurance company in the case of *Devki* (supra) and held as under:-

“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.

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.”

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.”

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. Faced with the above situation, the counsel for the claimant fairly concedes that the appeal may be allowed and the judgment set aside but requests that the claimants be given further opportunity to prove the involvement of the truck and negligence on the part of its driver.

6. In view of the above, the appeal is allowed and the impugned judgment is set aside. The issue of involvement of truck and negligence of its driver is remitted to the Tribunal for further inquiry, for which parties shall appear before it on 06.06.2016.

7. By order dated 10.04.2005, the insurer had been directed to deposit the entire awarded amount with interest with the Registrar General of this Court and the same was directed to be kept in a fixed deposit receipt with UCO Bank, Delhi High Court branch for a period of one year to be renewed

from time to time. The said deposited amount shall presently be returned to the appellant insurance company.

8. The statutory amount shall also be refunded, if deposited.

9. The appeal (with pending application) is disposed of in the above terms.

R.K. GAUBA
(JUDGE)

MAY 04, 2016

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