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

Date of Decision: 18th May, 2016

+ **MAC.APP. 19/2014**

ORIENTAL INSURANCE CO LTD Appellant
Through **Mr.J.P.N.Shahi, Adv.**

versus

VEER WATI & ORS Respondent
Through **Mr.M.K.Patty and Mr.Neeraj Anand,**
Advs. for R-1 and R-2.
Mr.Ramjee Pandey, Adv. for R-4.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 07.10.2015, the Motor Accident Claims Tribunal (the Tribunal) while deciding the accident claim case (Suit No. 1136/2010) instituted by first and second respondent (the claimants) upheld the case that their daughter Renu had died in a motor vehicular accident that had occurred allegedly involving negligent driving of a Chartered bus bearing registration No. DL-1PA-6100 (the offending vehicle) which was statedly insured against third party risk with the insurance company (the insurer) for the period in question. In reaching the said finding, the tribunal referred to the judgment of a learned Single Judge of this court in the case reported as *National Insurance Company Limited vs. Pushpa Rana* 2009ACJ 287. In

absence of any witness from scene of occurrence, the Tribunal accepted the case, not only as to the involvement of the offending vehicle but also negligence on the part of its driver referring, *inter alia*, to the statement of Kaushal recorded under Section 161 of Code of Criminal Procedure 1973 (Cr.P.C.) by the investigating police in the corresponding criminal case.

2. While challenging the judgment and award rendered by the Tribunal on 07.10.2013, the prime contention raised by the insurer is that such finding on the issue of involvement of the offending vehicle and negligence was impermissible.

3. Similar contention had been raised before this court in MACA 165/2013 titled as *New India Assurance Company Ltd. vs. Devki & Ors.* decided on 29.02.2016, this court 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.

4. The counsel for the claimants submitted that efforts were made to secure the evidence of eye-witness Kaushal but the process returned with the report that he was a tenant at the given address which had been left by him more than a year ago. In these circumstances, the claimants are unable to ensure the presence of the said witness. That, however, cannot be the end of the road for the claimants. They can still bring home the necessary facts, *inter alia*, by examining the investigating police officer who would be in a position to describe the state in which he had found the vehicle involved in the accident at the scene where he is shown by the relevant documents to have arrived immediately after occurrence. The circumstances would reveal their own story and the Tribunal would be in a position to make an appropriate evaluation as to not only the involvement of the vehicle but also fix the responsibility for the collision.

5. Faced with the above status of the case, the counsel for the claimants

fairly stated that the impugned judgment may be set aside but requested that the matter may be remitted to the Tribunal for further inquiry so that the claimants can bring home their case about involvement and negligence. The request is granted.

6. The impugned judgment is set aside. The matter is remitted to the Tribunal for further inquiry during the course of which the claimants would be granted liberty to lead additional evidence on the issue of involvement of the offending vehicle and negligence and any other aspect on which they wish to rely on that may have a bearing on the questions required to be addressed. Needless to add, the parties which contest will be entitled to cross-examine the witnesses additionally examined and also lead evidence in rebuttal, if any. The parties shall appear before the Tribunal on 12.07.2016.

7. By order dated 10.01.2014, the insurer had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General of this Court within the specified period from which 70% was released to the claimants and balance kept in FDR. The balance shall presently be refunded to the insurance company with statutory deposit, if made. The amount already released shall be subject to adjustment, should the Tribunal uphold the case of the claimants on the issue of involvement and negligence or be subject to such further directions as may be necessary and appropriate if the result is adverse.

8. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 18, 2016

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