In the High Court of Punjab and Haryana at Chandigarh

F.A.O No. 2785 of 2010 (O&M)
Date of Decision: 04.8.2017

Dhari Ram and another .....Appellants

Versus

Sohan Lal and another .....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rakesh Gupta, Advocate
for the appellants.

Mr. D.S.Nain, Advocate
for respondent No. 1.

Mr. Rajneesh Malhotra, Advocate
for respondent No. 2-Insurance Company.

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ANITA CHAUDHRY, J

This appeal is directed against the award dated 16.1.2010 passed by the Motor Accident Claims Tribunal, Kaithal, who dismissed the claim petition.

Kreshani had boarded a jeep on 1.1.2008 at 9.00 A.M. She was to go to Kaithal. It was claimed that her son Ishwar was following the jeep on his motor cycle driven by Gurmail Singh. The jeep had just covered 5-6 killas towards Kalayat when the jeep struck Safeda trees and fell in a ditch. It was pleaded that the accident occurred on account of negligence of the jeep driver.

The claim was resisted by the respondents.

The claimants examined Ishwar Singh who was stated to be an eye witness. In the affidavit, he gave a detailed account of the accident but

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in the cross-examination he stated that the jeep number was given to him by the persons who had gathered on the spot and he had reached the place of accident after 20 minutes of the accident though he maintained that he was a witness to the accident.

The claimants had also examined Dhari Ram, husband of Kreshani who stated that he had not witnessed the accident.

The FIR in this case was lodged by Ishwar.

The contention of the claimants that the police had registered an FIR and the details of the vehicle involved were detailed therein and the driver had been challaned, therefore that material was sufficient to discharge the onus placed upon them. The Tribunal recorded a finding against the claimants holding that the claimants had failed to prove that Kreshani had died in a road accident. The Tribunal also recorded a finding that the deceased was a gratuitous passenger and the insurance company was not liable to pay the compensation. The Tribunal calculated the compensation since it had to give a finding on the issue. The claim petition was dismissed.

Aggrieved with the judgment, this appeal has been filed by the claimants.

I have heard both the sides at great length.

The submission on behalf of the appellants is that the FIR had been lodged on the statement of Ishwar and the registration number of the vehicle was recorded therein and the police had challaned the driver and the report under Section 173 Cr.P.C. was available and the death of Kreshani was proved from the post-mortem report and as the Tribunal had calculated the compensation, then the petition should have been allowed. The counsel

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further submits that the FIR alone was sufficient to discharge the onus placed upon them and the Apex Court has taken a view that registration of the FIR is not necessary and in this case, there is a FIR.

The submission on behalf of the insurance company was that Ishwar Singh had lodged the FIR and he was supposedly an eye witness but in the cross-examination, there is an admission that he had reached the spot after 20 minutes, therefore he cannot be said to be an eye witness and there is no other witness who could depose about the manner of the accident. The counsel further submits that mere registration of the FIR or presentation of challan is not enough to foist any liability on the respondents much less insurance company since the deceased was a gratuitous passenger which was not covered under the policy.

The only eye witness to the accident has admitted in the cross-examination that he had reached the spot after 20 minutes, therefore he was not a witness to the accident. The claim petition had been filed under Section 166 of the Motor Vehicles Act and proof of negligence was *sine qua non* in a petition under Section 166 of the Motor Vehicles Act. Merely because a case has been registered against the driver, negligence cannot be inferred even on the touchstone of preponderance of probabilities and proof of negligence is essential before a person can be held liable to pay compensation.

A three Judges Bench in ***Oriental Insurance Company Limited versus Meena Variyal and others (2007) 5 SCC 428*** held as under:-

> *"25. In that decision, this Court considered the question whether in a claim for compensation under the Motor Vehicles Act, 1939, proof of negligence was essential to support a claim*

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for compensation. On the facts in that case, their Lordships found that the appeal was liable to be dismissed subject to certain directions issued therein. But their Lordships, in the light of the fact that the High Court had discussed the law on the question and it was of some importance, felt that it was necessary to state the position in law. Noticing that the liability of the owner of the car to compensate the victim in a car accident due to negligent driving of his servant is based on the law of tort, the Court discussed the scheme of the Act of 1939 and the law on the question. Regarding the view of the High Court that it was not necessary to prove negligence, the Court held: (Minu B. Mehta case [(1977) 2 SCC 441 : (1977) 2 SCR 886] , SCC pp. 455-56, para 33) "33. The reasoning of the two learned Judges is unacceptable as it is opposed to basic principles of the owner's liability for negligence of his servant and is based on a complete misreading of the provisions of Chapter VIII of the Act. The High Court's zeal for what it considered to be protection of public good has misled it into adopting a course which is nothing short of legislation."

Their Lordships also noticed that proof of negligence remained the lynchpin to recover compensation. Their Lordships concluded by saying: (Minu B. Mehta case [(1977) 2 SCC 441 : (1977) 2 SCR 886] , SCC pp. 456- 57, para 37) "37. We conclude by stating that the view of the learned Judges of the High Court has no support in law and hold that proof of negligence is necessary before the owner or the insurance company could be held to be liable for the payment of compensation in a motor accident claim case."

26. Learned counsel for the respondent contended that there was no obligation on the claimant to prove negligence on the part of the driver. Learned counsel relied on Gujarat SRTC v. Ramanbhai Prabhatbhai [(1987) 3 SCC 234 : 1987 SCC (Cri) 482] in support. In that decision, this Court clarified that the observations in Minu B. Mehta case [(1977) 2 SCC 441 :

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(1977) 2 SCR 886] are in the nature of obiter dicta. But, this Court only proceeded to notice that departures had been made from the law of strict liability and the Fatal Accidents Act by introduction of Chapter VII-A of the 1939 Act and the introduction of Section 92-A providing for compensation and the expansion of the provision as to who could make a claim, noticing that the application under Section 110-A of the Act had to be made on behalf of or for the benefit of all the legal representatives of the deceased. This Court has not stated that on a claim based on negligence there is no obligation to establish negligence. This Court was dealing with no-fault liability and the departure made from the Fatal Accidents Act and the theory of strict liability in the scheme of the Act of 1939 as amended. This Court did not have the occasion to construe a provision like Section 163-A of the Act of 1988 providing for compensation without proof of negligence in contradistinction to Section 166 of the Act. We may notice that Minu B. Mehta case [(1977) 2 SCC 441 : (1977) 2 SCR 886] was decided by three learned Judges and the Gujarat SRTC case [(1987) 3 SCC 234 : 1987 SCC (Cri) 482] was decided only by two learned Judges. An obiter dictum of this Court may be binding only on the High Courts in the absence of a direct pronouncement on that question elsewhere by this Court. But as far as this Court is concerned, though not binding, it does have clear persuasive authority. On a careful understanding of the decision in Gujarat SRTC [(1987) 3 SCC 234 : 1987 SCC (Cri) 482] 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 163-A of the Act of 1988, we are persuaded to think that the so-called obiter observations in Minu B. Mehta case [(1977) 2 SCC 441 : (1977) 2 SCR 886] govern a claim under Section 166 of the Act and they are inapplicable only when a claim is made under Section 163-A of the Act. Obviously, it is for the claimant to choose under which

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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 case [(1977) 2 SCC 441 : (1977) 2 SCR 886] 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 case [(1977) 2 SCC 441 : (1977) 2 SCR 886] deserve to be ignored.

27. We think that the law laid down in Minu B. Mehta v. Balkrishna Ramchandra Nayan [(1977) 2 SCC 441 : (1977) 2 SCR 886] was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section 163-A of the Act providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under sub-section (1) of Section 163-A of the Act, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned. Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default

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on the part of the owner of the vehicle or the driver of the vehicle."

There is no manner of doubt that under Section 166 of the Motor Vehicles Act, negligence is required to be proved by the victim or the legal representatives of the victim. It is also well settled that standard of proof required in a criminal case is beyond reasonable doubt whereas in a civil case including a petition under Section 166 of the Motor Vehicles Act negligence is required to be proved only on the touchstone of preponderance of probabilities.

The claimants had failed to prove the negligence of the driver, therefore the petition was rightly dismissed. No other view was possible.

The appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

August 04, 2017
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Whether speaking/reasoned : Yes
Whether reportable : No

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