

\$~9

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

Decided on: 5th July, 2017

+ MAC.APP. 20/2017

RELIANCE GENERAL INSURANCE CO LTD..... Appellant

Through: Mr.A.K.Soni, Advocate

versus

NIRMALA DEVI & ORS

..... Respondents

Through: Mr. Janender Mahajan, Adv.
with Mr. Manish Kumar, Adv.
for R-1 to R-3.

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

JUDGMENT (ORAL)

1. The first to third respondents (the claimants) had instituted accident claim case in the wake of Detailed Accident Report (DAR), registered as Suit No.81/2014 (New MACT Case No.476669/16) seeking compensation on account of death of Dharamvir Singh in a motor vehicular accident on 29.12.2012 allegedly due to negligent driving of tempo bearing no.HR-46B-2307 (tempo), the said vehicle being insured against third party risk with the appellant insurance company. The insurer contested. The Tribunal awarded compensation by judgment dated 14.10.2016 returning findings of negligent driving of the tempo to be the cause of accident, this in spite of the fact that no evidence to such effect was adduced, the Tribunal having chosen to

follow view taken in *National Insurance Company Limited vs. Pushpa Rana*, 2009 ACJ 287.

2. The insurance company assails the view taken by the Tribunal contending that in absence of proof of negligence, a claim under Section 166 of the Motor Vehicles Act, 1988 could not have been upheld.

3. Similar issue had arisen before this court in *New India Assurance Company Limited vs. Devki & Ors.*, MAC APP.165/2013, decided on 29.02.2016. The court took the following view :-

“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 learned counsel for the claimants fairly concedes that it is the obligation of the claimants to adduce formal evidence of negligence. He, thus, while agreeing that the appeal deserves to be allowed prays for an order of remit so that the claimants can discharge their burden.

5. The impugned award is, thus, set aside. The matter is remanded to the Tribunal for further inquiry in accordance with law in which the

claimants shall be given opportunity to further lead evidence with, of course, similar opportunity to the opposite party for evidence in rebuttal.

6. The amount of compensation awarded by the impugned judgment shall be presently refunded with the statutory amount, if already deposited, to the appellant insurance company.

7. The parties shall appear before the Tribunal on 08.08.2017.

8. The appeal is disposed of in above terms.

JULY 05, 2017

vk

R.K.GAUBA, J.