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

Decided on: 7th September, 2017

+ MAC.APP. 81/2010 and CM APPL.2598-2599/2010

MCD & ANR.

..... Appellants

Through: Mrs. Biji Rajesh, Advocate for
Mr. Gaurang Kanth, Advocate

versus

PUNIA & ORS.

..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Accident claim case (Suit No.537/1999, new No.42/2000) was instituted on 19.08.1999 by first to fourth respondents (collectively, the claimants) seeking compensation on the averments that Chhaju Ram, the husband of the first respondent and father of the other respondents, had died in a motor vehicular accident that took place on 09.02.1999 due to negligent driving of a motor vehicle described as water tanker bearing registration No.DL-1LB-5348 (tanker). The tanker admittedly is registered in the name of the first appellant, Municipal Corporation of Delhi (MCD), and was concededly driven during the relevant period by second appellant Ved Prakash (the driver). It is admitted case of the claimants that the deceased Chhaju

Ram was also an employee of MCD in a horticulture department and was on duty as an attendant on the said tanker at the relevant point of time. The sequence of events set out in the claim petition was that the deceased was travelling on the rear portion of the tanker when he fell off and suffered injuries due to sudden application of brakes by the driver, the injuries suffered in the consequence proving fatal.

2. The appellants put in contest denying any involvement of the tanker in the accident in which Chhaju Ram had suffered fatal injuries. The tribunal put the matter to inquiry in the course of which the claimants as also the appellants led evidence. After the said inquiry, the tribunal returned a finding that the accident had occurred resulting in death of Chhaju Ram due to negligent driving of tanker by the second appellant, referring in this context to the decision in *Kaushnumma Begum & Ors. vs. New India Assurance Company Limited, 2001 ACJ 421 SC*. The tribunal awarded compensation and directed the appellants to pay.

3. Seeking to assail the above noted finding on the issue of involvement of the tanker and negligence on the part of its driver, the present appeal was filed. It is argued that the claimants have not led any evidence on the basis of which such findings could have been returned.

4. On the issue of burden of proof in claim for compensation in death cases, this court by its decision in MAC Appeal No. 165/2013, *New India Assurance Co. Ltd. vs. Devki & Ors.* decided on 29th February, 2016, noted the law, bearing in mind, amongst others, the

decisions in *National Insurance Company Ltd. v. Pushpa Rana* 2009 ACJ 287; and of the Supreme Court in *Bimla Devi v. Himachal Road Transport Corporation* 2009 ACJ 1725 (SC) and held as under:-

“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.”*

5. In the case at hand though the first claimant appeared as her own witness as PW-1 on the strength of her affidavit dated 19.05.2005, she admitted during cross-examination that she was not an eye witness to the occurrence. The only relevant witness examined by the claimants relevant to the issue was Hans Raj (PW-4), who was also an employee of the MCD and concededly present on the water tanker. This witness denied any involvement of the water tanker in the accident. His version, on the other hand, shows that the death had occurred elsewhere and that the employees of the MCD, including second appellant, had rushed to the spot to take Chhaju Ram for medical aid. This precisely, was also the version of the second

appellant who appeared in the witness box as R1W1. The tribunal, curiously, accepted the contention of the claimants that the witness examined being an employee of MCD would not “*dare to speak against MCD*”. This reasoning cannot be accepted. The reliance on the fact that the second appellant was also prosecuted in the corresponding criminal case has also lost its value in as much as the prosecution failed, it resulting in acquittal of the second appellant of the criminal charge by judgment dated 28.05.2014 of the court of Metropolitan Magistrate.

6. In the above mentioned facts and circumstances, there being no evidence whatsoever to bring home the involvement of the water tanker leave alone negligence on the part of its driver, the impugned judgment cannot be sustained. It is set aside. The claim petition based on the averments to this effect stands dismissed.

7. In terms of order dated 10.02.2010, the appellants would have deposited the awarded amount with UCO Bank, Delhi High Court branch which was ordered to be kept in fixed deposit. The said amount with interest accrued thereupon would be refunded to the appellant.

8. The appeal along with accompanying applications are disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 07, 2017

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