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

*Decided on: 10<sup>th</sup> July, 2017*

+ **MAC APPEAL No. 562/2008**

**UOI & ORS.**

..... Appellants

Through: Mr. Prsanta Verma, Sr. Govt.  
Standing counsel.

versus

**ANNU JINDAL & ORS.**

..... Respondents

Through: Mr. Gaurav Mahajan & Mr.  
Lokesh Chopra, Advs. for R-1,  
2, 4 5.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT (ORAL)**

1. Naveen Jindal, aged about 30 years, died as a result of injuries suffered seemingly in a motor vehicular accident on 8.8.2001. An accident claim case (suit no. 367/2007) was instituted by his wife and son, first and second respondents (collectively the claimants) invoking Section 166 of the Motor Vehicles Act, 1988, alleging that the accident had been caused by an army truck bearing registration no. 94D 99533X, the third respondent statedly being at its wheel. This contention was contested by the appellants before the tribunal denying any involvement of the vehicle. The tribunal held inquiry, after framing issues, including the prime one to address the question as to

whether the death had occurred due to rash or negligent driving of the said truck. The claimants led evidence by examining the widow (first respondent) appearing as PW-1, besides the employer of the deceased appearing as PW-2 and a police official (PW-3), the last essentially to bring on record the record pertaining to investigation into the first information report (FIR) No. 253/2001 of police station Mandir Marg, the accident being its subject matter. The driver (third respondent) of the army vehicle appeared in the witness box as RW1 deposing that his vehicle was not involved and that it was rather intercepted far away from the scene and that he was falsely implicated.

2. The tribunal, by the impugned judgment, upheld the case of the claimants and returned a finding that the accident and death had occurred due to negligent driving of the vehicle in question.

3. By the appeal at hand, it is reiterated that the vehicle of the appellants has been wrongly involved on the basis of false claim. It is the contention of the appellants that there was no evidence led to prove the involvement or negligence. Reliance is placed on decision of this Court in *New India Assurance Co. Ltd. vs. Devki & Ors.* MAC Appeal No. 165/2013 decided on 29.02.2016.

4. *Per contra*, the respondents no.1 and 2 rely on *Bimla Devi & Ors. vs. Himachal Road Transport Corporation & Ors.* (2009) 13 SCC 530 and decision of a learned single judge in MAC Appeal No. 750/2016 *United India Insurance Co. Ltd. vs. Deepak Goel & Ors.* decided on 24.1.2014. The counsel for the claimants argued that strict rules of proof of civil or criminal proceedings do not apply and, therefore, the claimants had properly discharged their burden and that

the claim of the appellants based on the evidence of RW1 ought not to be believed.

5. The view similar to the one agitated by the claimants here was accepted by a learned single judge in *National Insurance Company Ltd. vs. Pushpa Rana & Ors.* 2009 ACJ 287. Similar questions had come up before this Court in the case of *New India Assurance Co. Ltd. vs. Devki & Ors.* (supra) against the backdrop of the judgments of the Supreme Court in certain previous decisions. This court 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”.*

9. Faced with the above state of law on the subject, the learned counsel for the claimants submitted that while the appeal may be allowed, the claimants may be given opportunity to adduce formal

evidence as to the involvement and negligence of the vehicle in question before the tribunal. In the given fact-situation, the prayer for further opportunity to the claimants seems to be just and fair.

10. The appeal is thus, allowed. The impugned judgment is set aside. The matter is remitted to the tribunal for further inquiry as to the involvement of the vehicle in question and negligence on the part of its driver. For this purpose, the claimants will have the liberty to examine additional witnesses. Needless to add, respondents will also have the liberty to lead evidence in rebuttal. Given the old pendency of the matter, it is desirable that the tribunal shall reach an early decision, preferably within three months of the date of first appearance before the tribunal in terms of these directions.

11. The parties shall appear before the tribunal for further proceedings on 27<sup>th</sup> July, 2017.

12. It is noted that by order dated 05.03.2009, the appellant had been directed to deposit the entire awarded amount with interest with the tribunal within the period specified whereupon the said amount was allowed to be released to the claimants though a portion was to be retained in fixed deposit receipt in terms of the directions in the impugned judgment of the tribunal, such original fixed deposit receipts to be retained till disposal of the appeal with liberty to claimants to receive the periodic interest thereupon.

13. The amount to the extent already released shall have to be suitably adjusted or appropriate orders in such regard will have to be passed at appropriate stage by the tribunal after fresh adjudication. No

fresh amount shall be released till a fresh decision is taken by the tribunal.

14. The appeal is disposed of in above terms.

15. Statutory amount shall be refunded.

**R.K.GAUBA, J.**

**JULY 10, 2017**

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