

\$~12

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

%

Judgment delivered on: 07.05.2019

+

MAC.APP. 856/2017 & CM No.34614/2017

RAHUL KUMAR & ANR. Appellants

Through: Mr. Anando Mukherjee and Mr. V.
Mehrotra, Advocates.

Versus

**SUMIT KUMAR (THR HIS GUARDIAN) & ANR (ICICI
LOMBARD GENERAL INSURANCE CO LTD)** Respondents

Through: Mr. S. R. Kamat, Advocate for Respondent
No.1.
Mr. Sandeep Jha, Advocate for Respondent
No.2.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. The appellants are aggrieved by award of compensation of Rs.1,60,000/- on account of injury having been caused to minor Master Sumit Kumar in an alleged motor vehicle accident.

2. The learned counsel for the appellants submits that the impugned order suffers from a grave error, both in fact and in law. For the award to have been made two aspects ought to have been decided: (i) that there was an offending vehicle; and (ii) that the same was being driven in a rash and negligent manner. He submits that in the present case, by the claimants' own submission, the injury to the minor was caused not by a motor vehicle but by his falling down the stairs; the father of the injured victim had

intimated the Station House Officer of Police Station Okhla Industrial Area, Phase –I, New Delhi by letter dated 23.01.2016 (Annexure A-2), which reads *inter alia* as under:-

“ It is submitted that today i.e. on 23.1.2016, at about 3 p.m., my son Sumit son of Ram Sunder resident of C-208/1, I.K.V. O.I.A- I, fell from the stairs while playing at home. No one has any fault in it. I have got done treatment of my son at AIIMS T/C. I do not want any police and legal proceedings in this regard.”

3. This communication to the police by the father of Master Sumit Kumar, is not in dispute.

4. The learned counsel for the appellants submits that being neighbours, the appellants had rushed the child to the hospital themselves. It is disputed that the father was persuaded to issue the aforesaid letter on the request of the vehicle owner.

5. The learned Tribunal has proceeded on the basis of the Medico-Legal Report (MLC) of Master Sumit Kumar, aged 12 years, wherein the cause for the injury is stated to be a motor vehicle accident i.e. a road traffic accident, which is corroborated by the police report and duly considered in the impugned order. The document was issued at 16:46 hours. It is logical that a mother would first take the child to the hospital and not necessarily rush him to the Police Station, which perhaps was done in the present case. However, the learned Tribunal has looked into the matter and determined the issue of injury as under:-

Issue no. 1 (Negligence)

“11. Counsel for driver owner argued that in the FIR, it has been recorded that the mother of injured has informed the

father of injured that injured has fallen from the stairs and this fact has also been stated by the father of injured in the FIR. He further argued that in the MLC, it is mentioned that injured has fallen from the stairs and therefore no case of rash and negligent driving of respondent no. 1 is made out. Perusal of the record shows that in the MLC, which has been prepared on 23.01.2016 itself, the patient Sumit has been brought to the hospital with the alleged history of RTA i.e. Road Traffic Accident. It is nowhere mentioned in the MLC that patient has received injuries due to fall from stairs. Subsequently, when the FIR has been registered, the father of injured has fully explained the delay in lodging the FIR as he stated that respondent nos. 1 & 2 i.e. driver & owner of the offending vehicle are his neighbors and therefore initially they did not lodge the FIR against the driver & owner but subsequently they lodged the FIR. PWI Ram Sunder Kamat in his affidavit of evidence (Ex.PWI/A) categorically stated that his son got injuries due to the rash and negligent driving of respondent no. 1. Nothing came in his cross examination to disbelieve his version. His version is duly corroborated by police investigation. Police during investigation also found respondent no.1 accused of rash and negligent driving, hence chargesheeted him for commission of offence under section 279/338 of Indian Penal Code and U/s 3/181 of Motor Vehicle Act.

12. To determine the negligence of the driver of the offending vehicle, I am being guided by the judgment of Hon'ble High Court(MP) in case titled as "Basant Kaur & Ors Vs. Chattar Pal Singh and Ors" [2003 ACJ 369 MP (DB)], wherein it has been held that registration of a criminal case against the driver of the offending vehicle is enough to record the finding that the driver of offending vehicle is responsible for causing the accident. Further it has been held in catena of cases that the proceedings under the Motor Vehicles Act are not akin to the proceedings as in civil suit and hence strict rules of evidence are not required to be followed in this regard. I am also being guided by the judgment of Hon'ble High Court of

Delhi in "National Insurance Company Limited Vs. Pushpa Rana" (2009 ACJ 287), wherein it was held that in ease the petitioner files the certified copy of the criminal record or the criminal record showing the completion of the investigation by the police or the issuance of charge sheet under Section-279/304 A IPC or the certified copy of the FIR or in addition the recovery memo or the mechanical inspection report of the offending vehicle, these documents are sufficient proof to reach to the conclusion that the driver was negligent, It is also settled law that the term rashness and negligence has to be constructed lightly while making a decision on a petition for claim for the same as compared to the word rashness and negligence as finds mention in the Indian Penal Code. This is because the chapter in the Motor Vehicle Act dealing with compensation is a benevolent legislation and not a penal one."

6. The Court is unable to find any error in the aforesaid reasoning or the conclusion arrived at by the learned Tribunal.

7. The learned counsel for the respondents –claimants seeks to rely upon the judgment of the Supreme Court in ***New India Assurance Co. Ltd. vs. Devki & Ors., MAC. APP. No.165/2013*** (decided on 29.02.2016) which held that the negligence of the driver of a motor vehicle ought to be established. He further submits that reliance of the impugned order on the judgment of ***National Insurance Company Limited vs. Pushpa Rana (2009 ACJ 287)***, is erroneous because the law has been declared by the Supreme Court in the judgment of ***Oriental Insurance Co. Ltd. vs. Meena Variyal & Ors. (2007) 5 SCC 428***, which, *inter alia*, held 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."

8. Accordingly, this Court in ***Pushpa Rana*** (supra) held as under:-

"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 nofault 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. Interestingly, the accident took place on 23.01.2016, however, the FIR was registered on 08.02.2016, wherein the complainant had, *inter alia*, stated that:-

"on 23.1.2016, my wife Kaushalya Devi told me on phone that my elder son Sumit has fallen from stairs and she has taken him to AIIMS Trauma Centre, thereafter I also reached at the Hospital. My son also told me the same thing. During this, police arrived at the Hospital, on which, I told

them that my son has sustained Injuries after falling from the stairs and we do not want any police action. Thereafter, we returned back to home from the Hospital after treatment of Sumit. Now my son Sumit told me that on 23.1.2016 at about 3.00 p.m., Rahul son of Shobhakant Rai, who lives in our neighbourhood, hit him with his Maruti Eeco No. DLILV-0188 White colour by driving it rashly and negligently on high speed In front of C-160, Okhla Phase- I, New Delhi and caused accident, due to which, he sustained injury in the leg. That day, mother of Rahul stopped him from telling about the accident and he stated about falling from stairs. After the accident, my son Sumit, my wife and niece Aarti went to the Trauma Centre, Medical Hospital by the car of Rahul etc.....”

The complaint was then made on 08.02.2016.

10. The Court would note that Rahul, who is stated to have driven the vehicle rashly and negligently, is a neighbour and had taken the injured child to the hospital and that the father, the mother and the son, all had told the police on the date of the accident that the injury was on account of Sumit having fallen from the stairs.

11. Oddly, the FIR which was registered 16 days later on 08.02.2016 sets up a completely different story. *Ex facie*, it does not give any reason to disbelieve the first information to the police. The prevaricating stand of the father, on the basis of information given to him by his spouse and the injured, is not convincingly reconciled with his claim.

12. In view of the above, the appeal is allowed. The impugned order is set aside.

13. The impugned amount is stated to have been deposited by the insurance company before the learned Tribunal, if it has not been withdrawn, the same would be returned to the insurance company alongwith

the interest accrued thereon.

14. The statutory amount be refunded to the appellants.

NAJMI WAZIRI, J.

MAY 07, 2019

sb

