



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

% **Judgment reserved on : 15 April 2024**
Judgment pronounced on: 27 May 2024

+ **MAC.APP. 194/2021 & CM APPL. 16684/2021**

THE ORIENTAL INSURANCE CO. LTD. Appellant

Through: Mr. Pradeep Gaur, Mr. Amit Gaur with Ms. Sweta Sinha, Adv.

versus

SH. SHIV PRASAD INDRAMANI@ SHIV PRASAD

SHARMA@SHIV PRASAD BHATT & ORS..... Respondents

Through: Mr. Pankaj Gupta, Adv. for R-1 & R-2.

+ **MAC.APP. 225/2021**

SHIV PRASAD INDRAMANI & ANR. Appellants

Through: Mr. Pankaj Gupta, Adv. for R-1 & R-2.

versus

MUBIN AHMED & ORS. Respondents

Through: Mr. Pradeep Gaur, Mr. Amit Gaur with Ms. Sweta Sinha, Adv. for R-3/insurance company.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This common judgment shall decide the above-noted two cross-appeals preferred by the insurer and the insured parties under Section



173 of the Motor Vehicles Act, 1988¹, assailing the impugned judgment-cum-award dated 19.03.2021 passed by the learned Presiding Officer, Motor Accident Claims Tribunal-02, Central District, Tis Hazari Courts, Delhi². The aforesaid two cross-appeals raise common questions of law and facts and can be conveniently disposed of together.

2. Shorn off unnecessary details, suffice to state that the claimants are the parents of the deceased-Bhanu Prakash Bhatt aged about 19 years, a first year B.Tech student, who sustained fatal injuries in a road accident that occurred on 10.04.2015. The claimants-parents filed a claim petition under section 166 read with Section 140 of the M.V. Act claiming compensation to the tune of Rs. 34 lakhs under various heads stating that the deceased was travelling in the bus bearing registration No. HR-74A-3695 (*hereinafter referred to as the 'offending bus'*) and as he was in the process of alighting from the offending bus at outer Ring Road (before Burari Red Light), Burari, the driver of the offending bus suddenly speeded up the bus, as a result of which, the deceased lost his balance and was run over under the rear wheels of the offending bus. This resulted in the registration of FIR³ No. 435/2015 under Sections 279/338 of the IPC⁴ with Police Station Burari. The offending bus was being driven by the respondent No.1/Mubin Ahmed and was owned by the respondent No.2/Haryana

¹ MV Act

² Tribunal

³ First Information Report

⁴ Indian Penal Code, 1860



Roadways and admittedly, insured for third party risks with the insurer i.e., the Oriental Insurance Company Limited.

3. Based on the pleadings of the parties, the learned Tribunal framed the following issues:-

- “1. Whether the deceased Bhanu Prakash suffered fatal injuries in an accident that took place on 10.04.2015 at about 17:00 hrs involving Bus bearing registration No. HR-74A-3695 driven by the Respondent No.1 rashly and negligently, owned by the Respondent No.2 and insured with the Respondent No.3? OPP.
2. Whether the petitioners are entitled for compensation? If so, to what amount and from whom?
3. Relief.”

4. During the course of the proceedings/trial before the learned Tribunal, the father of the deceased/Shiv Prasad was examined as PW-1 and one eyewitness, namely Wasim, was also examined as PW-2; while on the other hand, both the driver as well as the conductor of the offending bus were examined as R1W1 and R1W2 respectively. It would be apposite to refer to the observations made by the learned Tribunal while deciding Issue No.1, which goes as under: -

11. It would be appropriate to mention here that the occurrence of incident as well as death of the deceased is not disputed. It is only the aspect of 'rashness' or 'negligence', which remains to be decided. In order to prove the said aspect, the petitioners have examined PW-2 Wasim as the eye witness of the incident. PW2 deposed, through his affidavit Ex. PW2/A, that on the date of accident, he was driving his TSR and was proceeding towards Shahdara via Ring Road. At about 5 pm he saw the offending vehicle stopped before Burari Red Light for alighting the passengers. At that time, a boy, who was getting down from the offending vehicle, got run over by the rear wheels of the offending vehicle as the driver of the offending vehicle suddenly moved the same forward in a rash, negligent and reckless manner He further deposed that he asked the driver of the offending vehicle to park the same in the side of the road and then he made a call to the police helpline no 100 He further deposed that afterwards he left



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the spot as he had to take his passengers to their destination. This witness was cross-examined by R-1 and R-3. R-2 did not bother to cross-examine this witness.

From the above statement, it is apparent that PW-2 claims that the offending vehicle stopped at the spot of accident and the deceased was alighting from the same but suddenly R-1 drove the offending vehicle due to which the deceased lost his balance, fell on the road and was run over by the rear wheels of the offending vehicle. It would be appropriate to note here that PW-2 Wasim was also examined by the police during the investigation in FIR no. 435/15 PS Burari which was registered in respect of the above mentioned accident in which the deceased lost his life. PW-2 made a statement to the police U/s 161 CrPC, relevant extracts of which are reproduced below for ready reference :-

"बयान किया कि मैं पता उपरोक्त पर मय परिवार रहता हूँ व Auto-Rickshaw चलाता हूँ आप दिनांक 10/04/15 को मैं अपने Auto-Rickshaw में सवारी लेकर बुराड़ी आटर रिंग रोड से होता हुआ शाहदरा जा रहा था जो शाम करीब 5 बजे बुराड़ी रेड लाईट से पहले से एक Haryana Roadways Bus No. HR- 74A-3695 से आगे के गेट से एक लडका उतर रहा था, जो अचानक Bus Driver ने बस की speed तेज कर दी जिससे वह लडका disbalance होकर नीचे गिर गया व पिछले टायर के नीचे आ गया उसी बस के जिससे उसकी मौके पर ही मृत्यु हो गई मैंने फटाफट बस साईड में लगवा दी और 100 न. पर Call कर दी मुझे सवारी लेकर जाना था इसलिये मैं वहा से चला गया था..... यह हादसा बस ड्राईवर की गलती व लापरवाही के कारण तेजी से बस चलाने के कारण हुई है"

12. The said statement of PW-2, recorded Ups 161 CrPC, seems to convey that while the deceased was alighting from the front gate of the offending vehicle R-1 suddenly increased the speed of the offending vehicle) due to which the deceased lost his balance, fell down and was run over by the rear wheels of the offending vehicle. This latter statement is in contradiction with the statement made by PW-2 during the present proceedings. The minute but relevant & important difference between the said two statements is that while deposing before this Tribunal PW-2 claims that the offending vehicle was stopped, but PW-2 stated to the police (during investigation) that the offending vehicle was moving at the relevant time. Although, PW-2 was not specifically confronted with the latter statement at the time of his cross-examination in the present



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proceedings, but still this fact came on record during the cross-examination of PW-2 where he (PW-2) has admitted that at the relevant time R-1 was driving the offending vehicle at a normal speed and that he (R-1) was not driving the offending vehicle in a rash or negligent manner. These admissions are contradictory to the version deposed by PW-2 in his affidavit Ex. PW2/A. These admissions prove that at the relevant time the offending vehicle was in motion, albeit slow. Apart from the above, PW-2 has admitted specifically in his cross-examination conducted by R-3 that the offending vehicle was moving at a slow speed when the deceased alighted from the same. These admissions conclusively establish the fact that the deceased alighted from the offending vehicle while the same was in motion. The witnesses examined by R-1 (i.e. R1W1 namely Mubin Ahmed R1W3 namely Sh. Jasmal & R1W4 namely Sh. Rasheed Ahmad) have also stated so in their respective affidavits and whose cross-examination does not reveal anything to the contrary. The testimony corroborates the fact admitted by PW2 that the offending vehicle was motion when deceased alighted from the same. Apart from the same, the above witnesses examined by R-1 have also deposed that the deceased jumped out from the front gate of the offending vehicle without requesting the Driver or the Conductor to stop the same. All the said witnesses have deposed in unison that the deceased was negligent in alighting from a moving bus. The oral testimony of the said witnesses does not reveal any inconsistency or contradiction so as to reject the same.

13 in the considered opinion of this Tribunal, **it is safe to assume that the deceased alighted from a moving bus (offending vehicle) without requesting the Driver or the Conductor of the same to stop. Alighting from a moving vehicle, even if the vehicle is moving at a slow speed, involves a great risk to the life of oneself as well as others.** The one who indulges into such a brazen conduct does so at his own peril. **By no means driver of such vehicle could be condemned as the driver is not supposed to focus on the entry/ exit gates while driving the same.** While any vehicle is in motion, the driver of the same is supposed only to look towards the front of the vehicle in order to prevent any collision/ accident. Apparently, the deceased chose to tread on a perilous path and unfortunately paid for that mistake with his life. There is no fault of R-1 in the occurrence of accident in question. As such, this Tribunal finds it appropriate to hold that the petitioners have failed to establish that the deceased lost his life due to any neglect or default R-1 in driving the offending vehicle. This issue is accordingly decided against the petitioners and in favour of the respondents.”





5. In light of the aforesaid view, the learned Tribunal dismissed the claim petition under Section 166 of the M.V. Act. However, coming to the relief part, it converted the claim petition to one under Section 163-A of the M.V. Act and awarded a statutory compensation of Rs. 5 lakhs plus Rs. 40,000/- to each of the parents towards loss of consortium besides Rs. 15,000/- each towards funeral expenses and loss of estate. Accordingly, a total compensation of Rs. 6,10,000/- was awarded to the claimants-parents along with interest @ 6% per annum from the date of filing of the DAR⁵ i.e. 15.09.2015 till realization. Needless to say, the liability to pay the compensation was fastened upon the insurance company.

SUBMISSIONS ADVANCED AT THE BAR:

6. Mr. Pradeep Gaur, learned counsel for the appellant/Insurance Company has assailed the impugned judgment-cum-award passed in MAC.APP. 194/2021 primarily on the ground that the learned Tribunal had no powers to *suo moto* convert a claim petition under Section 166 of the M.V. Act into one under Section 163-A of the M.V. Act. It was vehemently urged that there was no application moved on behalf of the claimants-parents so as to convert their claim petition in such a manner and the learned counsel for the appellant/Insurance Company heavily relied upon a decision in the case of **Deepal Girishbhai Soni v. United India Insurance Co. Ltd.**⁶

⁵ Detailed Accident Report

⁶ (2004) 5 SCC 385



Lastly, it was urged that the quantum of compensation has not been awarded as per the law.

7. *Per contra*, Mr. Pankaj Gupta, learned counsel for the respondents/claimants-parents urged that there was no bar for the learned Tribunal to *suo moto* convert the claim petition into one under Section 163-A of the M.V. Act, for which, he relied upon a decision of this Court in **United India Insurance Company Ltd. v. Rita Devi**⁷ and **Raj Narain Jha v. Jagdish**⁸

8. As regards MAC. APP. 225/2021 preferred by the claimants-parents, Mr. Pankaj Gupta, learned counsel for the respondents/claimants-parents urged that the testimony of PW-2/Wasim was credible as to the manner in which the accident had occurred, while on the contrary, both R1W1/Mubin Ahmed i.e. the driver, as well as R1W2/Jamsad i.e. the conductor of the offending bus, were “interested witnesses” and it was vehemently urged that their version that the deceased, all of a sudden, himself opened the front door and jumped out of the moving bus, was belied from the statement of PW-2/Wasim to the effect that there was traffic jam moving ahead due to which, the bus was barely moving.

9. *Per contra*, learned counsel for the Insurance Company urged that the testimony of PW-2/Wasim was flawed since there were a lot of embellishments in his testimony and the learned Tribunal rightly

⁷ 2014 SCC OnLine Del 7523



concluded that no responsibility could be attributed upon the driver of the offending bus.

ANALYSIS AND DECISION

10. Having heard the learned counsels for the rival parties and on perusal of the record including the digitized Trial Court Record, insofar as MAC.APP. 194/2021 filed by the appellant/Insurance Company assailing the conversion of the claim petition to Section 163-A of the M.V. Act is concerned, the same is clearly not sustainable in law.

11. In the case of *Deepal Girishbhai Soni (supra)*, the claimant had preferred two simultaneous claim petitions; one under section 166 of the M.V. Act and the other under Section 163-A of the M.V. Act. The core issue before the Supreme Court was whether the claimant was entitled to institute two separate petitions on the presumption that the proceedings under Section 163-A of the M.V. Act would be akin to some kind of interim orders. It was held by the Supreme Court that the remedy for payment of compensation under Section 163-A and 166 of the M.V. Act are independent of each other and final, and thus, a claimant cannot pursue both these remedies simultaneously. It was held that one has to opt either of the remedies i.e. to pursue proceedings under Section 163-A or under Section 166 of the M.V. Act, but not both.

12. To my mind, it was rightly canvassed by the learned counsel for

⁸ MAC.APP. 386/2017 dated 20.09.2019



the claimants that the jurisdiction of the court would not depend merely on moving of an application by the claimants for conversion of their claim petition from Section 166 to one under Section 163-A of the M.V. Act, and therefore, the learned Tribunal can also *suo moto* exercise such powers. Reference in this connection can be invited to a decision of this Court in ***Rita Devi (supra)*** wherein, this Court relied upon a previous decision in ***Rukmani Devi v. New India Insurance Company Ltd. & Anr.***⁹ wherein, it was held:

“7. Based on the above discussion and after considering the ratio of the aforesaid judgment of the Apex Court, it becomes manifest that the bar is on taking simultaneous remedies under Section 163-A and Section 166 of the Motor Vehicles Act, but there cannot be any bar that the claimant cannot choose at any stage of the case to convert their petition from Section 166 to Section 163-A of the Motor Vehicles Act. Denying such right of conversion during the pendency of case would defeat the very social objective of granting speedy and expeditious compensation to the victims of the accident cases. Once the claimants have taken recourse to Section 163-A of the Motor Vehicles Act the only hindrance which will come in the way of the claimants would be that the compensation in their favour would be payable under the said structured formula of the Motor Vehicles Act and once the claimants seek an amendment to convert their petition from Section 166 to Section 163-A of the Motor Vehicles Act, then, at the same time the claimant cannot be allowed to take the advantage of the income which the deceased/victim might have been earning over and above the amount of Rs. 40,000 per annum as restricted in the Second Schedule to the Motor Vehicles Act.

9. Another question which is of vital importance is whether the petition filed under Section 166 of the Motor Vehicles Act can be allowed to be converted into a petition under Section 163- A of the Motor Vehicles Act or vice versa and if the answer is yes, then what should be the stage for allowing such a petition. There cannot be any dispute that the Motor Vehicles Act is a beneficial piece of

⁹ 2008 SCC OnLine Del 626



legislation and, therefore, endeavour has to be as to how best the intention of the legislation can be achieved so as to safeguard the interest of the victims of the accident rather than defeating the same. The statute has to be construed according to the intent of the makers and it is the duty of the courts to interpret the statute to see that true intention of legislature is achieved. Taking a purposive interpretation of Section 163-A of the Motor Vehicles Act the clear intendment of the legislation was to come to the rescue of all those who in the absence of any evidence are not in a position to file a claim petition under Section 166 of the Motor Vehicles Act where death of the victim or permanent disablement of the victim is required to be proved by establishing the factum of negligence involving the offending vehicle resulting into causing the accident but under section 163-A, the requirement of proving the negligence has been dispensed with."

13. In fact, several other decisions of this Court were also referred. In **TATA A.I.G. General Insurance Co. Ltd. v U.P. Roadways**¹⁰, it was held:

"6. The question for consideration is whether the Claim Petition filed and decided under Section 166 of the Motor Vehicles Act can be converted into one under Section 163-A so as to claim compensation without proving any negligence on the part of the driver of the vehicle involved in the accident. There is no prohibition in law to convert the said Petition unless some prejudice is shown by the opposite party, in my view, a Claim Petition filed under Section 166 can be converted to one under Section 163-A of the Act."

14. A similar view was taken in **Raj Narain Jha (supra)**, relied upon by learned counsel for the claimants. Further, reference can also be invited to a decision of the Supreme Court in **Nagappa v. Gurdayal Singh**¹¹ wherein, it was held as under:-

"11. Secondly, under Section 169, the Claims Tribunal in holding any inquiry under Section 168 is required to follow the rules that are made in this behalf and follow such summary procedure as it

¹⁰ MANU/DE/1575/2012

¹¹ (2003) 2 SCC 274



thinks fit. In the present case, it has been pointed out that Rule 253 of Karnataka Motor Vehicles Rules, 1989 empowers the Claims Tribunal to exercise all or any of the powers vested in a Civil Court under the provisions of Code of Civil Procedure, 1908. Rules 254 inter alia makes specific provision that Order 6 Rule 1 CPC is applicable to such proceedings. In this view of the matter, in an appropriate case, depending upon the facts and the evidence which has been brought on record and in the interest of justice, Court may permit amendment of claim petition so as to award enhanced compensation. Further, for amendment of the pleadings, it is settled law that unless it causes injustice to other side or it is not necessary for the purpose of determining real issue between the parties, Court would grant amendment. It is also to be stated that under the M.V. Act there is no time limit prescribed for claiming compensation. Therefore, there is no question of enhanced claim being barred by limitation.”

15. Therefore, insofar as the preliminary objection with respect to *suo moto* conversion of the claim petition to Section 163-A of the M.V. Act is concerned, the same is not sustainable in law. Now, before we proceed to render a decision on the correctness and legality of the quantum of compensation awarded, this Court should examine the legality of the reasons that prevailed in the mind of the learned Tribunal while deciding Issue no. 1.

16. I am afraid that on a conspectus of the entire evidence on the record, the appeal preferred by the claimants-parents challenging the findings of the learned Tribunal on Issue No.1, appears to be on a slippery ground. PW-2/Wasim testified that on that fateful day, he was driving a TSR¹² and was just behind the offending bus, which stopped to allow the passengers to get down just before the Burari Red

¹² Three-seater Auto Rickshaw



Light and just when the deceased-boy was getting down from the bus with due care and caution, the driver of the offending bus suddenly speeded up the bus, due to which, the boy got disbalanced and fell down on the road and was subsequently crushed by the rear tyres of the bus.

17. In his cross-examination, although PW-2/Wasim testified that he was the first one who made a PCR¹³ call about the accident and also disclosed his mobile number, however, there is no such record in the criminal investigation of the case. Further, he testified that he remained at the spot for about 15-20 minutes and left the place of occurrence before the arrival of the police. He also deposed that he went to the police station on his own. It is pertinent to mention here that PW-2 in his cross-examination, acknowledged the fact that he was following the bus and was driving it at a normal speed and the bus driver was also driving at a normal speed. PW-2/Wasim further acknowledged that the accident had taken place at about 200 to 300 metres before Burari Red Light, but he denied the fact that some construction work was going on near the flyover, due to which, there was a traffic jam. What makes his testimony untrustworthy is the fact that he testified that the deceased-boy had alighted from the door which was located in the middle of the bus, whereas, it is categorical in the testimony of both R1W1 and R1W2, who are the driver and conductor of the offending bus respectively, that the deceased alighted

¹³ Police Control Room



from the front door located near the driver's side.

18. In face of the fact, the testimony of PW-2/Wasim is questionable as he appears to be a chance witness and was unable to show his presence at the spot. Further, the testimony of R1W1/driver, as also corroborated by R1W2/Jamsad i.e. the conductor, that the deceased opened the door and in the process of alighting, fell down when the bus was moving slowly due to traffic jam, cannot be brushed aside. To my mind, the learned Tribunal has rightly observed that in a situation where the deceased-boy, all of a sudden, himself opened the door and attempted to alight from the offending bus, the driver of the offending bus would not be in a position to stop him as his focus was primarily on the traffic moving ahead, while the conductor was sitting in the rear portion of the bus.

19. In view of the foregoing discussions, I find that there are no grounds in the appeal preferred by the claimants-parents for enhancement in the amount compensation. That brings us to the objection raised by the appellant/insurance company with respect to the amount of compensation awarded.

20. It is pertinent to mention here that Section 163-A of the M.V. Act has since been repealed by the Motor Vehicles (Amendment) Act, 2019, which was made effective from 09.08.2019 and instead, Section 164 has been introduced in the M.V. Act, which provides as under:-

“164. Payment of compensation in case of death or grievous hurt, etc. -- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a



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compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or grievous hurt 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 or of the vehicle concerned or of any other person.

(3) Where, in respect of death or grievous hurt due to an accident arising out of the use of motor vehicle, compensation has been paid under any other law for the time being in force, such amount of compensation shall be reduced from the amount of compensation payable under this section.”

21. A bare perusal of the aforesaid provision would show that it commences with a non-obstante clause and has an overriding effect over anything contained in the M.V. Act or any other law for the time being in force. It provides that the owner of the motor vehicle or the authorized insurer shall be liable to pay the compensation in case of death or grievous hurt due to any accident arising out of the use of the motor vehicle. As per the abovementioned provision, the amount of compensation in case of death is Rs. Five Lacs in total. Since this is a special provision and the compensation is only to the extent of Rs. Five Lacs without submitting any proof of rashness or negligence on the part of any of the tort-feasors, the award of compensation by the learned Tribunal on account of loss of consortium, loss of estate and funeral expenses fall outside its purview and thus, not sustainable in law.

22. In view of the foregoing discussion, the appeal filed by the claimants-parents viz. MAC. APP. 225/2021, is hereby dismissed while the appeal filed by the appellant/insurance company viz. MAC. APP. 194/2021, is partly allowed to the effect that the total amount of



compensation is Rs. Five Lacs, which shall be payable to the claimants-parents with interest @ 7.5 % from the date of filing of the DAR till realization. Further, it is brought on the record that Rs. Two Lacs have already been disbursed to the claimants-parents in compliance with the interim order passed by this Court. The appellant/insurance company shall be liable to pay interest on the total amount of compensation till the date of payment of Rs. Two Lacs, which has already been paid/dispursed to the claimant-parents and thereafter, on Rs. Three Lacs, at such rate, till its realization.

23. The amount of statutory deposit of Rs. 25,000/- deposited by the appellant/insurance company shall be forfeited to the State.

24. Both the appeals, along with pending applications, stand disposed of accordingly.

DHARMESH SHARMA, J.

MAY 27, 2024

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