

(2012) 05 DEL CK 0724

In the Delhi High Court

Case No : MAC. APP. No. 563 of 2006, CM No's. 9112 of 2006, 3307 of 2007 and 6510 of 2007

National Insurance Co. Ltd.

APPELLANT

Vs

Munesh Devi and Others

RESPONDENT

Date of Decision : 04-05-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A, 92A, 95(1), 96(2)

Citation : (2013) ACJ 919 : (2012) 5 AD 607 : (2012) 189 DLT 725 : (2012) 134 FLR 284 : (2012) 4 TAC 156

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : L.K. Tyagi, for the Appellant; R.K. Kohli, for the Respondent

Final Decision : Dismissed

Judgement

J.R. Midha

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs. 4,65,800/- has been awarded to the respondents. The accident dated 5th December, 2004 resulted in the death of Sunil Singh Chauhan. The deceased was employed as a driver on tanker No. HR-55B-6161. On 5th December, 2004 at about 12:00 p.m., the deceased parked the tanker at Village Hempur, Ismail, District Udham Singh Nagar and climbed over the tanker to check the inside condition of the tanker when he came in contact with an overhead electric wire and died on the spot. The deceased was survived by his father, widow and minor son who filed the claim petition u/s 163A of the Motor Vehicles Act.

2. The Learned Counsel for the appellant has submitted at the time of hearing of this appeal that the deceased has not died because of any accident arising out of the use of the insured vehicle and, therefore, the appellant is not liable to pay any compensation. In the alternative, it is submitted that the liability of the

appellant is restricted to Rs. 3,43,167/- under the Workmen's Compensation Act.

3. The Learned Counsel for claimants/respondents No. 1 to 3 has made the following submissions:-

(i) The plea of limited liability under the Workmen's Compensation Act was neither raised nor any evidence was led in support thereof by the appellant before the Claims Tribunal. The appellant has raised this plea for the first time before this Court.

(ii) The deceased has died because of an accident arising out of the use of the motor vehicle and, therefore, the claimants are entitled to compensation u/s 163A of the Motor Vehicles Act.

(iii) The Claims Tribunal has not awarded any compensation for loss of estate. The Claims Tribunal has awarded interest @6% per annum instead of 9% per annum.\

4. The plea of limited liability under the Workmen's Compensation Act was not raised by the appellant before the Claims Tribunal. The appellant did not lead any evidence to substantiate this plea. This plea has been raised by the appellant for the first time before this Court. The appellant cannot, therefore, contend that the Claims Tribunal erred in any manner in not considering a plea not even raised. The plea of the appellant is, therefore, hereby rejected.

5. The next question that arises for consideration in this appeal is whether the deceased died due to the accident arising out of the use of a motor vehicle and is entitled to compensation u/s 163A of the Motor Vehicles Act. The law in this regard is well settled by the following judgments:-

(i) In Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, there was a collision between a petrol tanker and a truck due to which the petrol tanker went off the road and fell at a distance of about 20 feet from the highway leading to leakage of petrol which collected nearby. Later an explosion took place in the petrol tanker resulting in fire. Number of persons who assembled near the petrol tanker sustained burn injuries and few of them succumbed to the injuries. The victims filed the claim petitions which were dismissed by the Claims Tribunal on the ground that the explosion and the fire had no connection with the accident, and was altogether an independent accident. The appeal was allowed by the learned Single Judge of the High Court holding that the explosion was a direct consequence of the accident. The Division Bench of the High Court affirmed the findings of the learned Single Judge against which the matter came up before the Supreme Court.

The Supreme Court dismissed the SLP holding that the explosion and fire resulting in injuries and death was due to the accident arising out of the use of the motor vehicle. The findings of the Supreme Court are reproduced hereunder:

25. These decisions indicate that the word "use", in the context of motor

vehicles, has been construed in a wider sense to include the period when the vehicle is not moving and is stationary, being either parked on the road and when it is not in a position to move due to some break-down or mechanical defect. Relying on the abovementioned decisions, the Appellate Bench of the High Court had held that the expression "use of a motor vehicle" in Section 92A covers accidents which occur both when the vehicle is in motion and when it is stationary. With reference to the facts of the present case the learned Judges have observed that the tanker in question while proceeding along National Highway No. 4 (i.e. while in use) after colliding with a motor lorry was lying on the side and that it cannot be claimed that after the collision the use of the tanker had ceased only because it was disabled. We are in agreement with the said approach of the High Court. In our opinion, the word "use" has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a breakdown or mechanical defect or accident. In the circumstances, it cannot be said that the petrol tanker was not in the use at the time when it was lying on its side after the collision with the truck.

35. This would show that as compared to the expression "caused by", the expression "arising out of" has a wider connotation. The expression "caused by" was used in Sections 95(1)(b)(i) and (ii) and 96(2)(b)(ii) of the Act. In Section 92-A, Parliament, however, chose to use the expression "arising out of" which indicates that for the purpose of awarding compensation u/s 92-A, the causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of a motor vehicle" in Section 92A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment.

36. Was the accident involving explosion and fire in the petrol tanker connected with the use of tanker as a motor vehicle" In our view, in the facts and circumstances of the present case, this question must be answered in the affirmative. The High Court has found that the tanker in question was carrying petrol which is a highly combustible and volatile material and after the collision with the other motor vehicle the tanker had fallen on one of its sides on sloping ground resulting in escape of highly inflammable petrol and that there was grave risk of explosion and fire from the petrol coming out of the tanker. In the light of the aforesaid circumstances the learned Judges of the High Court have rightly concluded that the collision between the tanker and the other vehicle which had occurred earlier and the escape of petrol from the tanker which ultimately resulted in the explosion and fire were not unconnected but related events and merely because there was interval of about four to four and half hours between the said collision and the explosion and fire in the tanker, it cannot be necessarily

inferred that there was no causal relation between explosion and fire. In the circumstances, it must be held that the explosion and fire resulting in the injuries which led to the death of Deepak Uttam More was due to an accident arising out of the use of the motor vehicle viz. the petrol tanker No. MKL 7461.

(ii) In *Rita Devi v. New India Assurance Co. Ltd.*, 2000 ACJ 801 (SC), the deceased was employed to drive an auto rickshaw for ferrying passengers on hire. On the fateful day, the auto rickshaw was parked in the rickshaw stand at Dimapur when some unknown passengers engaged the deceased for journey. As to what happened on that day is not known. It was only on the next day that the police was able to recover the body of the deceased but the auto rickshaw in question was never traced out. The owner of the auto rickshaw claimed compensation from the insurance company for the loss of auto rickshaw. The heirs of the deceased claimed compensation for the death of the driver on the ground that the death occurred on account of accident arising out of use of the motor vehicle. The Apex Court held that the heirs of the deceased would be entitled to compensation. The question as to whether the case of murder would be covered was also gone into. Paras 9 and 10 are relevant and are quoted below:-

9. A conjoint reading of the above two Sub- clauses of Section 163A shows that a victim or his heirs are entitled to claim from the owner/Insurance Company a compensation for death or permanent disablement suffered due to accident arising out of use of the motor vehicle (emphasis supplied), without having to prove wrongful act or neglect or default of any one. Thus it is clear, if it is established by the claimants that the death or disablement was caused due to an accident arising out of the use of motor vehicle then they will be entitled for payment of compensation. In the present case, the contention of the Insurance Company which was accepted by the High Court is that the death of the deceased (Dasarath Singh) was not caused by an accident arising out of the use of motor vehicle. Therefore, we will have to examine the actual legal import of the words "death due to accident arising out of the use of motor vehicle".

10. The question, therefore, is can a murder be an accident in any given case" There is no doubt that "murder", as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The differences between a "murder" which is not an accident and a "murder" which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killings is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

(iii) In *Samir Chanda v. Managing Director, Assam State Trans, Corporation*, 1998

ACJ 1351 (SC), the Apex Court upheld the claim for compensation in respect of injuries suffered by the claimant due to bomb blast inside the vehicle relying on the decision given in Shivaji Dayanu Patil's case (supra).

(iv) In Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, the Supreme Court held that the principle of strict liability propounded in Rylands v. Fletcher, (186-73) AII ER Rep 1, was applicable in claims for compensation made in respect of motor accidents. The relevant findings of the Supreme Court are reproduced hereunder:-

12. Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use, should not the owner be made liable for damages to the person who suffered on account of such accident" This question depends upon how far the Rule in Rylands v. Fletcher (supra) can apply in motor accident cases. The said Rule is summarised by Blackburn, J, thus:

The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default, or, perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient.

19. Like any other common law principle, which is acceptable to our jurisprudence, the Rule in Rylands v. Fletcher can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, we are disposed to adopt the Rule in claims for compensation made in respect of motor accidents.

20. "No Fault Liability" envisaged in Section 140 of the MV Act is distinguishable from the rule of strict liability. In the former the compensation amount is fixed and is payable even if any one of the exceptions to the Rule can be applied. It is a statutory liability created without which the claimant should not get any amount under that count. Compensation on account of accident arising from the use of motor vehicles can be claimed under the common law even without the aid of a statute. The provisions of the MV Act permits that compensation paid under "no fault liability" can be deducted from the final amount awarded by the Tribunal. Therefore, these two are resting on two different premises. We are, therefore, of the opinion that even apart from Section 140 of the MV Act, a victim in an accident which occurred while using a motor vehicle, is entitled to get compensation from a Tribunal unless any one of the exceptions would apply. The Tribunal and the High Court have, therefore, gone into error in divesting the claimants of the compensation payable to them.

(v) In National Insurance Co. Ltd. v. Shiv Dutt Sharma, 2004 ACJ 2049 (J&K),

two sets of claims were made in this case; one relating to the accident in a bus and the other relating to an accident where bullets of terrorists killed the passengers of a bus. The Jammu and Kashmir High Court held as under:-

43. On the basis of the judicial pronouncements and the material which has come on the record, it is concluded:

(i) That a passenger travelling in a bus when he suffers from an injury on account of bomb explosion or on account of any other activity including terrorist activity, he would be well within his rights to claim compensation. This view is spelt out from the decision given by the Supreme Court of India in Shivaji Dayanu Patil v. Vatschala Uttam More, 1991 ACJ 777 (SC) and the latter decisions noticed above;

(ii) That even if a person is not actually in the vehicle and is standing outside and suffers an injury, even in that case Supreme Court of India has allowed compensation in Shivaji Dayanu Patil v. Vatschala Uttam More, 1991 ACJ 777 (SC). Therefore, merely because some of the victims were taken out of the bus and thereafter shot dead, would not make any difference;

(iii) That the material which has come on the record justified the grant of the compensation and the quantum thereof is accordingly sustained.

(vi) In DTC v. Meena Kumari, III (2010) ACC 72, a bomb blast in a DTC bus resulted in the death of the deceased. this Court discussed the law with respect to the liability of DTC to pay compensation to the legal representatives of the deceased and held that the accident arose out of the use of motor vehicle and, therefore, the claimants were entitled to compensation u/s 163A of the Motor Vehicles Act, 1988.

(vii) In United India Insurance Co. Ltd. v. Mosina, MAC.APP. No. 73/2006 decided on 25th November, 2011, this Court held that this issue was no more res integra in view of the judgment of the Supreme Court in Rita Devi v. New India Assurance Co. Ltd., (supra). The findings of this Court are as under:-

19. That apart even legally also this contention is untenable and issue is no more res integra. Way back in the year 2000, the Apex Court had occasioned to discuss the identical issue in Rita Devi Vs. New India Assurance Co. Ltd. 2000 ACJ 810 (SC). In that case the deceased was employed to drive an auto rickshaw for ferrying passengers on hire. On the fateful day, the auto rickshaw was parked in the rickshaw stand at Dimapur when some unknown passengers engaged the deceased for journey. As to what happened on that day is not known. It was only on the next day that the police was able to recover the body of the deceased but the auto rickshaw in question was never traced out. The owner of the auto rickshaw claimed compensation for the Insurance company for the loss of auto rickshaw. The heirs of the deceased claimed compensation for the death of the driver on the ground that the death of the driver on the ground that the death occurred on account of accident arising out of use of the motor vehicle. The Apex

Court held that the heirs of the deceased would be entitled to compensation.

20. The Court interpreted the expression "arising out of the use of the motor vehicle" in the context of death or permanent disablement suffered due to the accident arising out of the use of the motor vehicle and gave it a very wide interpretation even to include the situation where a "murder" can be treated as accident in a given case. Following discussion on this aspect from the aforesaid judgment is worthy of a quote.

A conjoint reading of the above two Sub-clauses of Section 163A shows that a victim or his heirs are entitled to claim from the owner/Insurance Company a compensation for death or permanent disablement suffered due to accident arising out of use of the motor vehicle (emphasis supplied), without having to prove wrongful act or neglect or default of any one. Thus it is clear, if it is established by the claimants that the death or disablement was caused due to an accident arising out of the use of motor vehicle then they will be entitled for payment of compensation. In the present case, the contention of the Insurance Company which was accepted by the High Court is that the death of the deceased (Dasarath Singh) was not caused by an accident arising out of the use of motor vehicle. Therefore, we will have to examine the actual legal import of the words "death due to accident arising out of the use of motor vehicle".

The question, therefore, is can a murder be an accident in any given case ? There is no doubt that "murder", as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But, there are also instances where murder can be by accident on a given set of facts. The differences between a "murder" which is not an accident and a "murder" which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killings is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the auto rickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto rickshaw and in the course of achieving the said object of stealing the auto rickshaw, they had to eliminate the driver of the auto rickshaw then it cannot but be said that the death so caused to the driver of the auto rickshaw was an accidental murder. The stealing of the auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh)

was caused accidentally in the process of committing the theft of the auto rickshaw.

While taking this view, the Court again emphasized that having regard to the fact that it was a beneficial legislation enacted with a view to confer a benefit of expeditious payment of a limited amount, same has to be given particular interpretation.

21. The plain language of Section 163A of the Act disclosed that the liability can be of the owner of the motor vehicle or the authorised insurer. Thus, the insurer is also made liable if the insurance policy is taken. In the present case not only the vehicle in question was insured the insurance cover/policy placed on record further reveals that the premium was also paid for driver and helper. In these circumstances, the Insurance Company, cannot shy away from its liability when owner of the vehicle had taken insurance in respect of driver and helper by paying premium on that account as well. It is also to be noted that such a plea was not even taken before the Id. MACT and is raised for the first time in this Court.

6. Following the aforesaid judgments, it is held that the accident in question arose out of the use of the motor vehicle and, therefore, the claimants are entitled to compensation u/s 163A of the Motor Vehicle Act.

7. There is no merit in this appeal which is hereby dismissed. The pending applications are disposed of. The appellant has deposited the entire award amount with the Claims Tribunal in terms of the order dated 19th July, 2006 and the said amount is kept in fixed deposit. The Claims Tribunal is directed to release the said amount to the claimants in terms of the award.