

(2012) 09 DEL CK 0514
In the Delhi High Court
Case No : MAC App. 671 of 2012

National Insurance Company Ltd.

APPELLANT

Vs

Rajbir Singh and Others

RESPONDENT

Date of Decision : 06-09-2012

Acts Referred:

Citation : (2012) 09 DEL CK 0514

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : S.L. Gupta, with Mr. Ram Ashray, for the Appellant;

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—These three Appeals arise out of a common judgment dated 28.04.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby various amounts of compensation was awarded in favour of the legal heirs of deceased Rohan Tyagi and Anuj Kumar, who died in a motor vehicle accident which occurred on 07.06.2010 and to Kuldeep Singh who suffered injuries in the earlier said accident. The only ground of challenge raised in the Appeals is that there was no negligence on the part of Respondent Raj Kumar, driver of the Esteem car No. DL-1CL-1132. The accident was caused on account of "vis major" and thus, the driver/owner of the offending car had no liability. Consequently, the Appellant Insurance Company was not liable to indemnify the insured.

2. The Claims Tribunal dealt with the issue of negligence in Paras 13 to 15 of the impugned judgment and found that the accident was caused on account of rash and negligent driving of the Esteem car No. DL-1CL-1132. Paras 13 to 15 of the impugned judgment are extracted hereunder:-

13. PW-2, Sh. Praveen Chaudhary deposed that on 06.06.2010 he along with his friends namely Rohan Tyagi, Kuldeep, Anuj was going towards Mandi Shyam Nagar for attending the marriage of their friend and after attending the marriage

they all were coming from Mandi Shyam Nagar and were proceeding towards Ghazipur by Esteem car bearing No. DL-1CL-1132 driven by Sh. Raj Kumar. It is stated that Sh. Raj Kumar was driving the car rashly and negligently. He was in a hurry. It is stated that they had requested so many times to Sh. Raj Kumar to drive the vehicle in a traffic manner but he did not pay any attention and in the intervening night of 6-7/6/2010 at about 12:30 (mid night) the front right side tyre of vehicle got burst and the vehicle overturned and the vehicle kept on overturning again and again for about 40 meters and three persons namely Raj Kumar, Rohan Tyagi and Anuj died and he and Kuldeep sustained injuries. PW-2 stated that he called the police. During cross-examination PW2 stated that there were other vehicles on the road and there was a divider in the mid of the road and the offending vehicle struck against the divider and he was thrown out of the car when the car met with an accident. PW-2 stated that accident took place because of negligence of driver of the car.

14. PW-4, Sh. Kuldeep Singh (petitioner in petition No. 920/10) deposed that on 07.06.2010, he was coming to Ghazipur, Delhi from Mandi Shyam Nagar in a car bearing No. DL-1CL-1132 and the said car was being driven by its driver at a high speed, rashly and negligently and the driver lost control and that car struck against the divider and electric pole. During cross examination he stated that the said car was belonging to their friend and he was sitting in the rear seat of the car.

15. I have gone through the material on record. In the report No. 9, dated 07.06.2010 it is recorded that a car bearing No. DL-1CL-1132 met with an accident against the divider and the directions were made for lodging of FIR. Sh. Kuldeep Singh, PW-4, had clearly stated that the driver of the above said vehicle was driving the car at high speed rashly and negligently. The PW-2 had stated that after the accident car rolled over again and again for about 40 meters. It has also come on record that car had hit the divider. From the facts on record, it can be easily inferred that the driver of the car was driving the car at high speed and due to which the car met with an accident on bursting of the tyre. If the driver of the car had been driving the car under controlled speed, the car could have been stopped on bursting of tyre, before overturning. It is evident that driver of the car was driving the vehicle negligently. There is nothing on record to dispel the inference that Sh. Rohan Tyagi and Sh. Anuj Chauhan and Sh. Kuldeep suffered injuries in the accident because of the negligence of the driver of vehicle No. DL-1CL-1132 and that Sh. Rohan Tyagi and Sh. Anul Chauhan died on account of injuries suffered in the accident. There is no evidence in rebuttal. The issue No. 1 is accordingly decided in favour of the petitioner and against the respondents.

3. There was no rebuttal to the evidence led by the Claimants. Thus, culpable negligence on the part of driver was sufficiently established.

4. Even if, the accident occurs on account of a tyre burst or because of the ill maintenance of the vehicle or the tyre, the owner of the vehicle and for that

matter, the Insurance Company with whom the vehicle is insured cannot escape liability. In this connection reference may be made to the Supreme Court report in Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, ; where the accident occurred on account of the capsizing of the Jeep due to bursting of one of the tyres. The owner of the Jeep disclaimed liability. The Claims Tribunal dismissed the Claims Petition on the ground that neither rashness nor negligence in driving the Jeep was established on the part of driver. A Division Bench of Allahabad High Court dismissed the Appeal. In the SLP preferred by the legal heirs of deceased Haji Mohammad Hanif, the Supreme Court held that negligence in use of motor vehicle is one of the species of causes of action for making a claim of compensation in respect of the accident arising out of use of a motor vehicle. There are other premises for such causes of action also. The Supreme Court applied the rule in *Rylands v. Fletcher* [1861-73] All E.R.I. Paras 13, 14, 15 and 16 of the report are extracted hereunder:-

13. The House of Lords considered it and upheld the ratio with the following dictum:

We think that 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 in 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.

14. The above rule eventually gained approval in a large number of decisions rendered by courts in England and abroad. Winfield on Tort has brought out even a chapter on the "Rule in *Rylands v. Fletcher* [(1861-73) All ER Rep 1 : (1868) 3 HL 330] ". At p. 543 of the 15th Edn. of the celebrated work the learned author has pointed out that

over the years *Rylands v. Fletcher* [(1861-73) All ER Rep 1 : (1868) 3 HL 330] has been applied to a remarkable variety of things: fire, gas, explosions, electricity, oil, noxious fumes, colliery spoil, rusty wire from a decayed fence, vibrations, poisonous vegetation.

He has elaborated seven defenses recognized in common law against action brought on the strength of the rule in *Rylands v. Fletcher* [(1861-73) All ER Rep 1 : (1868) 3 HL 330]. They are:

- (1) Consent of the plaintiff i.e. *volenti non fit injuria*.
- (2) Common benefit i.e. where the source of the danger is maintained for the common benefit of the plaintiff and the defendant, the defendant is not liable for its escape.
- (3) Act of stranger i.e. if the escape was caused by the unforeseeable act of a

stranger, the rule does not apply.

(4) Exercise of statutory authority i.e. the rule will stand excluded either when the act was done under a statutory duty or when a statute provides otherwise.

(5) Act of God or vis major i.e. circumstances which no human foresight can provide against and of which human prudence is not bound to recognize the possibility.

(6) Default of the plaintiff i.e. if the damage is caused solely by the act or default of the plaintiff himself, the rule will not apply.

(7) Remoteness of consequences i.e. the rule cannot be applied ad infinitum, because even according to the formulation of the rule made by Blackburn, J., the defendant is answerable only for all the damage "which is the natural consequence of its escape".

15. The Rule in Rylands v. Fletcher [(1861-73) All ER Rep 1 : (1868) 3 HL 330] has been referred to by this Court in a number of decisions. While dealing with the liability of industries engaged in hazardous or dangerous activities P.N. Bhagwati, C.J., speaking for the Constitution Bench in M.C. Mehta and another Vs. Union of India and others, expressed the view that there is no necessity to bank on the rule in Rylands v. Fletcher [(1861-73) All ER Rep 1 : (1868) 3 HL 330]. What the learned Judge observed is this: (SCC p. 420, para 31)

We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order.

16. It is pertinent to point out that the Constitution Bench did not disapprove the rule. On the contrary, learned Judges further said that "we are certainly prepared to receive light from whatever source it comes". It means that the Constitution Bench did not foreclose the application of the rule as a legal proposition.

5. Thus, although in the instant case negligence was proved as there was evidence that the Esteem car was being driven at a very high speed in a rash and negligent manner, the accident might have been avoided if the car was being driven at a normal speed. In any case, the Appellant could not avoid liability on the principle of "strict liability".

6. The Appeals are devoid of any merit; the same are accordingly dismissed. Pending Applications also stand disposed of.