NISHAN SINGH & ORS. A

v.

ORIENTAL INSURANCE COMPANY LTD.
THROUGH REGIONAL MANAGER & ORS.

(Civil Appeal No. 10145 of 2016) B

APRIL 27, 2018

[DIPAK MISRA, CJI, A. M. KHANWILKAR AND DR. D. Y. CHANDRACHUD, JJ.]

Motor Vehicles Act, 1988 – ss.166 and 140 – Fatal accident – Victim-deceased was travelling along with her husband-appellant no.1 in the car driven by PW-2 – The car dashed against the truck which was running ahead of it – Resulting in death of victim-deceased – Claim petition – Tribunal held that accident occurred due to rash and negligent driving by the driver of the car and concluded that truck driver and the insurer of the truck were not liable to pay any compensation – High Court upheld the order of the Tribunal – Held: PW-2 admitted that the subject truck was running ahead of the car for quite some time about one kilometre and at the time of accident, the distance between the truck and car was only 10-15 feet – He also admitted that the law mandates maintaining sufficient distance between two vehicles running in the same direction – Distance of 10-15 feet between the truck and car was certainly not a safe distance for which the driver of the car must take the blame – When car was following the truck and no fault can be attributed to the truck driver, the blame must rest on the driver of car for having driven his vehicle rashly and negligently – However, s.140 of the Act provides for liability of the owner of the vehicle (subject truck) involved in the accident – Fastening liability u/s.140 of the Act on the owner of the vehicle is regardless of the fact that the subject vehicle was not driven rashly and negligently – Therefore, appellants granted limited relief u/s.140 of the Act – Rules of Road Regulations, 1989 – regn. 23 – Road Safety – Distance of vehicles in front. C D E F G

Partly allowing the appeal, the Court

HELD: 1.1 The maruti car was driven by none other than PW-2-cousin brother of appellant no.1. In his evidence, he has H

A **admitted that the subject truck was running ahead of the maruti car for quite some time about one kilometre and at the time of accident, the distance between the truck and maruti car was only 10 -15 feet. He has also admitted that the law mandates maintaining sufficient distance between two vehicles running in the same direction. It is also not in dispute that the road on which** B **the two vehicles were moving was only about 14 feet wide. It is unfathomable that on such a narrow road, the subject truck would move at a high speed as alleged. In any case, the maruti car which was following the truck was expected to maintain a safe distance, as envisaged in Regulation 23 of the Rules of the Road** C **Regulations, 1989. [Para 10] [802-F-H]**

1.2 The expression 'sufficient distance' has not been defined in the Regulations or elsewhere. The thumb rule of sufficient distance is at least a safe distance of two to three seconds gap in ideal conditions to avert collision and to allow the following D **driver time to respond. The distance of 10–15 feet between the truck and maruti car was certainly not a safe distance for which the driver of the maruti car must take the blame. It must necessarily follow that the finding on the issue under consideration ought to be against the claimants. [Para 10] [803-B-C]**

E **2. The Tribunal also noted that there was no evidence on record to indicate that the driver of the truck suddenly applied his brake in the middle of the road. Further, the finding by the Tribunal is that there was no evidence regarding exact place of occurrence of accident and having taken survey. Therefore, it** F **was answered against the appellants (claimants), namely, that the subject truck was not driven rashly and negligently by the truck driver nor had he brought the truck in the centre of the road at right side or applied sudden brake as being the cause of the accident. Being a concurrent finding of fact and a possible view, needs no interference. [Para 11] [803-C-E]**

G **3. The question of contributory negligence would arise when both parties are involved in the accident due to rash and negligent driving. In a case such as the present one, when the maruti car was following the truck and no fault can be attributed to the truck driver, the blame must rest on the driver of the maruti car for**

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having driven his vehicle rashly and negligently. The High Court has justly taken note of the fact that the driver and owner of the maruti car, as well as insurer of that vehicle, had not been impleaded as parties to the claim petition. The Tribunal has also taken note of the fact that in all probability, the driver and owner of the maruti car were not made party being close relatives of the appellants. In such a situation, the issue of contributory negligence cannot be taken forward. [Para 12] [803-F-H]

4. Section 140 of the Motor Vehicles Act, 1988, provides for liability of the owner of the vehicle (subject truck) involved in the accident. It is a well settled position that fastening liability under Section 140 of the Act on the owner of the vehicle is regardless of the fact that the subject vehicle was not driven rashly and negligently. The appellants are granted limited relief under Section 140 of the Act. The respondent Nos.2 and 3 are made jointly and severally liable to pay a sum of Rs.50,000/- (Rupees Fifty Thousand Only) to the appellants towards compensation under Section 140 of the Act, on account of the death of wife of appellant No.1 in the accident, along with interest at the rate of 9% from the date of filing of the claim petition till realization. [Paras 13 and 15] [804-A-B, D-E]

Indra Devi and Others v. Bagada Ram and Another **(2010) 13 SCC 249 : [2010] 10 SCR 347 ;** *Eshwarappa alias Maheshwarappa and Another v. C.S. Gurushanthappa and Another* **(2010) 8 SCC 620 : [2010] 10 SCR 362 - referred to.**

Case Law Reference

[2010] 10 SCR 347	**referred to**	**Para 13**
[2010] 10 SCR 362	**referred to**	**Para 13**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10145 of 2016.

From the Judgment and Order dated 05.03.2015 of the High Court of Uttarakhand at Nainital in Appeal Order No. 125 of 2015.

Vijay Prakash, Ms. Nidhi, Advs. for the Appellant.

K.K. Bhat, Ranjan Kumar Pandey, Advs. for the Respondents.

A The Judgment of the Court was delivered by

A.M. KHANWILKAR, J. 1. This appeal, by special leave, filed by the claimants assails the judgment and order of the High Court of Uttarakhand at Nainital in Appeal From Order No.125 of 2015 dated 5th March, 2015, whereby the appeal was dismissed and the order passed B by the MACT/Additional District Judge-III, Rudrapur, Udham Singh Nagar, dated 10th December, 2014 in Motor Accident Claim Petition No.147 of 2012 dismissing the claim petition on the finding that the accident in question was not on account of rash and negligent driving of Truck bearing No. U.P.-32 Z-2397 but on account of rash and negligent C driving of Maruti Car bearing No. U.P.-02 D-5292 resulting in death of Balvinder Kaur who was sitting in the car driven by Manjeet Singh, came to be upheld.

2. Briefly stated, appellant No.1 asserted that when he was returning home to village Bindukhera with his wife Balvinder Kaur, the mother of appellant Nos.2 to 4, from his matrimonial home at village D Kuankhera, District Bijnaur along with his cousin brothers Manjeet Singh and Bittu and his son Karanjeet Singh on 28th November, 2010 in a Maruti Car bearing No. U.P.-02 D-5292 which was being driven by Manjeet Singh, son of Kashmir Singh, the said car met with an accident causing serious injuries to the persons travelling therein, including the E death of Balvinder Kaur. The maruti car had dashed against Truck bearing No. U.P.-32 Z-2397 which was running ahead of it. According to the appellants, the truck driver suddenly applied brake while the truck was in the centre of the road, bringing it to the right side, as a result of which, the maruti car collided with the truck from the back. Balvinder Kaur eventually succumbed to her injuries on the same day i.e. 28th November, F 2010, while she was being treated at Govt. Hospital, Kashipur. After that, an F.I.R. was registered on 4th December, 2010 at police station Kunda, District Udham Singh Nagar, bearing No.93/10 u/s 279 for offences punishable under Sections 304A, 337, 338 and 427 of IPC. The appellants asserted that Balvinder Kaur was gainfully employed and G earned around Rs.10,000/- (Rupees Ten Thousand Only) per month from the dairy business.

3. On these assertions, a claim petition was filed before the Motor Accident Claims Tribunal/Additional District Judge-III Rudrapur, Udham Singh Nagar being M.A.C. Case No.147/2012. Appellant No.1 who was H travelling in the car along with his wife deposed before the Tribunal.

Appellants also examined Manjeet Singh who was driving the Maruti Car bearing No. U.P.-02 D-5292 at the relevant time. The appellants also relied on the charge-sheet filed by the police against respondent No.3 (Parasnath) driver of the offending truck.

4. The respondents contested the claim petition. According to the respondents, the accident occurred due to the negligence of the driver of the maruti car and there was no negligence on the part of the truck driver. It was asserted by the respondents that the truck driver had a valid driving licence. Further, the appellants had failed to implead the owner and driver of the maruti car who was responsible for the accident and as such, no relief could be granted to the appellants.

5. The Tribunal analysed the entire evidence on record and answered the issue as to whether the truck was being driven in rash and negligent manner against the appellants. The Tribunal instead held that the accident occurred due to rash and negligent driving by the driver of the maruti car. The Tribunal, therefore, concluded that the truck driver and the insurer of the truck were not liable to pay compensation as claimed. The Tribunal noted the issue of contributory negligence but, having regard to the facts of the present case and particularly because the owner and the driver of the maruti car were not made parties, it held that the appellants were not entitled to any relief. The Tribunal also noted that the maruti car was purchased by Manjeet Singh about 1-1½ years before the accident but the same was not transferred in his name nor was it insured. Taking an overall view of the matter, the Tribunal dismissed the claim petition vide judgment dated 10th December, 2014.

6. The appellants carried the matter in appeal before the High Court of Uttarakhand at Nainital. The High Court summarily dismissed the appeal by reiterating the finding recorded by the Tribunal that the evidence clearly indicated that the driver of the maruti car himself was negligent in driving his vehicle and had failed to keep sufficient distance between the two vehicles running in the same direction. Furthermore, the maruti car driver, owner and concerned insurance company were not made parties to the claim petition. The High Court, thus, declined to interfere in the first appeal.

7. The appellants have assailed the aforementioned decisions in this appeal. According to the appellants, the finding recorded by the Tribunal and affirmed by the High Court, that the driver of the maruti

A car had not maintained safe distance from the truck running ahead of the maruti car in the same direction, is untenable. The appellants have also assailed the finding of fact recorded by the Tribunal and affirmed by the High Court that the maruti car was driven in a rash and negligent manner. It is urged that the fact that the maruti car was not registered in the name of Manjeet Singh or that the documents pertaining to the maruti B car and even the valid driving licence of the driver of maruti car was not brought on record, cannot denude the appellants to receive compensation due to contributory negligence of the truck driver. Further, the Tribunal committed manifest error in recording the finding on the issue of contributory negligence against the appellants without framing any issue C in that behalf. It is urged that the findings recorded by the Tribunal to absolve the truck driver, on the ground that the truck was not driven rashly and negligently, is perverse and untenable in law. Moreover, the Tribunal has completely glossed over the efficacy of the charge-sheet filed by the police against respondent No.3 truck driver after due investigation. The appellants have also reiterated their claim regarding D compensation, on the assertion that deceased Balvinder Kaur was earning around Rs.10,000/- (Rupees Ten Thousand Only) per month and after her death, her family was facing grave hardship. According to the appellants, the Tribunal as well as the High Court had dealt with the matter in a hyper-technical manner and did not appreciate the evidence E on the basis of preponderance of probabilities.

8. The respondents, on the other hand, have supported the finding of fact recorded by the Tribunal, that the accident occurred not because of rash and negligent driving of the truck but was on account of rash and negligent driving by the driver of the maruti car. On that finding, contends F learned counsel for the respondents, no liability can be fastened on the respondents. He submitted that the analysis of the evidence on record by the Tribunal and affirmed by the High Court does not warrant any interference. The respondents have supported the conclusions recorded by the Tribunal and affirmed by the High Court for dismissing the claim petition.

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9. We have heard Mr. Vijay Prakash, learned counsel appearing for the appellants and Mr. K.K. Bhat, learned counsel for the respondents.

10. The moot question is whether the Tribunal committed any error in answering issue No.1 against the appellants and in favour of the

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respondents. The Tribunal, while answering the said issue No.1, analysed the evidence, both oral and documentary, including the charge-sheet filed by the appellants and observed thus: A

> "20. In site plan paper No.6C/6 which is filed on record, the breadth of the road in question appears to be 14 feet and about 7 steps Kachcha Lekh appears at the both sides of the road. This B fact is remarkable that the said accident is not of front accident but the accident occurred as a result of collision of the Maruti Car on the rear part of the truck in question by the driver of the car in question and the same fact is also mentioned in the evidence of the petitioners. PW-2 Manjeet Singh driver of the car in question C as stated in his cross examination that he was driving the car behind the truck at the distance of about 10-15 feet. Despite there being the breadth of the road 14 feet Pucca, the driver of the car in question kept the vehicle only at the distance of 10-15 feet from the truck which doesn't appear in accordance with traffic rules. He should have driven the vehicle maintaining the proper D distance in order to escape from each circumstance but he has admitted in his cross examination as PW-2 that, "he knows that he should maintain proper distance from the heavy vehicle". Under such circumstance if the vehicle which is running behind the heavy vehicle, must maintain the proper distance if the proper distance is not maintain then the whole negligence shall be determined on E the part of rear vehicle in regard to the occurrence of accident in question. In addition no evidence in regard to the seizing of truck in question on the place of occurrence and taking into police custody the vehicles from the place of occurrence and getting done their technical survey is not available on place of occurrence. F
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> 21. By the facts mentioned in the petition and by the evidence of PW-1 and PW-2 it doesn't appear reliable that rash and negligent driving in the accident in question was on the part of the driver of the truck in question and for this purpose only by registering of F.I.R. of said accident and submitting of charge-sheet against the G driver of the truck in question, the driver of the truck in question cannot be held guilty for the said accident, whereas by the evidence of the petitioner on record this fact comes forward that the accident occurred as the driver of the car in question was not

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A driving the car in question in accordance with traffic rules i.e. the accident occurred as the vehicle was not being driven maintaining proper distance from the truck and it appears clearly that the speed of the car would have been fast whereby the car in question collided with the rear part of the truck in question being uncontrolled and said accident took place. Under such circumstance there was no rash and negligence on the part of the driver of truck bearing No.U.P.-32 Z-2397 regarding the accident in question but the same is determined on the part of Manjeet Singh driver of Maruti Car bearing No.U.P.-02 D-5292.

C 22. On the basis of the aforesaid interpretation it appears that the said accident didn't occur on 28.11.2010 at about 6:45 p.m. at village Kunda Kashipur-Jashpur Road under area of P.S. Kunda district Udham Singh Nagar by the driver of the truck bearing No. U.P.-32 Z-2397 due to rash and negligent driving of the truck and by applying sudden break but it occurred as a result of rash and negligent driving of Maruti Car bearing No. U.P.-02 D-5292 in question by Manjeet Singh driver, wherein Balvinder Kaur who was sitting in the car sustained serious injuries and expired during her treatment on account of serious injuries."

The finding so recorded by the Tribunal has been affirmed by the E High Court, by observing that the evidence was clearly indicative of the fact that the maruti car was being driven in a rash and negligent manner, which was the cause for accident of this nature and resulting in death of one of the passengers in the maruti car. The maruti car was driven by none other than PW-2 Manjeet Singh. In his evidence, he has admitted that the subject truck was running ahead of the maruti car for quite F some time about one kilometre and at the time of accident, the distance between the truck and maruti car was only 10 -15 feet. He has also admitted that the law mandates maintaining sufficient distance between two vehicles running in the same direction. It is also not in dispute that the road on which the two vehicles were moving was only about 14 feet G wide. It is unfathomable that on such a narrow road, the subject truck would move at a high speed as alleged. In any case, the maruti car which was following the truck was expected to maintain a safe distance, as envisaged in Regulation 23 of the Rules of the Road Regulations, 1989, which reads thus:

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"23. Distance from vehicles in front.- The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop."

The expression 'sufficient distance' has not been defined in the Regulations or elsewhere. The thumb rule of sufficient distance is at least a safe distance of two to three seconds gap in ideal conditions to avert collision and to allow the following driver time to respond. The distance of 10–15 feet between the truck and maruti car was certainly not a safe distance for which the driver of the maruti car must take the blame. It must necessarily follow that the finding on the issue under consideration ought to be against the claimants.

11. The Tribunal also noted that there was no evidence on record to indicate that the driver of the truck suddenly applied his brake in the middle of the road. Further, the finding on issue No.1 recorded by the Tribunal is that there was no evidence regarding exact place of occurrence of accident and having taken survey. Therefore, the issue under consideration was answered against the appellants (claimants), namely, that the subject truck was not driven rashly and negligently by the truck driver nor had he brought the truck in the centre of the road at right side or applied sudden brake as being the cause of the accident. Being a concurrent finding of fact and a possible view, needs no interference.

12. The next question is whether the Tribunal should have at least answered the issue of contributory negligence of the truck driver in favour of the appellants (claimants). The question of contributory negligence would arise when both parties are involved in the accident due to rash and negligent driving. In a case such as the present one, when the maruti car was following the truck and no fault can be attributed to the truck driver, the blame must rest on the driver of the maruti car for having driven his vehicle rashly and negligently. The High Court has justly taken note of the fact that the driver and owner of the maruti car, as well as insurer of that vehicle, had not been impleaded as parties to the claim petition. The Tribunal has also taken note of the fact that in all probability, the driver and owner of the maruti car were not made party being close relatives of the appellants. In such a situation, the issue of contributory negligence cannot be taken forward.

A 13. However, even in such a case, the Tribunal could have been well advised to invoke Section 140 of the Motor Vehicles Act, 1988, (for short "the Act") providing for liability of the owner of the vehicle (subject truck) involved in the accident. It is a well settled position that fastening liability under Section 140 of the Act on the owner of the vehicle is regardless of the fact that the subject vehicle was not driven rashly and
B negligently. We may usefully refer to the decisions in ***Indra Devi and others Vs. Bagada Ram and another***[1] and ***Eshwarappa alias Maheshwarappa and Another Vs. C.S. Gurushanthappa and Another***[2]**,** which are directly on the point.

C 14. Accordingly, even though the appeal fails insofar as claim petition under Section 166 of the Act, for the appellants having failed to substantiate the factum of rash and negligent driving by the driver of the subject truck, the appellants must succeed in this appeal to the limited extent of relief under Section 140 of the Act. We have no hesitation in moulding the relief on that basis.

D 15. For the reasons mentioned above, this appeal is partly allowed. The appellants are granted limited relief under Section 140 of the Act. The respondent Nos.2 and 3 are made jointly and severally liable to pay a sum of Rs.50,000/- (Rupees Fifty Thousand Only) to the appellants towards compensation under Section 140 of the Act, on account of the
E death of Balvinder Kaur in the accident which occurred on 28th November, 2010, along with interest at the rate of 9% from the date of filing of the claim petition till realization.

16. The appeal is partly allowed in the above terms with no order as to costs.

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Ankit Gyan Appeal partly allowed.

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[1](2010) 13 SCC 249

[2](2010) 8 SCC 620