A ORIENTAL INSURANCE CO. LTD.

v.

PREMLATA SHUKLA AND ORS.

MAY 15, 2007

B [S.B. SINHA AND MARKANDEY KATJU, JJ.]

Motor Vehicles Act, 1988 :

s.166—Collision between two vehicles—The vehicle against which FIR
C *was lodged could not be traced out—Claim petition filed against the driver, the owner and insurer of the vehicle on which deceased was travelling—Held, proof of rashness and negligence on the part of the driver of the vehicle is* **sine qua non** *for maintaining an application u/s 166—Factum of accident could also be proved from FIR—A party objecting to admissibility of a*
D *document must raise its objection at appropriate time—Once the document is allowed to be exhibited with consent, it cannot be said that the same should not be relied upon—Tribunal rightly dismissed the claim petition—Evidence—Evidentiary value of an exhibited document.*

In an accident as a result of collision between a truck and a Tempo Trax,
E **one person traveling in the tempo trax died. The case u/s 304-A IPC registered against the driver of the truck was closed as the truck could not be traced out. The claim petition filed against the driver, the owner and the insurer of the Tempo Trax was dismissed by the Motor Vehicles Accident Claims Tribunal holding that the driver of the Tempo Trax was not driving the vehicle**
F **rashly and negligently. In the appeal, the High Court opined that the driver of the Tempo Trax should be held guilty of driving rashly and negligently.**

In the instant appeal filed by the Insurance Company it was contended for the appellant that since the respondents themselves relied on the first information report, the High Court could not have ignored the same. On behalf
G **of the respondents it was contended that merely because the first information report was relied upon for the purpose of proving the accident and not for fixing the liability on the part of the driver of the vehicle the contents thereof** *ipso facto* **could not be said to have been proved.**

Allowing the appeal, the Court

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HELD : 1.1. Respondents filed an application under Section 166 of the Motor Vehicles Act, 1988. It was required to be determined in accordance with the procedures laid down therefor. Proof of rashness and negligence on the part of the driver of the vehicle, is therefore, *sine qua non* for maintaining an application under Section 166 of the Act.

[Para 8 and 10] [784-A, G]

Deepal Girishbhai Soni and Ors. **v.** *United India Insurance Co. Ltd., Baroda,* **[2004] 5 SCC 385 and** *Kaushnuma Begum & Ors.* **v.** *New India Assurance,* **(2001) ACJ 428 : [2001] 2 SCC 9, referred to.**

1.2. It is true that contents of a document are not automatically proved only because the same is marked an Exhibit. However, the factum of an accident could also be proved from the First Information Report. It is also to be noted that once a part of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part thereof had not been proved. It was marked as an Exhibit as both the parties intended to rely upon them. Once a part of it is relied upon by both the parties, the Tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document having been proved or not. If the contents have been proved, the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law, would not arise.

[Para 12, 13 and 14] [785-A, B, C, D]

1.3. A party objecting to the admissibility of a document must raise its objection at the appropriate time. If the objection is not raised and the document is allowed to be marked and that too at the instance of a party which had proved the same and wherefor consent of the other party has been obtained, the former cannot be permitted to turn round and raise a contention that the contents of the documents had not been proved and, thus, should not be relied upon. In this view of the matter, the impugned judgment cannot be sustained and is set aside. [Para 15 and 16] [785-E; 786-C]

Hukam Singh and Ors. **v.** *Smt. Udham Kaur,* **(1969) PLR 908, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2526 of 2007.

From the Order dated 2.8.2005 of the High Court of Judicature at Jabalpur, Madhya Pradesh in M.A. No. 993/2002.

A M.K. Dua, and Kishore Rawat for the Appellant.

P.C. Agrawal, Sr. Adv., M.P. Singh, and Dr. Vipin Gupta for the Respondents.

The Judgment of the Court was delivered by

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S.B. SINHA, J. 1. Leave granted.

2. Deceased Shivnandan Prasad Shukla was travelling in a Tempo Trax for going to Allahabad from Bhopal. It collided with a truck. Registration Number of truck could not be noticed. The truck also could not be traced. C A First Information Report was lodged by one of the occupants of the Tempo Trax. An investigation on the basis of the said First Information Report for commission of an offence under Section 304-A of the Indian Penal Code was registered against the driver of the said truck. As during investigation the truck could not be traced out, the case was closed. A Claim Petition was filed before the Motor Vehicles Accident Claims Tribunal against the driver, owner D and the Insurance Company with which the Tempo Trax was insured. The Tribunal upon analyzing the materials brought on record by the parties, including the First Information Report, arrived at a finding of fact that the driver of the Tempo Trax was not driving the vehicle rashly and negligently. It, therefore, dismissed the claim petition opining:

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> "16. On the basis of the above discussions, I come to this conclusion that the applicants on the basis of the discussions in issue No. 1, have failed to prove that the accident dated 23rd January, 2001 was caused by rash and negligent driving of tempo trax No. MP-04-H-5525. In these circumstances the driver and insurance company of tempo F trax No. MP-04-H-5525 cannot be held responsible for the accident. As a result, the present claim petition is dismissed."

3. In support of its finding, the decision of this Court in *Kaushnuma Begum & Ors.* v. *New India Assurance,* (2001) ACJ 428 : [2001] 2 SCC 9 which was relied upon by both the parties was referred to wherein it was held:

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> "18. Like any other common law principle, which is acceptable to our jurisprudence, the rule in *Rylands* v. *Fletcher,* [1861-73] ALL ER 1, 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 H in respect of motor accidents.

19. '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 permit 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.

4. Claimants being aggrieved by and dissatisfied with the said Award preferred an appeal before the High Court. The High Court principally relying on the depositions of depositions of Shri R.K. Sharma and Smt. Premlata Shukla, wherein allegations were made that the tempo trax was driven in a rash and negligent manner, opined that the First Information Report having been legally not proved, the driver of the Tempo Trax should be held to be guilty of driving rashly and negligently.

5. It is to be noted that in the claim petition itself a reference was made to the lodging of the First Information Report.

6. The learned counsel appearing on behalf of the appellant would submit that as the respondents themselves relied on the First Information Report, the High Court could not have ignored the same. Reliance in this behalf has been placed on *Hukam Singh and Ors.* v. *Smt. Udham Kaur,* (1969) PLR 908.

7. The learned counsel appearing on behalf of the respondent, on the other hand, would submit that only because First Information Report was relied upon for the purpose of proving the accident, the contents thereof *ipso facto* cannot be said to have been proved. In support of the said contention, reference has been made on *Narbada Devi Gupta* v. *Birendra Kumar Jaiswal and Anr.* [2003] 8 SCC 745.

A 8. It is not known whether the Central Government has yet framed any scheme in respect of the hit and run cases. We are not, however, concerned therewith in this case. Respondent had filed an application under Section 166 of the Motor Vehicles Act, 1988. It was required to be determined in accordance with the procedures laid down therefor. It will, however, be pertinent to refer to *Deepal Girishbhai Soni and Ors.* v. *United India Insurance Co. Ltd., Baroda,* [2004] 5 SCC 385 on this aspect, wherein it was observed:

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> "The Law Commission furthermore recommended for laying of a scheme in terms where of the victims of 'hit and run accident' could claim compensation where the identity of the vehicle involved in the accident was unknown. Yet again, the 199th Law Commission in its report submitted in 1987 stated the law as it stood them in the following terms:
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> "the law as it stands present, save the provisions in chapter VIIA inserted by the Motor Vehicles (Amendment) Act, 1982, enables the victim or the dependants of the victim in the event of death to recover compensation on proof of fault of the person liable to pay the compensation and which fault caused the harm."
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9. Where an accident occurs owing to rash and negligent driving by the driver of the vehicle, resulting in sufferance of injury or death by any third party, the driver would be liable to pay compensation therefor. Owner of the vehicle in terms of the Act also becomes liable under the 1988 Act. In the event vehicle is insured, which in the case of a third party, having regard to sub-section (2) of Section 147 of the Act, is mandatory in character, the Insurance Company would statutorily be enjoined to indemnify the owner.

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F 10. The insurer, however, would be liable to re-imburse the insured to the extent of the damages payable by the owner to the claimants subject of course to the limit of its liability as laid down in the Act or the contract of insurance. Proof of rashness and negligence on the part of the driver of the vehicle, is therefore, *sine qua non* for maintaining an application under Section 166 of the Act.

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11. The learned counsel appearing on behalf of the respondent contended that First Information Report was brought on record for the purpose of proving the accident and not for fixing the liability on the part of driver of the vehicle involved therein.

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12. In *Narbada Devi* (supra) whereupon reliance has been placed, this Court held that contents of a document are not automatically proved only because the same is marked as an Exhibit. There is no dispute with regard to the said legal proposition. A

13. However, the factum of an accident could also be proved from the First Information Report. It is also to be noted that once a part of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part thereof had not been proved. Both the parties have relied thereupon. It was marked as an Exhibit as both the parties intended to rely upon them. B C

14. Once a part of it is relied upon by both the parties, the learned Tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document been proved or not. If the contents have been proved, the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law, would not arise. D

15. A party objecting to the admissibility of a document must raise its objection at the appropriate time. If the objection is not raised and the document is allowed to be marked and that too at the instance of a party which had proved the same and wherefor consent of the other party has been obtained, the former in our opinion cannot be permitted to turn round and raise a contention that the contents of the documents had not been proved and, thus, should not be relied upon. In *Hukam Singh* (supra), the law was correctly been laid down by the Punjab and Haryana High Court stating; E

> "8. Mr. G.C. Mittal, learned counsel for the respondent contended that Ram Partap had produced only his former deposition and gave no evidence in Court which could be considered by the Additional District Judge. I am afraid there is no merit in this contention. The Trial Court had discussed the evidence of Ram Partap in the light of the report Exhibit D.1 produced by him. The Additional District Judge while hearing the appeal could have commented on that evidence and held it to be inadmissible if law so permitted. But he did not at all have this evidence before his mind. It was not a case of inadmissible evidence either. No doubt the procedure adopted by the trial Court in letting in a certified copy of the previous deposition of Ram Partap made in the criminal proceedings and allowing the same to be proved by Ram F G H

A Partap himself was not correct and he should have been examined again in regard to all that he had stated earlier in the statement the parties in order to save time did not object to the previous deposition being proved by Ram Partap himself who was only cross-examined. It is not a case where irrelevant evidence had been let in with the consent of the parties but the only objection is that the procedure B followed in the matter of giving evidence in Court was not correct. When the parties themselves have allowed certain statements to be placed on the record as a part of their evidence, it is not open to them to urge later either in the same Court or in a court of appeal that the evidence produced was inadmissible. To allow them to do so would C indeed be permitting them both to appropriate and reprobate."

16. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The Appeal is allowed. In the facts and circumstances of this case, however, there shall be no order as to costs.

D R.P. Appeal allowed.