

* HIGH COURT OF DELHI : NEW DELHI

MAC APP. No.429/2004

% Judgment reserved on: 24th November, 2009

Judgment delivered on: 02nd December, 2009

Oriental Insurance Company Ltd.,
1624/14/II, Thana Road,
Najafgarh, New Delhi-43

Through its Deputy Manger,
Oriental Insurance Co. Ltd.
86-88, Janpath,
New Delhi- 110001.

....Appellant

Through: Mr. Madhurendra Kumar, Adv.

Versus

1. Shri Amit Kumar,
S/o Sh. Rakesh Kumar,
R/o 12/3146, Arya Pura,
Subzi Mandi, Delhi-7.
2. Beg Raj.
S/o Nobat Ram,
V & PO Rawta, Delhi-43.
3. Sh. Jagbir Singh,
S/o Sh. Mange Ram,
R/o H. No. 10, Mundka,
Delhi.

....Respondents.

Through: Mr. Navneet Goyal with Mr.
Varun Kumar for respondent
no.1.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

V.B.Gupta, J.

This appeal has been filed by appellant-Insurance Company against award dated 3rd August, 2004, passed by Motor Accident Claims Tribunal (for short as ‘Tribunal’) Delhi. Vide impugned award, respondent no.1-the injured, was awarded compensation amounting to Rs.15,66,000/- (Rupees Fifteen Lakhs Sixty Six Thousand Only) along with interest @ 9% per annum from the date of filing of the petition till realization.

2. Brief facts of this case are that injured, aged about 17 years, met with a road side accident on 19th November, 1999. On that day he was driving his two wheeler “trendy” and when he reached at ‘T’ point crossing of Roshanara Road, Delhi and was taking a turn to the right on green light signal, a blue line bus bearing no. DL 1 PA 0671 came at fast speed jumping the red light and hit his scooter. Respondent no. 1 sustained grievous injuries, where as his uncle Mukesh Kumar, who was sitting on the pillion seat survived with minor injuries.

3. Learned counsel for appellant has made two-fold submissions;

(i) That it is a case of contributory negligence on the part of injured and ;

(ii) The injured was not having a valid driving licence.

4. In view of provisions of 3 and 4 of the Motor Vehicles Act,1988 (for short as ‘Act’), it is contended that a conjoint reading of these Sections would show that no person is entitled to drive a motor vehicle in a public place without having an

effective driving licence. This mandatory stipulation of holding of a driving licence applies to all kinds and categories of vehicles including motor cycle with engine capacity not exceeding 50cc. Only exception which is carved out in the case of a motor cycle with engine capacity not exceeding 50cc is that a person who has attained the age of 16 years with a valid licence may drive such a vehicle in a public place instead of the stipulated minimum age of 18 years for any other kind of vehicle.

5. It is contended that, respondent no. 1 who was 17 years of age at the time of accident, did not have a valid and effective driving licence and therefore, has contributed in great measure of the accident. In support learned counsel for appellant has referred decision of Supreme Court in *National Insurance Co. Ltd vs. Swaran Singh and Others, (2004) 3 Supreme Court Cases 297*.

6. On the other hand, it is contended by learned counsel for respondent no.1-injured that no such plea has been taken by appellant in written statement that injured was not having a valid driving licence.

7. The only plea taken by the appellant is with regard to the contributory negligence. Even this plea of contributory negligence has not been proved on behalf of appellant. In support learned counsel for respondent no. 1 cited decision of Supreme Court in *Sudhir Kumar Rana Vs. Surinder Singh and others, 2008 ACJ 1834*.

8. As per preliminary objections in its written statement, appellant took the following defence.

“Preliminary Objections:

1. That the present claim petition is not maintainable against the answering respondents as no accident took place due to the rash and negligent driving of respondent no. 3 it was the petitioner who was driving his own two wheeler scooter and was negligent on his part as he was carelessly driving his scooter without caring for the traffic rules, and it was he who caused the accident. He was contributory in the accident. He was not caring for the traffic rules or for the traffic and he abruptly came in front of the vehicle DL 1 PA 0671 and the driver of the said vehicle tried his best to save the accident.

2. That the petition is liable to be dismissed as the respondent no. 3 i.e. the driver of the alleged offending vehicle was not holding the valid driving licence at the time of alleged accident”.

9. Tribunal framed the following issue regarding rash and negligent driving:

“Whether Amit Kumar sustained injuries in the road accident caused due to rash and negligent driving of blue line bus no. DL 1PA -0671 by respondent no. 3 Sh. Jagbir Singh on 17-11-99 at about 7.20 am at T-point crossing of Roshanara Road and road coming from Burf Khana Chowk towards Rani Jhansi Road”.

10. Respondent no.1 himself appeared in the witness-box as PW-4. On the other hand, driver and owner of offending bus who were duly served did not appear and were proceeded ex-parte.

11. In cross-examination, no suggestion was given to PW-4 (respondent no.1) that he was carelessly driving his scooter and it was he who caused the accident. It was also nowhere suggested to him that he was contributory towards the accident.

12. Best witness to state about contributory negligence was the driver of the offending bus. But driver of the offending bus, has chosen not to contest the case and did not appear in the witness-box. Thus, plea of contributory negligence on behalf of appellant, falls to the ground. Even otherwise, trial court rightly rejected this plea of the appellant observing as under:

“10. Mr. Kaushal, Ld Counsel for respondent no. 1 vehemently urged that petitioner was not holding a valid and effective driving licence to drive a scooter and, therefore, he was guilty of contributory negligence. I am afraid the said plea must be cast aside since the evidence of PW3 and PW4 that the driver of the bus jumped the red light and hit their moped has not been challenged or impeached in their cross-examination. PW-3 and PW4 were not given any suggestion that the accident occurred due to any wrongful act or omission on the part of injured claimant. There is led no iota of independent, cogent or reliable evidence on the part of the Insurance Company to substantiate that there was any contributory negligence on the part of claimant leading to the accident. Indeed, no evidence has been led by the petitioner that he was holding a valid or effective driving licence but that alone is no conclusive evidence that he was in any way responsible for the occurrence. He was merely driving a moped “trendy” with engine capacity not exceeding 50 cc and as per Section 4 of the Act, he was not disqualified being 17 years of age from driving such vehicle on a public place. The plea of their being contributory negligence on the part of the petitioner is half-hearted and it cannot be presumed unless positive evidence is there. At the cost of repetition, insurer company has not chosen to produce the driver of the bus in the witness box or any other witness so as to substantiate such plea”.

13. Now, coming to appellant’s plea that respondent no.1 was not having a valid driving licence, appellant nowhere took this plea in its written statement,

that respondent no.1 was not having a valid driving licence. Case of appellant as per its written statement is that;

“Respondent no.3 i.e. driver of alleged offending vehicle was not holding the valid driving licence at the time of alleged accident.”

14. Appellant has miserably failed to prove to this fact that driver of the offending vehicle i.e. Bus no. DL 1 PA 0671, was not having a valid driving licence.

15. In *National Insurance Co. Ltd vs. Swaran Singh (Supra)*, it has been observed;

“The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle, admittedly, did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability”.

16. Even, assuming for the sake of arguments that the respondent no. 1 who was aged of 17 years was not having a valid driving licence, it will not mean that appellant is not liable to pay compensation to respondent no. 1 for injuries sustained by him in the road side accident. The accident was caused by Bus no. DL 1 PA 0671 , which was insured with the appellant. Under these circumstances, non-holding of a valid driving licence by respondent no. 1 to drive “trendy” scooter, is immaterial. Appellant in these proceedings, cannot escape its liability qua respondent no. 1- injured, who is a third party.

17. In *Sudhir Kumar Rana Vs. Surinder Singh and others (Supra)*, it was observed;

“If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini truck which was being driven rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence”.

18. Under these circumstances, pleas of appellant fails on both counts; that it is a case of contributory negligence on the part of injured and that injured was not holding a valid driving licence.

19. There is no reason to disagree with the findings of the Tribunal and there is no infirmity or illegality in the impugned judgment. Present appeal being not maintainable is dismissed with costs of Rs.10,000/-.

20. Appellant is directed to deposit the costs with Registrar General of this Court, within four weeks from today, failing which Registrar General shall recover the same in accordance with law.

21. Trial court record be sent back.

22. List for compliance on 11th January, 2010.

2nd December, 2009
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V.B.Gupta, J.