

\$~R-284

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 27th September, 2017

+ **MAC APPEAL NO.895/2010**

NATIONAL INSURANCE COMPANY LIMITED

.....Appellant

Through: Mr. Pankaj Seth, Advocate

versus

VINOD KHANNA @ VICKY ARORA

..... Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On the accident claim case (Suit No.512/2008) of the first respondent (claimant) instituted on 05.08.2008, the tribunal after inquiry, by judgment dated 03.09.2010, awarded compensation in the total sum of Rs.11,50,343/-, directing the appellant (insurer) to pay with interest @ 7.5% per annum, as compensation on account of injuries suffered by him in a motor vehicular accident that occurred on 01.06.2008, involving negligent driving of Mahendra Jeep bearing registration No.DL-1LE-0261, admittedly insured against third party risk for the period in question with the appellant insurance company.

2. The insurer, by the appeal at hand, questions the aforesaid award on the ground that the claimant himself was also guilty of

contributory negligence, he being the rider of motorcycle bearing registration No.DL-7SAN-5783 because both the vehicles had collided head-on.

3. Having heard the learned counsel for the insurer and having gone through the record of the tribunal, this court finds no substance in the plea. It is not a thumb rule that in every case of head on collision, drivers of both the vehicles are to be held equally responsible. In order to bring home the case of contributory negligence in such fact-situation, the contesting party must show by some evidence that the person in question had entered a wrong lane or was negligent on any such other count. No such material having been furnished, the driver of the offending vehicle not even having been called upon to enter the witness box, the plea cannot be sustained.

4. No other point was pressed at the hearing of the appeal.

5. The appeal is dismissed.

6. By order dated 24.12.2010 read with order dated 03.03.2011, the insurer had been directed to deposit the entire awarded amount and by the said earlier order dated 24.12.2010, fifty per cent (50%) thereof was permitted to be released to the claimant. The balance lying in deposit shall now be released to the claimant with accrued interest.

7. The statutory deposit shall be refunded to the appellant.

8. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 27, 2017/vk