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

Decided on: 23rd August, 2017

+ **MAC.APP. 499/2017**

USHA DEVI AND ANR Appellants

Through: **Mr. S.N. Parashar & Ms.
Pankaj Kumari, Advs.**

versus

SHISHU PAL SINGH AND ORS Respondents

Through: **Ms. Shipra Garg for Mr.
Gaurang Kanth, Adv. for R-2.
Mr. J.P.N. Shahi, Adv. for R-3.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Vijay Bahadur Yadav, described as 17 years old youth, riding on motorcycle bearing registration no. DL 8S BG 5706 (the motorcycle) was involved in a motor vehicular accident that occurred on 7.30 p.m. 26.04.2015 and died in the consequence. The appellants, being his parents, instituted accident claim case (suit no. 57347/2016) on 21.08.2015 on the averments that the accident had been caused due to negligent driving of bus bearing registration no. DL 1PC 6638 by the first respondent, it being registered in the name of the second respondent and admittedly insured against third party risk with the third respondent for the period in question, each of whom were impleaded as respondents. The first respondent contested by filing written statement not denying the collision between the two vehicles

but stating that the accident had occurred because the deceased himself was negligent, he having suddenly stopped the motorcycle, without warning, on which account the bus had struck his vehicle from behind. The third respondent, by its written statement, set up its usual defences. No written statement was filed by the second respondent in spite of due notice and opportunity.

2. The tribunal framed issues on 30.11.2015 and thereafter called upon the claimants to adduce evidence. Two witnesses were examined by the claimants, they including the first appellant Usha Devi (PW-1) and Vishal Yadav (PW-2), the latter being the brother of the deceased and described as an eye witness. Noticeably, the accident was also subject matter of investigation by the police through FIR No. 518/2015 registered with police station Burari. The police had also submitted detailed accident report (DAR) based on the evidence collected in the course of investigation into the said FIR, it being (Ex.PW-1/5 collectively).

3. The tribunal, however, dismissed the claim petition, by the impugned judgment dated 28.01.2017, declining to grant any compensation holding that the accident had occurred because the deceased himself had violated the law, he being not legally competent to drive a motorcycle and, thus, being the sole person guilty of negligence.

4. It is the above view which is assailed by the appeal at hand.

5. It is necessary to extract the reasons set out by the tribunal in the impugned judgment to comprehend their import:-

“This being a petition u/s 166 M.V. Act, the primary duty is of the petitioner to prove negligence on the part of the respondent.

As far as the negligence on the part of the Respondent No.1 is concerned, though nothing has been claimed but it is pertinent to mention that as per the narration of the accident as given by the eye witness PW-2 on whose statement the FIR was registered and as per the claim petition itself, the deceased was a minor child of 16 years.

The deceased being a minor was not legally competent to drive a motorcycle but still driving the same.

Accordingly, it is very clear that the deceased who was not even competent to obtain a driving licence being a minor, by driving the motorcycle on a public road had violated the law and was accordingly guilty of not contributory negligence but guilty of sole negligence on his part. Though no evidence has been led by the Respondents but the Court is of the opinion that what was the need of any evidence from their side in view of the clear cut fact of the case.

Though the Court's sympathy is totally with the claimants as they have lost their minor son but in view of the facts and circumstances of the case when they have allowed their minor son to drive a motorcycle on the public road despite not legally entitled to do the same, granting them any compensation under the Motor Vehicle Act merely on the sympathy ground will tantamount to encouraging such parents and such minors to drive the vehicle without having legal age or qualification encouraging not only their life but life of

other Road users and as a result of which accident happen on account of their own incompetence, the Court will itself be guilty of breaking the law and encouraging the law breakers.”

6. The approach of the tribunal was wholly misdirected. The tribunal has not cared to examine the testimony of PW-2 to find out whether there was any negligence on the part of bus driver. There is no basis to the conclusion that the deceased was solely responsible for the accident, this against the backdrop of facts that the bus had hit against the motorcycle from behind. It may be that the deceased was yet to come of age to have the capacity and competence to drive a motorcycle on public roads. But then, from this fact alone, the other evidence available in the form of report of the police reflecting negligence primarily of bus driver could not have been sidelined. Pertinent to add here that the bus driver, inspite of opportunity, did not enter the witness box to affirm that the motorcycle moving ahead had suddenly applied breaks resulting in the collision. There being no basis to accept the pleadings to such effect, it was unfair to dismiss the claim case with the observation to the effect that the claimants had improperly “allowed the minor son” to go out on public road on the motorcycle.

7. For the foregoing reasons, this Court holds that the evidence led by the claimants has proved the negligence of the bus driver thereby justifying their claim for compensation under Section 166 of Motor Vehicles Act. The finding returned by the tribunal to the contrary is, thus, set aside.

8. Since the tribunal did not undertake the necessary exercise in such regard, the claim case is remitted to it for determining the compensation payable to the claimants. Since both sides have led evidence even on that issue, the tribunal shall pass the necessary order after affording a hearing to the parties. Needless to add, such exercise should not take long time and, therefore, it is expected that the tribunal will render the award at an early date.

9. The parties shall appear before the tribunal on 22nd September, 2017.

10. The appeal is disposed of in above terms.

AUGUST 23, 2017
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R.K.GAUBA, J.