

In the High Court of Punjab and Haryana at Chandigarh

**FAO- 5671 of 2019 (O&M)
Date of Decision: 13.9.2019**

United India Insurance Company Limited

---Appellant

versus

Jogindero and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Ashwani Talwar, Advocate
for the appellant**

Rekha Mittal, J.

Challenge in the present appeal has been directed against award dated 3.7.2019 passed by the Motor Accidents Claims Tribunal, Kurukshetra (in short “the Tribunal”) whereby compensation has been assessed on account of death of Rakesh Kumar in a motor vehicular accident that took place on 23.9.2018.

Counsel for the appellant would inform that appeal has been filed to assail findings of the Tribunal on issue No. 1 as well as quantum of compensation. It is argued that deceased was 16 years old and he was driving the motor cycle without any licence and wearing helmet, therefore, contributory negligence is liable to be attributed to the deceased particularly in the circumstances that as per the post mortem report, head injury was sustained by the deceased.

With regard to quantum of compensation, the sole submission

made by counsel is that the Tribunal has allowed Rs. 40,000/- towards filial consortium to the appellants by relying upon judgment of Hon'ble the Supreme Court **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others, 2018(4) RCR (Civil) 333.**

The claimants examined Krishan Kumar, eye witness to the occurrence and author of FIR No. 346 dated 23.9.2018 under Sections 279 and 304-A of the Indian Penal Code against Nihal Chand driver of offending Bolero Jeep bearing registration No. PB-11BR-3011. Krishan Kumar tendered into evidence his duly sworn affidavit Ex. PW2/A by way of examination in chief. In para 1 of the affidavit, he has reiterated version of the claimants that accident is the result of rash and negligent driving of offending Bolero Jeep. He had stated that deceased was going from village Bhalari to Babain while driving motor cycle at a moderate speed and on left side of the road while observing traffic rules. In the meanwhile, offending Bolero Jeep came from opposite side i.e. Babain side at a very fast speed and in rash and negligent manner. After seeing the offending vehicle, Rakesh Kumar lowered down speed of his motor cycle and came on extreme left side of the road but despite that the offending jeep struck motor cycle of Rakesh Kumar by coming on wrong side of the road. In cross examination, he had stated that accident was not head on collision though the same had taken place on metaled portion of the road. However, he has admitted that deceased was not wearing helmet.

The questions that fall for consideration are (i) whether the deceased can be attributed contributory negligence merely because he did not have a licence to drive the motor cycle as he was minor at that time; (ii) contributory negligence can be attributed to the deceased for want of

wearing helmet.

The question with regard to non-possessioning of driving licence by a minor came up for consideration before Hon'ble the Supreme Court in **Sudhir Kumar Rana vs. Surinder Singh and others 2008(3) RCR (Civil) 265** wherein the court has held, reads thus:-

“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.”

Counsel for the appellant has failed to point out any materials on record on the basis whereof rashness or/and negligence can be attributed to the deceased for the unfortunate occurrence. On the contrary, a plain but careful reading of testimony of Krishan Kumar leaves no manner of doubt that entire negligence for the occurrence is liable to be attributed to driver of offending Bolero Jeep. In this view of the matter, possessing or non-possessioning of driving licence or disentitlement of deceased to have a licence loses its relevance and significance. As such, the insurance company cannot be heard to say that contributory negligence is liable to be attributed to deceased because he did not have a licence to drive the two

wheeler.

The second submission made by counsel is also not meritorious when examined in the light of judgment of this Court **Jagdev Singh and others vs. Parveen Kumar and others 2017 (3) PLR 232** wherein this court has held that concept of contributory negligence was wrongly understood by the Tribunal in assuming that by not wearing a helmet she was guilty of contributory negligence. The contributory factor must be to the extent of collision and not because she was not wearing a helmet. The findings could not be given that she was negligent in causing the accident. At the most, it could be said that she was only negligent in not wearing the helmet that caused her death. That being so, contention raised by the appellant to assail findings of the Tribunal on issue No. 1 are not meritorious and accordingly rejected.

The insurer has challenged amount of Rs. 40,000/- towards filial consortium to the parents. The claimants at the age of 38 years lost their young son aged about 16 years. In the given circumstances, I do not find any reason to interfere in assessment made by the Tribunal.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine. However, nothing stated hereinbefore shall cause prejudice to the claimants in case they file an appeal for enhancement of compensation.

(Rekha Mittal)
Judge

13.9.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No