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

% **Judgment delivered on: 01.04.2019**

+ **MAC.APP. 421/2019**

UNITED INDIA INSURANCE CO LTD Appellant

Through: Mr.Sankar Sinha, Advocate

versus

SOMBIR & ORS

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE A.K. CHAWLA

J U D G M E N T

A.K. CHAWLA, J. (ORAL)

CM APPL. 14847/2019

Exemption allowed, subject to just all exceptions.

MAC.APP. 421/2019 and CM APPL.14848/2019 (STAY)

1. By the instant appeal, the appellant – insurer assails the impugned judgment – award, whereunder, a total compensation of Rs.4,94,768/- has come to be awarded to the respondent no.1 – the injured, for the injuries sustained by him in the motor accident involving Car bearing Registration

No.UP-14 BU 2590, in short ‘the offending vehicle’, of which, the appellant is the insurer.

2. Concisely, the relevant facts are that on 29.11.2017 at about 12:00 noon, when the injured along with a pillion rider was going to his village driving motor cycle bearing registration No.HR-10 Q 7690, it met with an accident with the offending vehicle. According to the injured, the accident occurred on account of rash and negligent driving of the offending vehicle.

3. During the course of hearing, learned counsel for the appellant submits that the challenge to the impugned judgment / award is restricted to the element of deduction towards contributory negligence. In view of such submissions, the aspect of rash and negligence driving of the offending vehicle; the insurer’s liability; and the compensation awarded under the different heads being not in dispute, the only aspect of contributory negligence is under consideration.

4. The tribunal while passing the impugned award has deducted 30% of the compensation towards contributory negligence, observing, as under:

“28. Keeping in view the facts and circumstances, I consider the following amount to be the just compensation to the Claimant:-

1.	<i>Future Loss of Income</i>	<i>Rs.2,53,368/-</i>
2.	<i>Towards Pain Shock & Suffering</i>	<i>Rs.1,00,000/-</i>
3.	<i>Towards Loss of Amenities & Enjoyment of Life</i>	<i>Rs.50,000/-</i>
4.	<i>Towards Servant / Attendant Charges</i>	<i>Rs.20,000/-</i>

5.	<i>Towards Conveyance & Special diet</i>	<i>Rs.30,000/-</i>
6.	<i>Towards medical bills</i>	<i>Rs.0/-</i>
7.	<i>Towards loss of wages</i>	<i>Rs.41,400/-</i>
	Total =	<i>Rs.4,94,768/-</i>

Ld. counsel for insurance company vehemently argued that due to the contributory negligence of the petitioner, he is not entitled for the compensation and claim petition should be dismissed. The contributory negligence of petitioner is proved in view of his testimony as during cross examination the witness has admitted that he did not have any DL to drive the bike. Keeping in view of circumstances of the case, the 30% of the total compensation amount is deducted towards contributory negligence. The petitioner is accordingly entitled for compensation of Rs.3,46,338/- from the respondents.

I accordingly award an amount of compensation of Rs,3,46,338/- in favour of the Claimant and against respondents.”

5. The deduction towards contributory negligence has simply been premised on the basis that the injured, who was driving the motor-cycle, did not have any driving licence to drive the motor cycle. During the course of hearing, learned counsel for the appellant was queried as to whether any evidence had emerged for the motor-cycle having been driven rashly and negligently and such driving, resulted into accident equally. To such pointed queries, learned counsel for the appellant failed to make even an oblique reference. The sole contention has been only to the effect that the absence of the driving licence by itself would imply rash and negligent

driving. His such submission does not appeal to any reason. The tribunal having arrived at a categorical finding for the occurrence of the accident attributable to the rash and negligent driving of the offending vehicle, mere absence of the driving licence by the injured to drive the motor-cycle, cannot be taken to attribute contributory negligence in the occurrence of the accident. May be, the injured violated the provisions of the Motor Vehicle Act in driving the motor-cycle without holding a valid driving licence and also committed an offence punishable under the Motor Vehicle Act, drawing an inference of contributory negligence for the occurrence of the accident on that count, does not sound well founded. In support of his submissions, learned counsel for the appellant however, placed reliance on ***Sri Krishna Vishweshwar Hegde Vs. General Manager, Karnataka State Road Transport Corporation*** (2008) 15 SCC 771 and ***Renukadevi H. and Ors. Vs. Bangalore Metropolitan Transport Corporation & Ors***, (2008) 17 SCC 56. Reliance on ***Sri Krishna Vishweshwar Hegde (Supra)*** is outrightly misplaced and out of context. In the case *supra*, on the facts and circumstances, the Supreme Court took the view that the judgment of the Tribunal assessing the ratio of liability at 50:50 was proper and the High Court ought not to have interfered with it. In other words, only the question of apportionment of liability on contributory negligence was decided by the Supreme Court. In ***Renukadevi's case (Supra)***, on facts, the finding of contributory negligence was given, inasmuch as, the injured was found to be driving his scooty on the wrong side and held negligent in the occurrence of the accident. Suffice to say, absence of driving licence by itself inviting an inference of contributed negligence, was not the subject, even in the said case. The contentions raised to the contrary are, therefore, rejected. Though,

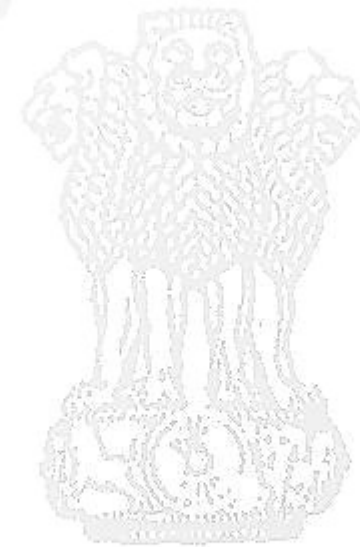
the Tribunal, in the impugned judgment-Award, has deducted 30% of the compensation towards negligence, it would suffice to say that this court does not deem it necessary to get into the legality thereof, for the simple reason that the appellant cannot be said to be aggrieved thereof.

6. For the foregoing reasons, there is no merit in the appeal and the same is hereby dismissed.

APRIL 01, 2019

ssn

**(A.K. CHAWLA)
JUDGE**



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