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

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Decided on: 17.10.2019

+ MAC.APP. 604/2019

MOHD TOFIQUE

..... Appellant

versus

ORIENTAL INS CO LTD & ANR

..... Respondents

+ MAC.APP. 610/2019

SALMA BEGUM & ANR

..... Appellants

versus

ORIENTAL INS CO LTD & ANR

..... Respondents

Through: Mr. Anshuman Bal, Advocate for
appellants.

Mr. A.K. Soni, Advocate for
Insurance Company.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. These appeals impugn the award of compensation passed by the learned MACT on 11.02.2019 in MACP Nos. 499/2018 and 498/2018, dismissing the claim of the appellants on the ground that three persons were riding on a scooty-two wheeler, they were all minors. The said vehicle met with an accident, resulting in fatality of one of the pillion riders and head injuries were sustained by the other two. The rider of the scooty was the claimant/injured. He did not possess a driving licence. According to the

narration of facts, the scooty was being driven by the minor; it was hit by the offending vehicle, which was being driven on the wrong side of the road and coming from the opposite direction at a very high speed. So the accident was as a result of the rash and negligent driving of the offending vehicle i.e. on the wrong side of the road. Had it not been driven on the wrong side, the accident would not have happened. The action of the minor, who was in breach of motor vehicle driving rules, for not wearing a helmet and not possessing a driving licence, may not have resulted in the unfortunate accident and fatality. Whether the pillion rider was counted as 1st or 2nd is barely an issue because he would be an innocent rider and would not be denied the benefit of the insurance policy which is a bundled policy. The rider of the scooty could well have best be challaned for traffic violations or for other liabilities, as may be.

2. The learned counsel for the appellants argues that contributory negligence ought not be apportioned on the claimant/injured as he was a minor. He relies upon the dicta of Supreme Court in **Sudhir Kumar Rana v. Surinder Singh**, (2008) 12 SCC 436, which held as under:-

“9. 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 who was driving 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.”

3. This Court too in *National Insurance Co. Ltd. vs. Sushila & Ors.* in MAC. APP. 745/2019 decided on 21.08.2019 held as under:-

“2. Lastly, the appellant contends that apportionating only 25% of the contributory negligence of the motorcyclist, who did not possess the driving license, is on the lower side, because the motorcycle dashed into the insured vehicle from the rear side. The possibility of the accident happening because of the alleged rash and negligent driving of the insured vehicle is doubled on the ground that the motorcyclist is stated to have been going at a mild speed of 20 to 25 km/h, therefore, he could have easily stopped his vehicle from crashing into the insured vehicle which had allegedly overtaken the motorcycle. Even otherwise, the motorcyclist could have somehow avoided the forceful impact, which resulted in his unfortunate fatality.

3. The impugned order has dealt with the arguments as under:-

“Para.9....

(ii). In order to establish rashness or negligence on the part of respondent no.1, petitioner has placed reliance on the deposition of PW2.

(iii). PW2 in his cross-examination admitted that he had not seen the driving licence of deceased. During arguments, counsel fairly conceded that deceased was not holding a driving license at the time of accident. However, he placed reliance on the judgement *Sudhir Kumar Rana vs. Surinder Singh & ors.* (supra) wherein it is held that mere fact that deceased was not holding a valid driving licence is not a sufficient ground for Tribunal to hold that the accident had taken place due to the contributory negligence of deceased. Thus, mere fact that in the instant case, deceased was not holding a valid driving licence is ipso-facto not sufficient to hold that accident had either taken place due to the negligence or contributory negligence of deceased. As per school certificate Ex. PW1/3, date of birth of deceased was 18.05.2001. Since the accident had taken place on

21.02.2018, it means that he was below 18 years old at the time of accident.

(iv). From the deposition of PW2, it is also established that motor cycle belonged to one Rahul, friend of PW2. It means that motor cycle was not belonged to the deceased. PW2 also admitted in his cross-examination that neither the deceased nor he was wearing helmet. Thus, from the testimony of PW2, it is established that the deceased was neither holding a driving licence nor he was wearing helmet nor the motor cycle belonged to him. Though these facts are ipso-facto not sufficient to hold that the accident had taken place either due to his negligence or contributory negligence, but these facts are sufficient to hold that deceased was careless and was not vigilant towards his safety.

(v). PW2 in his examination-in-chief testified that the offending vehicle came from behind at very fast speed in a zig-zag manner and overtook their motor cycle. In his cross-examination, PW2 deposed that the speed of their motor cycle was between 20-25 km/h. Since PW2 did not disclose the approximate speed of the offending vehicle, it is not feasible for this Tribunal to hold what was the approximate speed of the offending vehicle. However, since offending vehicle overtook the motor cycle, it can safely be culled out that speed of the offending vehicle must be probably between 50-60 km/h, which cannot be termed as very high speed.

(vi). PW2 further testified that negligence on the part of driver of offending vehicle was that he was driving the offending vehicle at fast speed in a zig zag manner and after overtaking their motor cycle, he applied brake all of sudden. Assuming for the sake of arguments that offending vehicle was being driven at fast speed and he applied brake all of sudden after overtaking the motor cycle. But since motor cycle was being driven at the speed of 20-25 km/h, deceased could have easily stopped the motor cycle, but he

failed to do so. This itself shows that either he did not know how to drive the motor cycle or he was driving the motor cycle more than the speed of 20-25 km/h. Had he been driven the motor cycle between the speed of 20-25 km/h impact of the collusion would (sic) be so severe that the injuries would become fatal. This itself shows that the motor cycle must be driven at high speed.

(vii)(sic). Since the deceased was coming from behind, he was also supposed to maintain safe distance. Though PW2 testified that deceased tried to avoid the collision but he did not specify how he tried to avoid the collision. This also shows that there was some negligence on the part of deceased also. As per the testimony of PW2, negligence on the part of respondent no.1 was that he applied brake all of sudden. Since during inquiry, respondent no.1 & 2 did not lead any evidence to explain the circumstances under which respondent no.1 applied brake, this Tribunal has no reason to disbelieve the version of PW2 that respondent no.1 applied the brake without any reason

(vii). In view of the aforesaid discussion, I am of the considered opinion that the accident had taken place due to the negligence on the part of respondent no.1 as well as contributory negligence on the part of deceased. Considering the facts and circumstances of the case as a whole, contributory negligence on the part of deceased is assessed at 25%. In other words, 25% of the award amount is liable to be deducted from the total award amount."

4. What emanates from the above is that non-possession of the driving license by itself would not be a reason for not granting the award of compensation, if it is proven that the accident was on account of rash and negligent driving of the offending vehicle. The rashness and negligence of the offending vehicle

has been duly established in terms of the facts and reasoning of the impugned order.

*5. Furthermore, in **Sudhir Kumar Rana vs. Surinder Singh & Ors.** (2008) 12 SCC 436 decided on 06.05.2008, the Supreme Court has held as under:-*

“9. 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 who was driving 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.”

6. In view of the above, the appellant's contention that the compensation would not be payable to the motorcyclist, who was not holding a driving license, is untenable and is rejected. The rationale of the impugned order as quoted hereinabove could not be faulted because the negligence of the offending vehicle is evidently much larger than that of the deceased motorcyclist. The offending vehicle was imprudently being driven i.e. in the rash and negligent manner, as stated by the eyewitness-the pillion rider. Accordingly, the argument regarding apportionment of liability too is rejected.”

4. What emanates from the preceding discussion is that as per the claimants, the offending vehicle was being driven in a rash and negligent manner on the wrong side of the road. This irresponsible and dangerous driving led to the inevitable unfortunate fatality and other injuries. In view

of the above, the impugned order is set aside and the case is remanded to the learned Tribunal for fresh adjudication. The parties shall appear before the learned Tribunal on 27.11.2019. Since the accident happened almost a year ago, the learned Tribunal is requested to endeavour to dispose-off the case, preferably within a period of six months from the date when the case is next listed before it. The learned counsel for the parties submit that they would also endeavour to assist the learned Tribunal on every date when the case is listed and will not take any adjournment whatsoever.

5. Let the issue of negligence and compensation, as may be, assessed by the learned Tribunal.

6. The appeals are disposed-off in the above terms.

NAJMI WAZIRI, J.

OCTOBER 17, 2019

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