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

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Decided on: 21.08.2019

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MAC.APP. 745/2019

NATIONAL INSURANCE CO LTD

..... Appellant

Through: Ms. Hetu Arora Sethi, Advocate.

versus

SUSHILA & ORS

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

MAC.APP. 745/2019, CM APPL. 37356/2019 & CM APPL. 37357/2019

1. This appeal impugns the award of compensation on the following grounds:-

- (i) The compensation should not have been granted because the motorcyclist did not have a valid driving license; in other words, his ability to ride a motorcycle had not been tested by the Transport Authority.
- (ii) The victim was a minor, therefore, he had put not only his own life at risk but also that of the pillion rider.
- (iii) He was a threat to the safety and security of the other persons on the road and accidents caused by such motorcyclists or drivers are a dangerous threat to the safety of all road users and

such irresponsible acts should neither be encouraged nor rewarded by way of grant of compensation.

2. Lastly, the appellant contends that apportioning 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 collision would (sic) be so severe that the injuries would become fatal. This itself show 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.

7. Lastly, the learned counsel for the appellant impugns the award on the ground that right of recovery was not granted to the appellant although, the driver was not holding a valid driving license for the insured vehicle which was a goods-carrier/ transport vehicle; the driver possessed a license only for a Light Motor Vehicle and motorcycle. However, she fairly submits that this issued has been referred to a larger Bench by the Supreme Court in ***Bajaj Alliance General Insurance Co. Ltd vs. Rambha Devi & Ors.*** 2018 SCC OnLine SC 3325 vide order dated 03.05.2018 which had reproduced the conclusions in ***Mukund Dewangan vs. Oriental Insurance Company Ltd.*** (2017) 14 SCC 663 wherein it was held as under:

“60.2 A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg would be a light motor vehicle and also motor car or tractor or a roadroller, “unladen weight” of which does not exceed 7500 kg and holder of a driving licence to drive class of “light motor vehicle” as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg or a motor car or tractor or roadroller, the “unladen weight” of which does not exceed 7500 kg. That is to say, no separate endorsement on the license is required to drive a transport vehicle of light motor vehicle class as enumerated above. A license issued under Section 10(2)(d) continues to be valid after Amendment Act 54 of 1994 and 28-3-2001 in the form.

.....

60.4 The effect of amendment of Form 4 by insertion of “transport vehicle” is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving license for transport vehicle of class of “light motor vehicle” continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding license to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.”

8. **Rambha Devi (supra)** further held, *inter alia*, as under:-

“5....

While the counsel have referred to various other provisions of the Act and the Rules, we have only referred to a few, very significant submissions. Since the prayer is for the reconsideration of Mukund Dewangan (supra), we are of the view that it is only appropriate that the prayer itself, in light of some of the submissions we have noted above, be considered by a larger Bench of 3 Judges.”

9. For the moment, the decision of **Mukund Dewangan (supra)** holds the field, therefore, the appellant would have no right of recovery at this stage, on the basis of the nature of driving licence held by the driver.

10. Accordingly, the appeal is dismissed.

11. The statutory amount, alongwith interest accrued thereon, be returned to the appellant.

NAJMI WAZIRI, J

AUGUST 21, 2019

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