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

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Decided on: 08.01.2020

+ **MAC.APP. 812/2019, CM APPL. 44169/2019 & CM APPL. 44171/2019**

UNITED INDIA INSURANCE CO LTD Appellant

Through: Mr. Pankaj Seth, Advocate.

versus

RESHMA & ORS

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM APPL. 44170/2019 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed-off.

MAC.APP. 812/2019, CM APPL. 44169/2019 & CM APPL. 44171/2019

3. This appeal impugns the order dated 09.05.2019 passed by the learned MACT in MACP No. 48/11 (New No. 49977/16), on the ground that contributory negligence of only 20% apportioned on the rider of the scooter bearing no. DL 8S L 7067, which had two pillion riders, is on the lesser side. The learned counsel for the appellant contends that it should be atleast 50%. The impugned order has dealt with this issue as under:-

“ ...

The copy of criminal case record as part of DAR would show the mechanical inspection reports of the vehicles nos. DL-1YB-1091 (Tavera) and LML Scooter no. DL-8SL-7067 both showing fresh damages. The seizure memo of both the said vehicles is also part of the DAR. The seizure memo of driving licence R1 and the necessary documents including RC, insurance policy, permit and fitness certificate of the offending vehicle is also part of the DAR. Said documents and copy of driving licence of R1 are also part of DAR. Further, it has not been denied by any respondents that the said two vehicles were not involved in the case accident. It is also an admitted position that the offending vehicle at the relevant time was being driven by R1 and the above said scooter was being driven by deceased Jagdish Sisodia at the time of accident. As discussed above, R1 and R2 have not cross examined the eye witness/injured persons i.e. PW3 & PW4 and hence, R1 and R2 shall be deemed to admit that the case accident occurred between the offending vehicle being driven by R1 and the above said scooter being driven by the deceased Jagdish Sisodia at the above said date, time and place and that R1 was driving the offending vehicle in a rash and negligent manner.

Ld counsel for insurance co./R3 has argued that deceased Jagdish Sisodia also contributed to the accident as he was driving the said scooter on the wrong-side of the road, whereas, the offending vehicle was coming on its correct side of the road. He also referred to the copy, of MLC of the deceased on record which would show that he was under influence of alcohol at the time of accident. He also referred to the site plan on record as part of DAR and argued that it is evident that the deceased Jagdish Sisodia was driving the scooter on the wrong side of the road. He further argued that the triple riding was being done on the said scooter at the time of accident. He has thus argued that on the facts of the present case, some amount on account of contributory negligence on the part of deceased Jagdish Sisodia should be deducted.

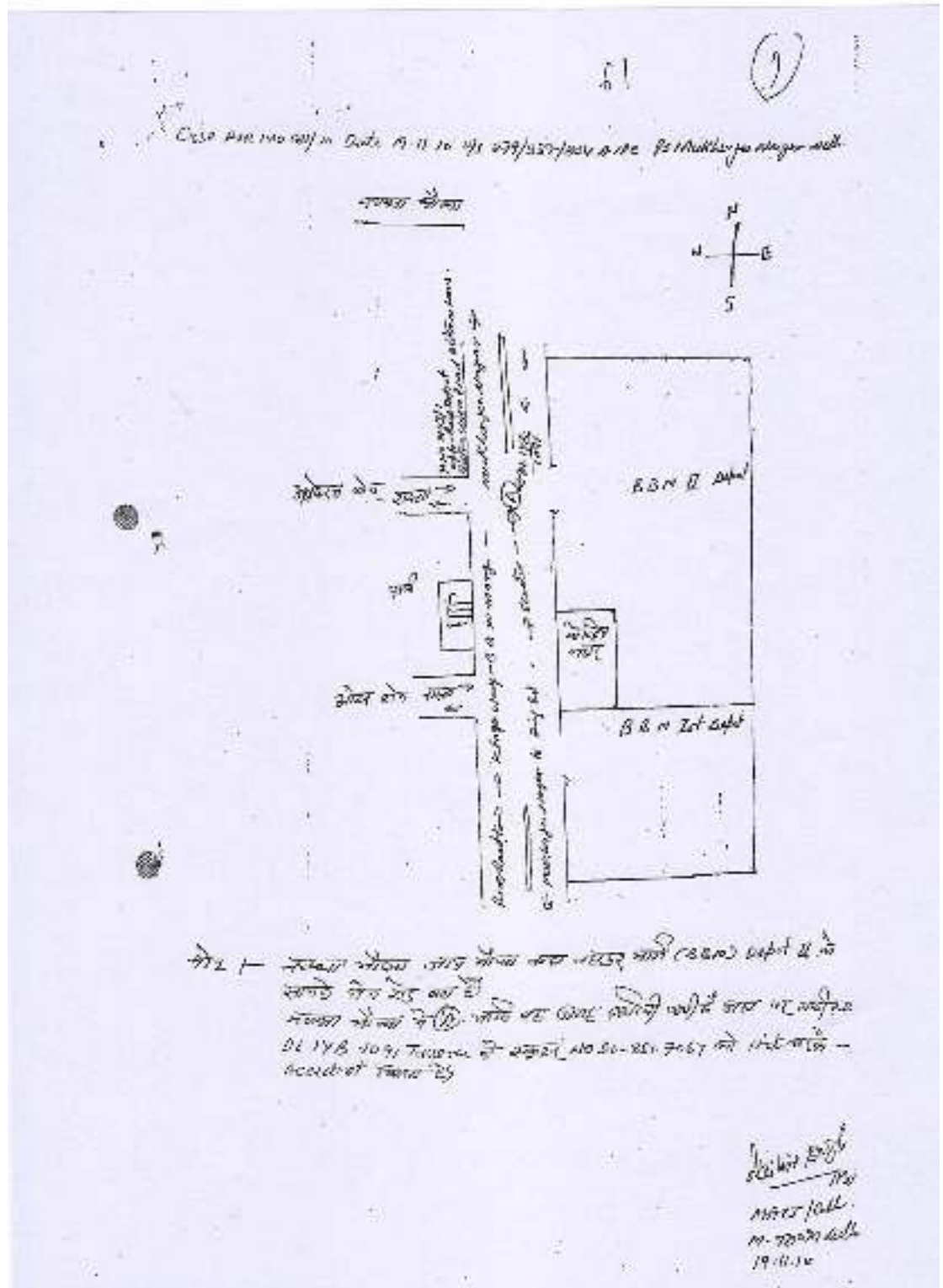
On the other hand, ld counsel for petitioner has argued that there was no contributory negligence on the part of the deceased as the accident occurred only due to the rash and negligent driving of R1. He also referred to the MLC of R1 which also mentioned the smell of alcohol.

It is evident from the record that the respondents have not lead any evidence in this case to prove the factum of contributory negligence on the part of the deceased Jagdish Sisodia. The record would, however, show that both PW3 and PW4 have admitted in their cross examination that they were triple riding on the scooter being driven by the deceased. Both PW3 & PW4 have further admitted that the offending vehicle was coming on the correct side of its road i.e. the offending vehicle was being driven on the correct side of the road. PW4 has admitted during cross examination that the deceased took the right turn while coming out of the depot. The site plan as part of the DAR would also show that the offending vehicle was coming on the correct side of its road whereas, the said scooter at the time of accident was being driven on its wrong side of the road. Further, the MLC of the deceased mentions that he was under the influence of alcohol although the quantity of consumed liquor is not on the record. It would show that the deceased at the time of accident was driving the above said scooter under the influence of alcohol was driving the scooter on the wrong side of the road at the time of accident and was also driving the said scooter triple riding.

In view of the above said discussion, some amount of contributory negligence on the part of the deceased while driving the said scooter was there in the present case which is assessed at 20% on the part of the deceased.

Issue no. 1 is decided in favour of petitioners and against the respondents to the effect that the case accident was caused at the above said date, time and place due to the rash and negligent driving of R1 of the offending vehicle and further that the injured was also guilty of contributory negligence to the extent of 20% in causing the accident.”

4. The Site Plan prepared by the police is as under:-



5. It shows that the motor accident occurred virtually in the middle of the road at a trisection, but more on the left side of the road. Therefore, the scooterist was not entirely at fault. In the circumstance, for the learned Tribunal to have apportioned 20% contributory negligence upon the scooterist does not call for any interference.

6. The learned counsel for the appellant next contends that recovery rights should have been granted against the driver of the insured four-wheeler i.e. Tavera car bearing registration no. DL-1Y-B-1091, because he was under the influence of alcohol. This contention was rejected by the learned Tribunal because the degree of alcohol in the driver's blood was not tested i.e. it was not proven that whether it was above the permissible limit of 30mg per 100ml of blood. Likewise, the blood of the deceased-scooterist too was not tested and the contention that he was under the influence of alcohol, is not supported by any evidence either. The conclusion that the deceased-scooterist was under the influence of alcohol is only hearsay and not proven.

7. In view of the above, there is no reason to interfere with the impugned order. The appeal is without merit and is accordingly dismissed. The pending applications too are dismissed.

8. The statutory amount, alongwith interest accrued thereon, be deposited into the 'AASRA' Fund created by this Court.

NAJMI WAZIRI, J

JANUARY 08, 2020

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