

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**FAO No.1262 of 2020 (O&M)
DATE OF DECISION : 21.07.2022**

United India Insurance Co. Ltd.Appellant

versus

Kavita and OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Harsh Aggarwal, Advocate for the appellant

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ALKA SARIN, J. (Oral):

The present appeal has been preferred by the Insurance Company challenging the award dated 19.11.2019 passed by the Motor Accident Claims Tribunal, Jalandhar on the ground that there was an element of contributory negligence since there were four pillion riders on the motorcycle.

The brief facts relevant to the present *lis* are that the claimants filed the present claim petition on the ground that the claimants along with their son Prabhjot (since deceased) and Nanak Sarup were going on a motorcycle bearing registration No.PB-37-F-1027 to their Mama's house on the occasion of Raksha Bandhan. At about 6.00 P.M. when they reached

petrol pump near Sagar Restaurant, Police Station Adampur, a bus bearing registration No.PB-07-AS-4979 being driven by Ranjit Singh, respondent No.3 herein, came at a high speed in a rash and negligent manner and struck the motorcycle of the claimants from behind due to which they fell on the road and received serious injuries. Prabhjot was taken to Miglani Hospital, Adampur from where he was referred to Armaan Hospital, Jalandhar where he eventually succumbed to his injuries on 26.08.2018. It was stated that the deceased was 9 months old.

The claim petition was contested by respondent Nos.3 and 4 herein, who were driver and owner of the offending vehicle, on the ground of maintainability and *locus standi*. It was further stated that there was no fault on the part of the driver and the accident took place due to the negligence of claimant Hardeep Kumar who suddenly lost control over his motorcycle and without giving any signal turned the motorcycle towards his right side. The appellant-Insurance Company also contested the claim petition on the ground that there was no negligence on the part of the driver and that the bus driver was not holding a valid and effective driving licence.

On the basis of the pleadings of the parties and the evidence on the record, the Tribunal returned a finding on Issue No.1 that the documentary evidence produced by the claimants had gone virtually uncontroverted as respondent No.3 herein (driver) of the offending vehicle did not step into the witness box. It was held that the accident had occurred due to the rash and negligent driving of respondent No.3 herein. Compensation to the tune of Rs.9,63,700/- along with interest at the rate of

7.5% per annum from the date of filing of the claim petition till recovery was awarded.

The learned counsel for the appellant would contend that there was an element of contributory negligence in as much as there were four pillion riders on the motorcycle.

Heard.

On 12.02.2020 the present case was adjourned *sine die* to await the outcome of the reference to the Division Bench in FAO No.2218 of 2012 (*Sona Devi & Ors. vs. Ramesh Kumar & Ors. decided on 07.03.2014*) on the point regarding the effect on a claim of compensation in case of a motor accident involving a motorcycle which was being driven with two pillion riders in violation of the law on the ground of contributory negligence. The Division Bench of this Court vide order dated 20.02.2020, relying on a Supreme Court judgment in *Mohammed Siddique & Anr. vs. National Insurance Company Ltd. & Ors., AIR 2020 SC 520*, held that the issue referred to the Division Bench stood answered by the Supreme Court in the case of Mohammed Siddique (*supra*) and no further orders were required to be passed. In the case of Mohammed Siddique (*supra*), it was held as under:

“13. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of

the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two-wheeled motor cycle, not to carry more than one person on the motor cycle. Section 194C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the

accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW3 to the effect that 2 persons on the pillion added to the imbalance.

14. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence the

reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside.”

The learned counsel has not been able to show any evidence on the record to show that the accident had resulted due to the fact that there were four pillion riders on the motorcycle. The offending bus hit the motorcycle from behind and there is not an iota of evidence to show that there was any wrongful act on the part of the motorcycle rider that contributed in any way to the accident. In view of the above, there is no merit in the arguments raised by the learned counsel for the appellant.

The appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

21.07.2022
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(ALKA SARIN)
JUDGE

<u>NOTE:</u> Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
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