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

Date of decision: 11.07.2023

+ **MAC.APP. 339/2023**

SHRI RAM GENERAL INSURANCE COMPANY LTD
INSURER

..... Appellant

Through: Mr.Yasharth Kant &
Ms.Masoom Raj Singh, Advs.

versus

BABY KHUSHI

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 34472/2023 (Exemption)

1. Allowed, subject to all just exceptions.

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2. This appeal has been filed challenging the Award dated 18.03.2023 passed by the learned Motor Accident Claim Tribunal-02, South-West District, Dwarka Courts, New Delhi (hereinafter referred to as the 'Tribunal'), in MACT No. 782/2016 titled ***Baby Khushi (Minor) v. Rahul & Ors.***

3. The above claim petition was filed claiming that on 31.08.2013 at about 6:30 PM, the claimant was going on a Scooty bearing No. DL-9S-AM-4156 as a pillion rider along with her Aunt Annu @

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Moni, who was driving the same. When the Scooty reached in front of P.S. Bindapur, suddenly one truck bearing No. DL-IL-G-4192, being driven by its driver, Shri Rahul (respondent no. 1 before the learned Tribunal), in a rash and negligent manner came from behind and hit the rear of the Scooty with its front bumper with great force. Due to this forceful impact, the Claimant along with her Aunty fell down on the road and the Claimant received grievous injury resulting in amputation of her left leg below knee. The claimant suffered permanent disability of 75%.

4. The limited challenge of the appellant to the Impugned Award is that the Claimant had failed to prove that the accident had occurred due to the truck being driven in a rash and negligent manner. She submits that it was the case of the driver of the truck that he was driving at a moderate speed, and it was only because the Scooty was being driven in a rash and negligent manner that the accident happened.

5. The learned counsel for the appellant submits that, in fact, the Aunty of the claimant, who was driving the Scooty, did not possess a valid driving license. She submits that, therefore, a presumption should, in fact, have been drawn against the claimant on this issue.

6. I have considered the submissions made by the learned counsel for the appellant, however, find no merit in the same.

7. The learned Tribunal has held that the accident occurred due to the truck being driven in a rash and negligent manner by the driver thereof. The Tribunal also rejected the plea of contributory negligence by observing as under:-



“7. The onus to prove this issue is upon the petitioner. To prove the present issue, the petitioner has examined PW1 Annu @ Moni. Who in her affidavit (Ex. PW-1/A) has deposed that on 31.08.2013 at about 06.30 p.m she was going on a Scooty bearing No. DL-9S-AM-4156 alongwith her niece Khushi, who was sitting on a pillion seat. When the Scooty reached in front of P.S Bindapur on Road, Bindapur, New Delhi. Suddenly one truck bearing No. DL-IL-G-4192 being driven by its driver, respondent No.1, in rash and negligent manner came from behind and hit the scooty from behind by its front bumper with great force. Due to this forceful impact, she alongwith petitioner fell down on the road. And petitioner received grievous injury.

8. PW- 1 has been duly cross-examined. The testimony of the witness with respect to accident and rash & negligent driving of offending vehicle could not be impeached. Even otherwise, the proof of negligence while disposing off a claim under MACT is not that strict as it is under Section 279/338 of IPC. The evidence which has come on record can be considered and becomes more relevant when there is no specific evidence led by other side in rebuttal. Moreover after investigation, police indicted respondent no.1 for offences punishable under Sections 279/338 of IPC and M.V. Act. The FIR has been registered against respondent no.1 and he has not filed any complaint against the police before any higher authority against his alleged false implication, if any. The fact of accident and the respondent no.1 is facing the trial as an accused in criminal Court is not disputed. Even otherwise strict rule that negligence is to be proved beyond reasonable doubt is not to be proved in MACT proceedings.

9. On the other hand, Ld Counsel for the Insurance Company has argued that there is contributory negligence on the part of the driver of scooty No DL-9S-AM-4156 as she was not having driving licence. In this regard



a fact which has to be considered by the Court whether driver of the scooty was driving rashly and negligently and resulted in accident. It is not so. As per investigation it was the R.I who was driving the truck rashly and negligently. So the argument of Ld Counsel for Insurance Company does not relevant in view of judgment in case titled Sudhir Kumar Rana Vs Surinder Singh & Ors in Appeal (Civil) 3321 of 2008 of Hon'ble Supreme Court. Where it is held that "The question of contributory negligence would arise only when both the parties are found to be negligent". But here in the present case the offending truck hit the scooty from behind.

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11 Considering all these facts, it is proved on record that accident in question was caused due to rash or negligent driving of a truck bearing registration no. DL-1LG-4192 by respondent no.1 thereby causing injuries to the petitioner."

8. I find no infirmity in the above findings of the learned Tribunal.

9. On the accident being caused due to the offending vehicle (truck) being driven rashly and negligently, the learned counsel for the appellant could not draw attention of the court to any evidence that would persuade this Court to take a contrary view from that of the learned Tribunal.

10. It is a settled law that in a claim petition filed under The Motor Vehicles Act, 1988, the claimant is not to prove the negligence of the Offending Vehicle beyond reasonable doubt; the same has to be determined on the basis of preponderance of probability.

11. In ***Mangla Ram v. Oriental Insurance Co. Ltd.***, (2018) 5 SCC

65, the Supreme Court has held as under:



27. Another reason which weighed with the High Court to interfere in the first appeal filed by Respondents 2 & 3, was absence of finding by the Tribunal about the factum of negligence of the driver of the subject jeep. Factually, this view is untenable. Our understanding of the analysis done by the Tribunal is to hold that Jeep No. RST 4701 was driven rashly and negligently by Respondent 2 when it collided with the motorcycle of the appellant leading to the accident. This can be discerned from the evidence of witnesses and the contents of the charge-sheet filed by the police, naming Respondent 2. This Court in a recent decision in *Dulcina Fernandes [Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13]*, noted that the key of negligence on the part of the driver of the offending vehicle as set up by the claimants was required to be decided by the Tribunal on the touchstone of preponderance of probability and certainly not by standard of proof beyond reasonable doubt. Suffice it to observe that the exposition in the judgments already adverted to by us, filing of charge-sheet against Respondent 2 prima facie points towards his complicity in driving the vehicle negligently and rashly. Further, even when the accused were to be acquitted in the criminal case, this Court opined that the same may be of no effect on the assessment of the liability required in respect of motor accident cases by the Tribunal.

12. Reliance is also placed on the judgment of Supreme Court in *Sunita v. Rajasthan SRTC*, (2020) 13 SCC 486, where the Supreme Court has reiterated that the nature of proof required to establish culpability in criminal law is far more higher than the standard required under the law of torts to create liability, and reliance in a



the FIR or the Charge-Sheet filed giving account of the accident. The relevant dictum of the Supreme Court is reproduced herein below:

“27. The Tribunal's reliance upon FIR No. 247/2011 (Ext. 1) and charge-sheet (Ext. 2) also cannot be faulted as these documents indicate the complicity of Respondent 2. The FIR and charge-sheet, coupled with the other evidence on record, inarguably establishes the occurrence of the fatal accident and also point towards the negligence of Respondent 2 in causing the said accident. Even if the final outcome of the criminal proceedings against Respondent 2 is unknown, the same would make no difference at least for the purposes of deciding the claim petition under the Act. This Court in Mangla Ram [Mangla Ram v. Oriental Insurance Co. Ltd., (2018) 5 SCC 656 : (2018) 3 SCC (Civ) 335 : (2018) 2 SCC (Cri) 819], noted that the nature of proof required to establish culpability under criminal law is far higher than the standard required under the law of torts to create liability.”

13. In the present case, PW-1, who was driving the Scooty, has been examined and cross-examined at length. The police has also investigated the accident and has charged the respondent no.1 for offences punishable under Sections 279/338 of The Indian Penal Code, 1860, and The Motor Vehicles Act, 1988. Merely because the driver of the Scooty, that is the Aunty of the claimant, was unable to produce her license, it cannot be said that the accident was caused due to her rash and negligent driving or that the rash and negligent driving of the truck stood disproved or a case of contributory negligence was made out.

14. In ***Dinesh Kumar Alias Dinesh J v. National Insurance Company Limited and Others***, (2018) 1 SCC 750, the Supreme Court,

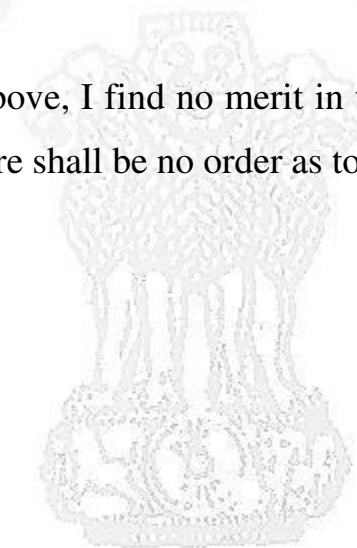


relying upon its earlier Judgment in *Sudhir Kumar Rana v. Surinder Singh and Ors.*, (2008) 12 SCC 436, has held that if a person drives a vehicle without a license, he commits an offence, however, that by itself may not lead to a finding of negligence as regards the accident. If such a driver was not driving the vehicle rashly or negligently which contributed to the accident, only because he was not having a license, he would not be held guilty of contributory negligence. No deduction on the ground of contributory negligence can, therefore, be made on the sole ground that the driver was not in possession of the requisite license.

15. In view of the above, I find no merit in the present appeal. The same is dismissed. There shall be no order as to costs.

JULY 11, 2023/rv/ss

NAVIN CHAWLA, J



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