



2024:DHC:9796



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: 2nd December, 2024***MAC.APP. 6/2023**

SH. DEEPAK KUMARAppellant

Through: Mr. Bipin Kumar Jha, Advocate.

versus

1. SH. ABDUL MAZID
S/o Abdul Saheb JaanRespondent No.12. SMT. ROSHAN KHATOON
W/o Sh. Abdul MazidRespondent No. 2
Through: None**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G E M E N T (Oral)**

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CM APPL. 399/2023 (delay)

1. An Application under Section 5 of the Limitation Act, has been filed on behalf of the Appellant seeking condone the delay of 174 days in filing the accompanying Appeal.

2. For the reasons stated in the Application, the delay of 174 days in filing the accompanying Appeal, is condoned and the Application is allowed.

3. The Application is disposed of accordingly.

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4. The Appeal under Section 173 of the *Motor Vehicles Act, 1988* ('M.V.Act' *hereinafter*) has been filed on behalf of the Appellant/Owner-



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driver against the impugned Award dated 15.02.2022 *vide* which the compensation in the sum of Rs.12,24,000/- along with interest @9% p.a., has been granted on account of death of Abdul Sajim, in a road accident.

5. *Learned counsel on behalf of the Appellant* has challenged the Award on the sole ground that the *deceased was responsible to contributory negligence* as he was driving a motorcycle even though he was less than 18 years and was not having a driving license. He was also not wearing a helmet.

6. Submissions heard.

7. *Briefly Stated*, on 13.11.2016, Abdul Sajim, deceased was going on motorcycle and at about 10:20 PM when he reached near SRHC Hospital Red Light, Delhi one Tata Ace bearing no. DL-1LR-3165 being driven in rash and negligent manner by Deepak Kumar/Appellant came and hit the motorcycle of the deceased with great force. Due to the impact, the deceased fell and sustained injuries. He was taken to SRH Hospital, Narela, Delhi where he expired during the course of treatment, on 14.11.2016.

8. *FIR No. 832/16* got registered under Sections 279/304A of the *Indian Penal Code, 1860* ('IPC') at PS Narela. The *Chargesheet* stands filed against the Appellant under Section 279/304A of IPC.

9. The Petition under Section 166 and 140 of the M.V. Act was subsequently filed for *grant of compensation*. The Detailed Accident Report ('DAR' *hereinafter*) was filed before the Ld. Tribunal.

10. The *sole ground* on which the impugned Award is challenged is that the deceased was responsible for contributory negligence as he was driving the motorcycle even though he was less than 18 years and was not having a driving license, and he was also not wearing the helmet.



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11. While Injured/Appellant may not have been eligible to have a driving License to drive the Scooty, for which he may be liable to be prosecuted under the penal provisions of the *Motor Vehicles Act, 1988*, but the same does not *ipso facto* attribute contributory negligence in driving the Scooty.

12. In *Sudhir Kumar Rana vs. Surinder Singh*, (2008) 12 SCC 436, the Apex Court has considered the similar case where the injured was 17 years old and observed that the injured must be guilty of an act or omission which materially contributed to the accident and consequent injury. The composite negligence refers to the negligence on the part of the two or more persons. Where the person injured is not shown to have contributed in any manner in the happening of the accident, it cannot be said that it is a case of contributory negligence. It is only that the vehicle was being driven by the injured in a rash and negligent manner, can be held guilty of contributory negligence. Merely because the injured did not have a Licence, is not sufficient to attribute contributory negligence.

13. Similar observations have been made by the Apex Court in *Saraswati Palariya & Ors. vs. The New India Assurance Company Ltd. & Ors.*, Civil Appeal No. 9114/2018, wherein it was observed that merely because a vehicle was being driven by the deceased without a Driving Licence, would not automatically make him liable for contributory negligence.

14. In the present case, the accident in question had occurred due to the rash and negligent driving of the offending tempo bearing No. DL 1LR 3165 being driven by the Appellant herein, which is supported by the Chargesheet.

15. In the case of *National Insurance Co., vs Pushpa Rana* 2009 ACJ 287 Delhi, it has been held that filing of Chargesheet is sufficient proof of the



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negligence and involvement of the Offending Vehicle. The Apex Court in Mangla Ram vs. The Oriental Insurance Company Ltd., AIR 2018 SC 1900 and N K Bros (P) Ltd. vs. M. Karumal Ammal, 1980 LawSuit (SC) 141 has held that filing of chargesheet against the driver of the offending vehicle *prima facie* points towards the complicity in driving the vehicle negligently and rashly.

16. In the present case, the Chargesheet stands filed against the Appellant under Section 279/304A of IPC.

17. Therefore, the Ld. Tribunal has rightly held that there was no contributory negligence on part of the deceased and the impugned Award warrants no interference.

18. The Appeal is dismissed and disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

DECEMBER 2, 2024/RS