



2024:DHC:10048



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

% **Date of decision: 12th December, 2024**

+ **MAC.APP. 149/2021**

PARVEEN SAGWAN

R/o H.No.1986, Village Pilanji,
Kotla Mubarakpur,
New Delhi.

.....Appellant

Through: Mr. S.N. Parashar, Advocate.

versus

1. **GULSHAN**

S/o Sh. Chaman Lal,
R/o H.No.T-56/6, INA Colony,
DDA, Vikas Sadan,
New Delhi.

2. **SH. MALIYAT SINGH**

S/o Sh. Pratap Singh,
R/o 146, Sultanpur,
Mehrauli South, Delhi.

3. **TATA AIG GEN. INS. CO. LTD.**

Plot No.G-001, Unit No.810-816,
8th Floor, Gautam Budh Nagar,
U.P.

.....Respondents

Through: Ms. Vandana Kahlon & Mr. Rudra
Kahlon, Advocates for R-3.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

Signature Not Verified

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MAC.APP. 149/2021

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JUDGMENT (Oral)

1. *An Appeal under Section 173 Motor Vehicle Act, 1988* has been filed by the injured Parveen Sangwan, to challenge the Award dated 29.07.2020 whereby the Claim Petition under Section 166 Motor Vehicle Act, 1988 has been dismissed by the learned Tribunal on the ground that the *Appellant driving the motorcycle without a Driving License*.
2. ***Learned counsel for the Appellant*** has argued that merely because the Appellant was not having a Driving License while driving the vehicle, cannot be an *ipso facto* factor to conclude that he was negligent in driving the vehicle. It is, therefore, submitted that the the Claim Petition is erroneously dismissed and the Impugned Order is liable to be set aside.
3. Opportunity was given to the Insurance Company to address arguments.
4. **Submissions heard and record perused.**
5. *Briefly stated*, on 04.08.2017 at about 11 P.M the Appellant/Parveen Sangwan was driving his motorcycle bearing No.DL12SF 5077 on which his cousin brother, Kuldeep, was travelling as pillion rider, was going to their house from Bara Pula Flyover. When they reached Chandu Lal Marg, near HP Gas Godown, Kotla Mubarakpur, New Delhi, a *Car bearing registration No.DL 14CD 1955* which was being driven by Respondent No.1/ Gulshan, at a high speed in a rash and negligent manner, came from the wrong side and collided with the motorcycle with great force, because of which the Appellant sustained grievous injuries.
6. *FIR No.228/17 dated 05.08.2017* under Section 279/337/338 IPC, 1860 was registered against the driver/Gulshan. After investigations, the



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Chargesheet was filed in the Court of learned M.M.

7. The Disability Certificate was issued by Pt. Madan Mohan Malviya Hospital certifying that the Appellant had suffered *Permanent Disability of 58% in relation to right lower limb.*

8. The DAR was filed on the basis of the Chargesheet. No Written Statement was filed on behalf of Respondent No.1 and 2 driver/owner. The Insurance Company gave a legal offer, though it was not accepted by the Appellant.

9. The learned Tribunal has dismissed the Claim Petition solely on the ground of the injured not having a Driving License at the time of accident.

10. The Appellant as PW1/Parveen Sangwan, had cogently explained that it was the offending Vehicle/ *Car bearing registration No.DL 14CD 1955* which came from the wrong side and hit his motorcycle and caused the accident. The manner of accident clearly points to the sole negligence of the driver of the offending vehicle with no circumstance being attributable to the injured. The driver/owner had not contested the Petition to challenge the testimony of the injured.

11. Pertinently, the Chargesheet has been filed against the driver of the offending car. The Site Plan prepared during the investigations in the FIR also corroborates the testimony of the injured. 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 negligence and involvement of the Offending Vehicle.. The Apex Court has opined in the judgment of Mangla Ram vs. The Oriental Insurance Company Ltd., AIR 2018 SC 1900 that filing of Chargesheet against the driver of the offending vehicle *prima facie* points towards the complicity in driving the vehicle negligently and



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rashly. Similar observations have been made in the case of United India Insurance Co. Ltd. v. Deepak Goel and Ors., 2014 (2) TAC 846 Del, Amanti Devi and Ors. v. Maheshwar Rai, MAC Appeal no. 831/2015 decided on 19.11.2022

12. Merely because the Appellant was not having a Driving License, cannot lead to any conclusion of there being rashness or negligence on his part. While considering this aspect, it must not be forgotten that it is a compensation case under Motor Vehicle Act and unless there is some independent evidence to show that the injured did not know how to drive the motorcycle or had committed any act which contributed or attributable to his lack of skill of driving of motorcycle, can it be concluded that he was solely responsible for causing the accident. Mere absence of Driving License cannot be a ground to conclude that the Appellant was solely negligent in causing the accident.

13. 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, who was not having Driving License. It 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 does not have a Licence, it does not attribute to contributory negligence.

14. Similar observations have been made by the Apex Court in Saraswati



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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.

15. Therefore, the learned Tribunal fell in error in concluding the negligence solely on the part of the injured. It is hereby held that the negligence was that of the driver/owner of the offending vehicle, in causing the accident.

16. The Impugned Award is hereby set aside and remanded back to the learned Tribunal for assessing the compensation in accordance with law.

17. The parties are directed to appear before the learned Tribunal on 10.01.2025.

**(NEENA BANSAL KRISHNA)
JUDGE**

DECEMBER 12, 2024

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