



2024:DHC:9760



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 29<sup>th</sup> November, 2024*+ **MAC.APP. 113/2020**

SALEEM AHMAD

.....Appellant

Through: Mr. S Chakraborty, Advocate.

versus

1. JAIPAL  
S/o Sh. Rangpal

.....Respondent No.1

2. DTC

....Respondent No.2

3. UNITED INDIA INSURANCE CO. LTD. ....Respondent No.3  
Through: Mr. Amit Kumar Singh, Mr. Oren  
Ezyung and Ms. K Enatoli, Advocates  
for R-3.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G E M E N T (oral)**

1. An Appeal under Section 173 of the *Motor Vehicles Act, 1988* ('M.V. Act' *hereinafter*) has been filed on behalf of the Appellant/Claimant against the Judgment dated 19.11.2019 *vide* which the Claim Petition under Section 166 of the M.V. Act, has been dismissed.

2. The *main ground of challenge* is that the Claim of the injured has been dismissed on the sole ground that he was not having a valid driving license and was thus, not entitled to any compensation. The Appellant has placed reliance on *National Insurance Company v. Swaran Singh & Ors.* (2004) 3 SCC 297 wherein the Apex Court observed that at the time of



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accident if a vehicle was driven by a person having learner's license, then the Insurance Company would be liable to satisfy the decree.

3. *Learned counsel on behalf of the Insurance Company* submits that the learned Tribunal has rightly concluded that it was clear case of self-negligence on the part of the injured who was driving the vehicle without any driving license. There is no infirmity in the impugned Order dated 19.11.2019 and the Appeal is liable to be dismissed.

**4. Submissions heard.**

5. *Briefly Stated*, on 14.02.2011 the Injured/Appellant aged 19 years was driving his Motorcycle bearing No. DL-3SBE04179 from Tara Apartment, Delhi to Ravi Das Marg. He was suddenly hit by a DTC bus bearing No. DL-1PB-6407 being driven in a rash and negligent manner due, to which he fell and sustained grievous injuries. On a call to 100 number, the PCR Van reached the spot of accident and took the injured to Jai Prakash Narayan Apex Trauma Centre, AIIMS, Delhi for his treatment.

6. An **FIR No. 48/2011** u/s 279/338 of *Indian Penal Code, 1860* ('IPC' *hereinafter*) was registered at P.S. Govindpuri. After investigations, the police filed the Chargesheet Ex. PW 1/3 against Respondent no. 1 under Sections 279/338 IPC.

7. Before the Ld. Tribunal, the Appellant/Mohd. Saleem examined himself as PW-1 and during his cross-examination admitted the fact that he was not holding a valid Driver's License to drive the motorcycle at the time of the Accident and merely possessed a Learner's license Ex. PW1/10. He also admitted that he had not displayed 'L' Label in either front or rear side of the vehicle and there was no pillion rider on his back seat with a valid license. However, he denied that the accident was caused due to his sole



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negligence.

8. The Ld. Tribunal while dismissing the petition, observed that at the time of the accident the Injured/Appellant was 19 years old and was not having a valid driver's license and merely had a Learner's License Ex. PW1/10 and was driving the motorcycle without a pillion rider and 'L' Plates in front and rear of the vehicle, in violation of Rule 3 of CMV Rules, 1989. It was further observed that the petitioner was not supposed to drive the motorcycle without a license and had the petitioner not been on the road, no accident would have happened. It was also observed in the impugned Judgement that the Appellant committed an offence under Section 181 M.V. Act, which is punishable for imprisonment upto 3 months or a fine upto Rs. 500/-. The Ld. Tribunal relied on Rehmani Begum v. Krishan Pal AIRONLINE 2019 DEL 111 and Rehmani Begum v. Krishan Pal SLP No.10293/2019 wherein it is held that initial onus lies on the Claimant that he was permitted to drive the motorcycle and only thereafter, the question of negligence of offending vehicle arises.

9. The Ld. Tribunal has dismissed the petition holding that the Appellant/Injured was solely negligent since he did not have a valid license. However, the Apex Court has held in Saraswati Palariya & Ors. vs. The New India Assurance Company Ltd. & Ors., Civil Appeal No. 9114/2018, that merely because a vehicle was being driven by the deceased without a Driving License, would not *ipso facto* establish Negligence.

10. Pertinently, the Appellant who appeared as PW1, had cogently deposed that he was going on his motorcycle when the offending vehicle bearing No. DL-1PB-6407 driven in a rash and negligent manner by Sh. Jaipal, Respondent No.1, came at a high speed being and hit his motorcycle



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causing the accident. The evidence of the Appellant explained how the accident was caused due to sole negligence of the Respondent/ Driver of the offending vehicle.

11. The Respondents, including the Driver of the offending vehicle has not challenged the testimony of the Injured. The circumstances as explained by the Injured, do not spell any circumstance which could attribute the negligence to the injured.

12. Further, the Chargesheet Ex. PW 1/3 has been filed against the Driver of the Offending Bus. 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.

13. While considering this aspect of negligence, it must not be forgotten that it is a compensation case under M.V. Act which is under consideration 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 would be attributable to his lack of skill of driving of motorcycle, mere absence of Driving License or just holding a Learner's Licence, cannot be a ground to conclude that the Appellant was solely negligent in causing the accident.

14. While Injured/Appellant may be liable to be prosecuted under the penal provisions of the *Motor Vehicles Act, 1988* for not having a valid Driver's License but only a Learner's Licence to drive the Motorcycle, but the same does not *ipso facto* attribute sole or contributory negligence in driving the motorcycle.

15. Therefore, the learned Tribunal fell in error in concluding the negligence on the part of the injured. It is held that the accident occurred due



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to negligent driving of the offending vehicle by its driver Jaipal/ Respondent No.1.

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 23.12.2024.

**(NEENA BANSAL KRISHNA)**  
**JUDGE**

**NOVEMBER 29, 2024/RS**