



2024:DHC:9630



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

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Date of decision: 10th December, 2024

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MAC.APP. 645/2024, CM APPL. 72152/2024 (stay)**RELIANCE GENERAL INSURANCE CO. LTD.Appellant****Through: Mr. Shoumik Mazumdar and Ms.
Sabhyata Sharma, Advocates.****versus**

1. **BHARAT**
S/o Ms. Kamla DeviRespondent No.1
2. **Akhilesh (Driver)**
S/o Sh. Laxman ...Respondent No. 2
3. **Munilal (Owner)**
S/o Sh. Shiv Lal BarotRespondent No. 3
Through: None

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)****MAC.APP. 645/2024**

1. An Appeal under Section 173 of the *Motor Vehicles Act, 1988* ('M.V. Act' *hereinafter*) has been filed on behalf of the Appellant/Insurance Company against the Award dated 28.10.2024.
2. The *grounds of challenge* are:
 - (i) that the motorcycle on which the injured was travelling had



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three persons sitting and they all were not wearing a helmet and thus, it was a case of contributory negligence; and

(ii) that the Injured/Respondent No. 1 has suffered 85% Permanent Disability of the whole body, while the Functional Disability has been taken as 100% instead of 40%.

3. **Submissions heard and the record perused.**

4. Briefly stated, on 01.10.2014, at about 03:30 p.m. Mr. Narender Singh, was driving Hero Honda CD Deluxe bearing No. HR-15B-1652, on which the injured, Mr. Bharat and Mr. Sumit were travelling as pillion riders. When they reached near Village Nangura, Kaithal Road, Jind, Haryana, a truck bearing No. GJ-09Y-9479, which was being driven at a high speed in a negligent manner, by its driver/Respondent No.2, Mr. Akhilesh, came from the opposite direction and hit the motorcycle because of which all the three occupants fell. Mr. Narender succumbed to injuries and died while the injured/Mr. Bharat and Mr. Sumit sustained the grievous injuries, who were taken to PGIMS Rohtak, Haryana and thereafter, shifted to AIIMS Trauma Centre, Delhi.

5. FIR No. 0184/2014 under Section 279/337/338/304A/427 of the Indian Penal Code ('IPC' *hereinafter*) was registered on 02.10.2014. After due investigation, Charge-Sheet was filed before the concerned Criminal Court.

6. The learned Tribunal assessed the Permanent Disability of the injured as 100% and granted compensation in the sum of Rs.32,22,817/- along with the interest @7.5% p.a.

I. Contributory Negligence:

7. The *first ground* taken is of contributory negligence. The *main factor* on



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which contributory negligence has been alleged is that they were three persons travelling on the motorcycle and were not wearing a helmet. Mere triple riding by the victim/Respondent No.1 as a pillion rider, cannot be considered as contributory negligence.

8. The Hon'ble Supreme Court of India in the case of Mohd. Siddique vs. National Insurance Company Ltd., (2020) 3 SCC 57, had observed that a pillion rider on a motorcycle with the driver and one more person may be in violation of law, but in itself cannot be considered as a case of contributory negligence.

9. *In the present case*, it is a head on collusion, which has happened because of the offending truck having hit into the motorcycle. Though, it is claimed that it is a case of contributory negligence but no circumstances have been explained as to whether the triple-riding on the motorcycle in any way contributed to the causing of the accident. There is nothing to show that there was loss of balance or lack of control of the motorcycle, which had contributed towards the accident; rather it has been observed by the Id. Tribunal that it is a clear-cut case of head-on collusion wherein the sole negligence of the driver of the offending truck is manifest. Moreover, the site plan prepared during the criminal investigation, also corroborated the manner in which the accident took place.

10. No eye witness may have been examined but in the case of National Insurance Co., vs Pushpa Rana 2009 ACJ 287 Delhi it has been held that the FIR is registered and a Charge-Sheet is filed, then the documents and the investigations are sufficient proof of the negligence and involvement of the Offending Vehicle.

11. Pertinently, the Insurance Company failed to examine the driver of



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the offending truck, who also was an eye witness and the material person who had witnessed the accident. There are no circumstances brought out to establish contributory negligence. *The learned Tribunal has rightly concluded that it is not a case of contributory negligence.*

II. Quantum of Compensation:

12. The **second aspect of challenge is the quantum of compensation.** It is submitted that the Permanent Disability suffered by the injured, was 85% of whole body, but it has been considered as 100% Functional Disability. It may not be overlooked that the learned Tribunal has categorically observed that the injured had become 100% disabled and incapacitated from taking up any job or work. No evidence to the contrary has been made by the Insurance Company. **The Tribunal was right in taking the Functional Disability as 100%.**

13. It is submitted that the **Attendant Charges of Rs.5,00,000/-** has been granted, which are on the higher side and is not supported by any evidence whatsoever.

14. It cannot be overlooked that the disability suffered is 100% whereby indicating that the injured, who was aged about 35 years, would be requiring an Attendant for his lifetime. The Attendant Charges in the sum of Rs.5,00,000/-, cannot be considered on a higher side.

15. The quantum of compensation has been rightly assessed and does not merit any interference.

16. There is no merit in the present Appeal, which is hereby dismissed.

17. The statutory amount be returned to the Insurance Company, in accordance with Rules.



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18. The Appeal is disposed of accordingly along with the pending Application.

**(NEENA BANSAL KRISHNA)
JUDGE**

DECEMBER 10, 2024/RS