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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 24rd January, 2024**
Judgment pronounced on : 12th March, 2024

+ **MAC.APP. 1016/2015 & CM APPL. 16295/2023**
RELIANCE GENERAL INSURANCE CO LTD. Appellant
Through: **Mr. Rajeev M Roy and Mr. P. Srinivasan, Advocates.**

versus

JAGDISH & ORS Respondents
Through: **Ms. Anjali Labh & Mr. Rohit Labh, Advocates for R-1 & R-2**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The appellant/insurance company has preferred the present appeal under Section 173¹ of the Motor Vehicles Act, 1988² assailing the impugned judgment-cum-award dated 09.11.2015 passed by the learned Presiding Officer, Motor Accident Claims Tribunal (West-01), Tis Hazari Courts, Delhi³ in Case No.

¹ 173. Appeals. - (1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court, unless he has deposited with it twenty-five thousand rupees or fifty per cent. of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than [one lakh] rupees.

² MV Act

³ Tribunal



110/2014 whereby the learned Tribunal has imposed the entire liability to pay the compensation to the parents of the deceased Virender Kumar @ Veeran, upon the shoulders of the appellant/insurance company.

2. At the outset, the only plea raised by the learned counsel for the appellant/insurance company is that in terms of testimony of PW-2 Vikram and PW-3 Naresh, who were examined on behalf of the claimants/parents of deceased Virender Kumar @ Veeran. It is clearly brought out that the deceased was driving a motorcycle bearing registration No. DL4SBY-3868 (TVS Model) with three of his friends on the pillion seat when the vehicle struck with the offending truck/ Tanker bearing registration No. DL1GB-6566⁴, resulting in fatal injuries to the driver of the motorcycle and bodily injuries to the other occupants.

3. Having heard the learned counsel for the appellant/insurance company and the learned counsel for the respondents No.1 and 2/ claimants, first things first, there is no challenge to the findings given by the learned Tribunal holding that the accident had occurred due to rash and negligent driving of respondent No.3 herein, i.e. the driver of the offending vehicle. Admittedly, the offending vehicle was insured for third party risk, and there is no challenge to the quantum of compensation awarded to the claimants either.

4. However, the plea by the appellant/insurance company that it was the victim and pillion riders who were also at fault and thereby,

⁴ Offending vehicle



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contribution to the negligence was dealt with by the learned Tribunal as follows:

“42. The insurance company has taken the defence that the four persons / victims were riding as pillion rider on the motor cycle at the time of accident. It has further taken the defence that since the victims have violated the road, rules as contained in Motor Vehicle Act and liable, for contributory negligence.

43. In order to decide this issue, I am being guided by the judgment of Hon'ble Supreme Court of India in case titled as ' National Insurance Co. Ltd Vs. Swaran Sinah & Ors. reported in 2004 ACJ 1 has held in para '102' that insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches of the conditions of policy are so fundamental as are found to have contributed to the cause of the accident. It was further held that Tribunals in interpreting the policy conditions would apply 'the rule of main purpose' and the concept of 'fundamental breach' to allow defences available to the insurer u/s 149(2) of the Act.

44. In the present matter the insurer failed to prove the fact that the said breach was so fundamental in nature' as was found to have contributed to the very cause of action in terms of the judgment of Hon'ble Supreme Court of India in Swaran Singh case(supra). This being a benevolent legislation and rules of the main purpose will apply. Hence the plea of insurer stands rejected.”

5. Unhesitatingly, the aforesaid reasoning is absolutely perverse, incorrect, and cannot be sustained in law. A careful perusal of the digitized Trial Court Record would reveal that PW-2 Vikram, as well as PW-3 Naresh, acknowledged in their evidence that they were riding on the ill-fated motorcycle being driven by the deceased, in addition to a fourth person. Their testimony indicates that they started their journey from Punjabi Bagh, and the accident took place at Madipur. During the course of proceedings/trial before the learned Tribunal, a site plan was marked as Ex.PW-1/1Q prepared by the Investigating Officer during the course of investigation of the present case *vide* FIR No. 396/2012 Police Station Punjabi Bagh, New Delhi under Section



279/338/304-A of the Indian Penal Code, 1860. It goes to suggest that accident had occurred near the middle divider having iron railings which was a 'T Intersection' and both PW-2 and PW-3 were given suggestion by the learned counsel for the appellant/insurance company that since there were four persons riding on the motorcycle, they were not able to apply brakes, resulting in the accident. It is truly unfortunate that the driver, Virender Kumar @ Veeran, died at the young age of 20 years. However, it is a stark case where he was guilty of contributory negligence in causing the accident, which occurred at 3:15 a.m. The motorcycle in question was a TVS Model 100 CC, and there is no need to have any knowledge or rocket science to understand that when the weight on the bike exceeded the allowed limit, it might have led to a delayed response of the motorcycle coming to a halt when the brakes were applied. The Motor Vehicle Inspection Report is unclear as to what was the status of the motorcycle, but it does suggest damage to the rear side, with rear mudguard broken, heavy scratches on the left side, and bending of the leg guard and footrest, besides damage to the accelerator system. It is a common knowledge that accelerator is typically on the left side of the motorcycle, and the brake system is under the right feet. Nevertheless, what cannot be permitted is that people indulging in a joy ride is such a flagrant violation of the laws.

6. Statutory provision where the MV Act also prohibits riding of more than one passenger on a motorcycle is provided as follows-

“Section 128. Safety measures for drivers and pillion riders. - (1) No driver of a two-wheeled motor cycle shall carry more than one person in addition to himself on the motor cycle and no such person shall be carried



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otherwise than sitting on a proper seat securely fixed to the motor cycle behind the drivers seat with appropriate safety measures.

(2) In addition to the safety measures mentioned in sub-section (1), the Central Government may, prescribe other safety measures for the drivers of two-wheeled motor cycles and pillion riders thereon.

[129. Wearing of protective headgear. - Every person, above four years of age, driving or riding or being carried on a motorcycle of any class or description shall, while in a public place, wear protective headgear conforming to such standards as may be prescribed by the Central Government:

Provided that the provisions of this section shall not apply to a person who is a Sikh, if, while driving or riding on the motorcycle, in a public place, he is wearing a turban:

Provided further that the Central Government may by rules provide for measures for the safety of children below four years of age riding or being carried on a motorcycle.

Explanation. - "Protective headgear" means a helmet which, -

(a) by virtue of its shape, material and construction, could reasonably be expected to afford to the person driving or riding on a motorcycle a degree of protection from injury in the event of an accident; and

(b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear.]”

7. The legislative purpose of prohibiting triple riding on a motorcycle is evident that triple or more riding on a motorbike introduces challenges in navigating the vehicle through the crowd, causes issues as to acceleration of speed and even hampers the application of brakes when necessary due to vehicle's momentum. Reference can be invited to the decision by the Punjab and Haryana High Court in the case of **Roshan Lal v. Mahabir Singh**⁵, where the learned Tribunal on appraisal of facts, pleadings and evidence on record held that the deceased had died due to injuries suffered by him in motor vehicular accident that took place on 05.09.2011 due to rash and negligent driving of Swift car bearing registration No. HR-26-BK-

⁵ FAO 6546/2016 (O&M) decided on 26.04.2023



4221 being driven by respondent No.1, owned by respondent no.2 and insured by respondent No.3. The Tribunal awarded compensation as above along with interest @ 8% per annum from the date of filing of the claim petition till realization. Liability to pay the compensation was joint and several. However, the Id. Tribunal held the deceased guilty of contributory negligence to the extent of 30% in view of the fact that admittedly, at the time of accident the deceased was triple-riding on the motorcycle bearing registration No. HR-26-AG-2006 along with his father Roshan Lal and brother Ombir.

8. In view of the foregoing discussion, I find that the deceased was guilty of contributory negligence in causing the accident. Although unfortunately, a young life at the age of 20 years was lost, resulting in great loss and discomfort for the parents, but then it was their responsibility alone to teach their son and instil in him respect for the laws of the land. Unfortunately, they suffer irreparable pain and anguish on the death of their young son, but this Court cannot allow any premium to be given for such kind of audacious actions violating the traffic laws. It is in evidence that the victim was not even wearing helmet either. Therefore, the deceased was guilty of contributory negligence, and the amount of compensation is required to be reduced to 50%. As per the order dated 26.05.2016, 40% amount of compensation with interest has already been released to the claimants/parents of the deceased. Let the remaining 10% of the amount of compensation be also released to them with interest as directed by the learned Tribunal within four weeks from today, failing



which, appellant/insurance company shall be liable to pay interest @ 12% from the date of this judgment till realization.

9. The appeal along with pending application stands disposed of accordingly.

DHARMESH SHARMA, J.

MARCH 12, 2024

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