
(2012) 12 DEL CK 0344
In the Delhi High Court
Case No : MAC. App. 334 of 2011

Reliance General Insurance Company Ltd.	APPELLANT
Vs	
Smt. Bilkish and Others	RESPONDENT

Date of Decision : 14-12-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2012) 12 DEL CK 0344

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Sameer Nandwani, for the Appellant; Anshuman Bal, for R-1 and R-2 and Mr. D.K. Pandey, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—This Appeal is directed against a judgment dated 30.11.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 3,75,000/- was awarded for the death of Shahrukh, a minor aged 17 years in a motor vehicle accident which occurred on 22.06.2010. The quantum of compensation awarded is not challenged by Respondents No. 1 and 2 who were the Claimants before the Claims Tribunal.

2. The only ground of challenge raised in the instant Appeal is that the deceased Shahrukh was riding on a two wheeler along with two other persons. Thus, he himself was negligent in causing the accident or in any case, there was contributory negligence on the part of the deceased.

3. The Claims Tribunal dealt with the issue of negligence and the fact that the deceased was a minor and did not possess a driving licence in Paras 9 to 13 of the impugned judgment which are extracted hereunder:-

9. To determine the negligence, I am being guided by the judgment of Hon'ble High Court of Delhi in National Insurance Company Ltd. Vs. Smt. Pushpa Rana

and Others, wherein in the Hon''ble High Court held that in case the petitioner files the certified copy of the criminal record or the criminal record showing the completion of the investigation by the police or the issuance of charge sheet u/s 279/304A IPC or the certified copy of the FIR or in addition the recovery memo on the mechanical inspection report of the offending vehicle, these documents are sufficient proof to reach to the conclusion that the driver was negligent. It was further held that the proceedings under the Motor Vehicles Act are not akin to the proceedings in a civil suit and hence strict rules of evidence are not required to be followed in this regard. Further, in Kaushnumma Begum and Others v/s New India Assurance Company Limited, 2001 ACJ 421 SC the issue of wrongful act or omission on the part of driver of the motor vehicle involved in the accident has been left to a secondary importance and mere use or involvement of motor vehicle in causing bodily injuries or death to a human being or damage to property would made the petition maintainable u/s 166 and 140 of the Act. It is also settled law that the term rashness and negligence has to be construed lightly while making a decision on a petition for claim for the same as compared to the word rashness and negligence as finds mention in the Indian Penal Code. This is because the chapter in the Motor Vehicle Act dealing with compensation is a benevolent legislation and not a penal one.

10. During the course of arguments, the learned counsel for the Insurance Company had taken a plea that the deceased also contributed to the negligence as he was driving the motorcycle without driving licence. It was stated by the counsel for the Insurance Company that in the petition itself it has been mentioned that the deceased was aged around 17 years, the age on which he is not entitled to be issued with a driving licence, he was driving the motorcycle. The Insurance Company requested that the deceased must also be held liable for the contributory negligence in the accident.

11. The learned counsel for the petitioners rebutted the said arguments by saying that merely because the deceased was driving the motorcycle without driving licence it does not ipso facto lead to the conclusion that he contributed to the very cause of accident.

12. I have heard the parties at length. The Hon''ble Supreme Court of India in a judgment in Sudhir Kumar Rana Vs. Surinder Singh and Others, have categorically laid down the law in Para No. 9, which is reproduced as under:

9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.

13. In view of the judgment of Hon"ble Supreme Court of India, I do not find any force advanced by the learned counsel for the Insurance Company in his plea regarding the contributory negligence of the deceased and hence the same stands rejected.

4. The deceased Shahrukh was not so small that he could not handle a two wheeler at all. Of course, as per the law driving licence to drive a two wheeler with gear could be issued to a person who is not less than 18 years of age, but unless some evidence was produced by the Appellant Insurance Company to say that there was some negligence on the part of deceased Shahrukh, it could not be said that there was contributory negligence.

5. The driver of the offending tractor bearing No. HR-13E-1823 did not come forward to rebut the evidence produced by the Claimants. In this view of matter, it cannot be said that there was any negligence on the part of deceased Shahrukh or that he contributed to the accident.

6. The Appeal, therefore has to fail; the same is accordingly dismissed.

7. The statutory deposit of Rs. 25,000/- be refunded to the Appellant Insurance Company. Pending Applications also stand disposed of.