
(2020) 01 DEL CK 0306

In the Delhi High Court

Case No : MAC.APP. No. 24 Of 2020, Civil Miscellaneous Application No. 2322 Of 2020

United India Insurance Co Ltd

APPELLANT

Vs

Asharfi Devi & Ors

RESPONDENT

Date of Decision : 21-01-2020

Acts Referred:

Motor Vehicles Act, 1988 — Section 128, 194C

Citation : (2020) 01 DEL CK 0306

Hon'ble Judges : Najmi Waziri, J

Bench : Single Bench

Advocate : Pankaj Seth

Final Decision : Dismissed

Judgement

Najmi Waziri, J

CM APPL. 2324/2020 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed-off.

MAC.APP. 24/2020 & CM APPL. 2322/2020

3. This appeal impugns the award of compensation dated 24.09.2019 passed by the learned MACT in Claim Petition No. 76655/2016, on the ground that there was contributory negligence on the part of the deceased, who held only a learner's licence but was riding the motor-cycle alongwith the pillion. It is the appellant's case that a learner's licence holder cannot ride a two wheeled motor vehicle with a pillion, as that is a traffic violation. The Court is of the view that a traffic violation by itself cannot be assumed to have contributed to the accident. For contributory negligence, the actual contribution to the accident ought to be proven i.e. there should be a link between his riding with a pillion and the accident. The facts of the case are rather ghastly. A young rider on a motor-cycle

was crushed between two DTC buses when both of them were being driven in a rash and negligent manner. The nature of the accident has been recorded in the impugned order, inter alia, as under:-

"3. Brief facts of the vehicular accident as averred in the claim petitions are that at about 08:30 AM on 30.08.2014, deceased Ravi Kant @ Ravi and his friend injured Praveen Kumar were going on motorcycle bearing registration No. DL-4S-BG-7977 towards Petrol Pump Ranhola from their house. The said motorcycle was being driven by deceased Ravi Kant. When they reached near Karan Vatika, Najafgarh- Nangloi, the offending DTC Bus bearing No. DL-1PC-8994 in order to overtake another offending DTC Bus bearing No. DL-1PC-8921, took sudden turn towards extreme left of the road and hit another DTC Bus bearing No. DL-1PC-8858 which was stationed on the road. Due to this collision, the deceased had applied sudden brake to avoid collision with the offending DTC Bus bearing No. 8994, but the meantime, the other offending DTC Bus bearing No. DL-1PC-8921 came at a high speed, in a rush and negligent manner and hit the motorcycle of the deceased from behind with a great force. After hitting the motorcycle, it hit the offending Bus bearing No. DL-1PC-8994. Due to the collision of the two buses, the motorcycle was squashed between the buses and both the motorcyclist fell on the road. Resultantly, they sustained grievous injuries and became unconscious. Thereafter, Ravi Kant (since deceased) was removed to Sanjay Gandhi Memorial Hospital and injured Parveen Kumar was removed to Mansa Ram Hospital, where their MLCs were prepared. Deceased Ravi Kant was further removed to Sajfdarjung Hospital where he succumbed to his injuries on 30.08.2014.

18. The fact that motorcycle of the deceased Ravi Kant was squashed between the two offending buses is further established from the Mechanical Inspection Report of the motorcycle. The bare perusal of the Mechanical Inspection Report of the motorcycle reflects that it was found with fresh damages on front, rear side and left side. The Mechanical Inspection Report of the offending bus bearing registration No. DL-1PC-8921 reflects that it was found with fresh damages i.e. front wind screen glass broken; dashboard bracket bended; steering system damaged; engine fan system damaged and engine system damaged. The Mechanical Inspection Report of another offending bus bearing registration No. DL-1PC-8994 reflects that it was found with fresh damages i.e. front bumper damaged and dislocated; front body damaged from left side; front windscreen glass broken; dashboard bracket bended; rear body, bumper and both tail light damaged; rear windscreen glass broken; rear side engine bonnet damaged and engine system damaged. The Mechanical Inspection Report further reveals that the motorcycle was so severely damaged that it was found not fit for road test."

4. What emanates from the above is that there was rash and negligent driving by both the buses and there was no iota of contribution to the accident by the deceased rider especially on the ground that he had a pillion on the vehicle. The deceased made a valiant attempt to avoid a mishap, little did he know that the

menacing DTC buses had laid out a sinister chakravayuh, from which there was no escape. There is neither any indication nor even a whisper of him having contributed to the said accident. Apropos the principle of contributory negligence, the Supreme Court in Mohammed Siddique & Anr. vs. National Insurance Co. Ltd. & Ors. 2020 SCC OnLine SC 24, has held inter alia as under:

"13.The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two-wheeled motor cycle, not to carry more than one person on the motor cycle. Section 194-C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW-3 to the effect that 2 persons on the pillion added to the imbalance."

(emphasis supplied)

5. In view of the above, the contention of the learned counsel for the appellant that there was contributory negligence on the part of the deceased rider is untenable and is accordingly rejected.

6. The learned counsel for the appellant next impugns the award of Rs. 40,000/-

granted towards 'loss of consortium' by the impugned order, relying upon the dicta of the Supreme Court in Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram & Ors 2018 SCC OnLine SC 1546.

7. A similar relief was granted by this Court in National Insurance Co. Ltd. vs. Lokesh Verma & Ors., MAC. APP. 762-763/2019, decided on 02.09.2019, relying upon the dicta of the Supreme Court in Magma (supra), wherein this Court had awarded compensation towards 'loss of love and affection' and 'loss of consortium' @ Rs. 50,000/- and Rs. 40,000/- respectively, to each of the claimants. In the aforesaid judgment, it was held as under:

"....

10. The Court would note that in terms of Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram & Ors., 2018 SCC OnLine SC 1546, each of the two claimants would be entitled to an award of compensation at the rate of Rs. 40,000/- and Rs. 50,000/- towards 'loss of consortium' and 'loss of love and affection' respectively. The impugned order has only awarded Rs. 40,000/- towards 'loss of consortium', same would have to be supplemented by another Rs. 40,000/- towards "loss of consortium" and Rs. 1,00,000/- towards "loss of love and affection". 50,000/-x2) "

8. SLP (Civil) No(s). 25316-25317/2019, against the said judgment was dismissed by the Supreme Court on 24.10.2019.

9. A similar relief was also granted by this Court vide judgment dated 13.01.2020 in The New India Assurance Co. Ltd vs. Zamila & Ors., MAC APP. 8/2020.

10. Therefore, the contention of the appellant against this grant of compensation is without merit and is accordingly rejected. Resultantly, the appeal, alongwith pending applications, is dismissed.

11. The parents of the deceased are granted compensation towards 'loss of love and affection' and 'loss of consortium' @ Rs. 50,000/- and Rs. 40,000/-, in terms of Magma (supra). The additional amount payable to the claimants-parents of the deceased shall be Rs. 1,40,000/- (Rs. 50,000x2 +Rs. 40,000/-x2=Rs. 1,80,000/- less Rs. 40,000/- already awarded).

12. Let the awarded amount and the aforesaid additional amount, alongwith interest @9% p.a. from the date of filing of the claim petition till its realization, be deposited before the learned Tribunal, within three weeks from the date of receipt of a copy of this order, to be released to the beneficiaries of the Award, in terms of the scheme of disbursement specified therein.

13. The statutory amount, alongwith interest accrued thereon, be deposited into the 'AASRA' Fund created by this Court for the treatment and rehabilitation of burn victims.