

Before Darshan Singh, J.

NATIONAL INSURANCE CO. LTD. — *Appellant*

versus

SATPAL SINGH — *Respondent*

FAO No. 7419 of 2010

August 22, 2016

Motor Vehicle Accident Claim Tribunal Act — S. 4 — An absence of driving license will not ipso facto establish negligence on part of victim — Present appeal filed by insurance company — Deceased was 16 ½ years of age — He was not having any driving license — Contended that he will be presumed to be contributory negligent — The Ld. Tribunal has not determined his contributory negligence Appeal Dismissed.

Held, that there is no dispute with the proposition of law that as per Section 3 of the Act a driving license is required to drive the vehicle in any public place. The absence of driving license required under the provisions of the Act but the absence of the driving license will not be ipso facto establishes the negligence on the part of the victim.

(Para 9)

Further held, that as per provision of Section 4, a person after detaining the age of 16 years is entitled to drive the motorcycle with engine capacity not exceeding 50 cc in a public place. In the absence of any evidence, to show as to what was the engine capacity of the motorcycle, it cannot be concluded that he was not competent to drive the motorcycle in question.

(Para 8)

Further held, that moreover, in the instant case as per the evidence on record the Motorcycle of deceased was stationary when the accident has taken place. So there is no evidence to establish that the deceased himself was negligent for causing this accident as he was in any way contributory negligent.

(Para 11)

Vandana Malhotra, Advocate, *for appellant.*

None for respondents.

DARSHAN SINGH, J.

(1) The present appeal has been preferred against the award dated 09.10.2010 passed by the learned Motor Accidents Claims Tribunal, Patiala, (hereinafter called the "Tribunal"), vide which respondent No.2-claimant Surinderpal Kaur has been awarded compensation to the tune of Rs.4,66,000/- on account of death of her son Seeshpal Singh in the motor vehicular accident, which took place on 19.09.2008.

(2) The appellant—Insurance Company, who was impleaded as respondent No.3 in the claim petition has preferred this appeal to assail the aforesaid award.

(3) I have heard learned counsel for the appellant and have gone through the paper-book carefully.

(4) Learned counsel for the appellant contended that the deceased was 16 and half years of age. He was not having any driving licence. So, he was not legally entitled to drive the vehicle. Thus, he will be presumed to be contributory negligent for causing the accident but the learned Tribunal has not determined his contributory negligence. She contended that the deceased was driving the motorcycle in violation of the statutory provisions of law. The claimants being his parents were liable for allowing him to drive the vehicle, so they cannot claim the benefit of their own wrong and were not entitled for any amount of compensation.

(5) I have duly considered the aforesaid contentions.

(6) As per the facts of the case, on 19.09.2008 at about 11:00 a.m. deceased after taking the milk from the retail counter of Verka Milk Plant, Sirhind Road, Patiala started his motorcycle bearing registration No.PB-11Q-9356 for going to his house. He stopped the motorcycle at the divider cut of the road for waiting the traffic to pass-over so that he may cross the road. In the meanwhile one Scorpio bearing registration No.CH- 03V-0018 being driven at a very high speed in a rash and negligent manner came from the Sirhind side and hit the motorcycle of the deceased. Due to which, he fell on the road and suffered fatal injuries. So, the accident has taken place when the motorcycle was stationary. The deceased was waiting for passing over of the traffic on the road to cross the road. He had stopped his motorcycle at the divider cut when his motorcycle was struck by the Scorpio bearing registration No.CH-03V-0018 being driven by respondent No.4. From the statement of PW2 Surjit Singh, the witness

of occurrence it is established that respondent No.4 the driver of Scorpio was driving the Scorpio at a high speed in a rash and negligent manner and struck the motorcycle of the deceased. No doubt respondent No.4 Bakshish the driver of the Scorpio has stepped into the witness box as RW2 and he has alleged that he was driving the vehicle on the correct side of the road at normal speed and the accident has taken place due to negligence of the deceased who was minor and not competent to drive the motorcycle. He has not deposed about the actual mode of accident in rebuttal to evidence of RW2 Surjit Singh, the witness of occurrence. As per the case of the claimants, the motorcycle was stationary at the time of the occurrence. So, it cannot be concluded that the deceased was negligent in driving the motorcycle.

(7) This fact is not disputed that at the time of the accident the age of the deceased was 16 and half years. Section 4 of the Act reads as under : -

“4. Age limit in connection with driving of motor vehicles. – (1) No person under the age of eighteen years shall drive a motor vehicle in any public place:

Provided that [a motor cycle with engine capacity not exceeding 50 cc] may be driven in a public place by a person after attaining the age of sixteen year.

(2) Subject to the provisions of section 18, no person under the age of twenty years shall drive a transport vehicle in any public place.

(3) No learner’s licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this section.”

(8) As per the aforesaid provision of the law, a person after attaining the age of 16 years is entitled to drive the motorcycle with engine capacity not exceeding 50 cc in a public place. In the instant case, the respondents have not led any evidence to show as to what was the engine capacity of the motorcycle being driven by the deceased. So, in the absence of such evidence it cannot be concluded that he was not competent to drive the motorcycle in question.

(9) There is no dispute with the proposition of law that as per Section 3 of the Act a driving licence is required to drive the vehicle in any public place. The absence of driving licence required under the

provisions of the Act may be a contravention of the provisions of the Act but the absence of the driving licence will not *ipso facto* establishes the negligence on the part of the victim. In case *Gujarat State Road Transport Corporation versus Thacker Narottam Kalyanji*¹ the Division Bench of Hon'ble Gujarat High Court while taking the note of *Mahendra Singh Sohal versus Rameshkumar and others*² has held as under:

“13. In *Mahendrasingh Sohal versus Rameshkumar & Ors. 1981 ACJ 326*, it has been observed that contributory negligence is not to be presumed merely from the fact that the driver did not hold a driving licence. It was further held that if the driver was driving the motor cycle with due care and caution in that case, it could not be held that he was liable for contributory negligence. In the case before us, the Tribunal found that there is no negligence on the part of the deceased. As such the plea of contributory negligence cannot be accepted. The Tribunal was therefore justified in rejecting the appellant's plea of contributory negligence of Anil Kumar.”

(10) The same ratio of law has been laid down by the Division Bench of Hon'ble Allahabad High Court in case *National Insurance Co. Ltd. versus Ajj Ul-Haq and Anr.*³.

(11) Moreover, in the instant case as per the evidence on record the motorcycle of the deceased was stationary when the accident has taken place. So, there is no evidence to establish that the deceased himself was negligent for causing this accident or he was in any way contributory negligent.

(12) Learned counsel for the appellant-Insurance Company has also contended that the learned Tribunal has wrongly applied the multiplier of 19. Even as per the age of the deceased the multiplier of 18 should have been applied. No doubt the learned Tribunal has wrongly applied the multiplier. It should have applied the multiplier of 18 instead of 19 but at the same time, there is no justification to reduce the amount of compensation as the learned Tribunal has not awarded any amount towards the treatment of the deceased in Amar Hospital, Patiala and Daya Nand Medical College, Ludhiana. No

¹ 2000(4) RCR (Civil) 507

² 1981 ACJ 326

³ 2004 ACJ 2042

amount has been awarded towards loss of love and affection and less amount has been awarded towards funeral expenses.

(13) Thus, I do not find any ground to interfere with the impugned award passed by the learned Tribunal.

(14) Consequently, the present appeal is without any merit and the same is hereby dismissed.

A. Aggarwal