



IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 6th OF JANUARY, 2025

MISC. APPEAL No. 2316 of 2020

RAJENDRA RATHORE AND OTHERS

Versus

RAMESH KAUSHAL AND OTHERS

Appearance:

Shri Arshad Ali M. Haque - Advocate for appellants.

Shri Keshav Pathak- Advocate for respondent No.1.

Shri Ram Vilas Sharma- respondent No.2.

ORDER

This Miscellaneous Appeal, under Section 173(1) of the Motor Vehicles Act, 1988, has been filed by appellants/driver and owner against award dated 29.01.2020 passed by VI Motor Accident Claims Tribunal, Shivpuri (M.P.) in Motor Accident Claim Case No.173/2018, by which Claims Tribunal has held that in absence of permit, the Insurance Company cannot be held liable and after applying the principle of pay and recover it has been directed that compensation amount shall be paid by the Insurance Company with right to recover the same from owner.

2. Challenging the award passed by the court below, it is submitted by counsel for appellants that so far as violation of insurance policy on the ground of absence



of permit is concerned, the law is settled and the Claims Tribunal did not commit any mistake by exonerating the Insurance Company as well as by applying the principle of pay and recover. However, it is submitted that it is the case of contributory negligence. It is submitted that according to the claimant on 21.07.2017 at about 05:30 in the morning he was going on his motorcycle bearing registration No.MP33-BA-8838 with two pillion riders. The motorcycle was being driven by the claimant. As soon as the motorcycle reached in front of Panchmukhi Hanuman Mandir, it was alleged that appellant No.1 who was the driver of offending Auto bearing registration No.MP33-R-1934 dashed the motorcycle. As a result, Ankita sustained injuries on her head and shoulder and whereas claimant/respondent No.1 sustained injury on knee of his right leg ankle as well as head. Veeru Gupta sustained injury on his right hand and leg. Since respondent No.1/complainant sustained fracture of his knee, therefore, he was hospitalized. It is submitted that it is clear from the claim petition that three persons were riding on the motorcycle. Furthermore, claimant/respondent No.1 was not having driving licence and therefore the Claims Tribunal committed material illegality by not applying the principle of contributory negligence.

3. *Per contra*, appeal was vehemently opposed by counsel for respondent No.1. It is submitted that even if respondent No.1 was not having driving licence, still it cannot be said that he was also negligent in driving the vehicle.

4. Heard learned counsel for the parties.

5. The Supreme Court in the case of **Saraswati Palariya & Ors. Vs. The New India Assurance Company Ltd & Ors.** reported in **2019 ACJ 42 (SC)** has held that if the deceased was driving the vehicle without driving licence then that by itself cannot be sufficient to hold that case would fall within the meaning of contributory negligence. However, in the present case, not only respondent No.1 was not having the driving licence but three persons were riding on the



motorcycle. Motorcycle is a two-wheeler and only two persons i.e. driver and pillion rider can ride at a time.

6. Section 128 of the Motor Vehicles Act, 1988, reads as under:

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 otherwise than sitting on a proper seat securely fixed to the motor cycle behind the driver's 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.

Motorcycle has been defined under Section 2(27) of the Motor Vehicles Act, 1988, which means a two-wheeled motor vehicle, inclusive of any detachable side-car having an extra wheel, attached to the motor vehicle.

7. In the present case, three persons were riding on the motorcycle. Under these circumstances, it is clear that respondent No.1 who was driving the motorcycle was not in complete control of motorcycle. Furthermore, absence of driving licence clearly indicates that he was not declared fit to drive the motorcycle. Under these circumstances, where persons more than the sitting capacity of vehicle were riding on the bike coupled with the fact that driver was not having licence then the case would clearly fall within the category of contributory negligence. Under these circumstances, this Court is of the considered opinion that since respondent No.1 was not having a driving licence coupled with the fact that he was driving the motorcycle with two pillion riders which was in excess of sitting capacity of motorcycle, therefore, the Claims Tribunal committed material illegality by holding that the principle of contributory negligence would not apply.

8. Under these circumstances, finding given by the Claims Tribunal with



regard to the fact that respondent No.1 was not equally negligent is hereby set aside. It is held that respondent No.1 was equally negligent in driving the vehicle which resulted in the accident.

9. Accordingly, it is held that appellants No.1 and 2 are liable to pay only 50% of compensation amount awarded by the Claims Tribunal. As a result, it is directed that out of total compensation amount of Rs.3,66,224/-, appellants No.1 and 2 are jointly and severally liable to pay Rs.1,83,112/-. Other conditions of the award including the condition of pay and recover would remain intact.

10. With aforesaid modification, award dated 29.01.2020 passed by VI Motor Accident Claims Tribunal, Shivpuri (M.P.) in Motor Accident Claim Case No.173/2018 is hereby affirmed.

11. Appeal succeeds and is *allowed* to the extent indicated above.

(G.S. Ahluwalia)
Judge