
(2020) 1 ACC 478

Delhi High Court

Case No: MAC.APP. No. 812 Of 2019, Civil Miscellaneous Application No. 44169, 44171 Of 2019

United India Insurance
Co Ltd

APPELLANT

Vs

Reshma & Ors

RESPONDENT

Date of Decision: Jan. 8, 2020

Citation: (2020) 1 ACC 478

Hon'ble Judges: Najmi Waziri, J

Bench: Single Bench

Advocate: Pankaj Seth

Final Decision: Dismissed

Judgement

Najmi Waziri, J

CM APPL. 44170/2019 (Exemption)

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed-off.

MAC.APP. 812/2019, CM APPL. 44169/2019 & CM APPL. 44171/2019

3. This appeal impugns the order dated 09.05.2019 passed by the learned MACT in MACP No. 48/11 (New No. 49977/16), on the ground that

contributory negligence of only 20% apportioned on the rider of the scooter bearing no. DL 8S L 7067, which had two pillion riders, is on the lesser

side. The learned counsel for the appellant contends that it should be atleast 50%. The impugned order has dealt with this issue as under:-

wrong side of the road. He further argued that the triple riding was being done on the said scooter at the time of accident. He has thus

argued that on the facts of the present case, some amount on account of contributory negligence on the part of deceased Jagdish Sisodia

should be deducted.

On the other hand, Id counsel for petitioner has argued that there was no contributory negligence on the part of the deceased as the

accident occurred only due to the rash and negligent driving of R1. He also referred to the MLC of R1 which also mentioned the smell of

alcohol.

It is evident from the record that the respondents have not lead any evidence in this case to prove the factum of contributory negligence on

the part of the deceased Jagdish Sisodia. The record would, however, show that both PW3 and PW4 have admitted in their cross

examination that they were triple riding on the scooter being driven by the deceased. Both PW3 & PW4 have further admitted that the

offending vehicle was coming on the correct side of its road i.e. the offending vehicle was being driven on the correct side of the road. PW4

has admitted during cross examination that the deceased took the right turn while coming out of the depot. The site plan as part of the DAR

would also show that the offending vehicle was coming on the correct side of its road whereas, the said scooter at the time of accident was

being driven on its wrong side of the road. Further, the MLC of the deceased mentions that he was under the influence of alcohol although

the quantity of consumed liquor is not on the record. It would show that the deceased at the time of accident was driving the above said

scooter under the influence of alcohol was driving the scooter on the wrong side of the road at the time of accident and was also driving the

said scooter triple riding.

In view of the above said discussion, some amount of contributory negligence on the part of the deceased while driving the said scooter was

there in the present case which is assessed at 20% on the part of the deceased.

Issue no. 1 is decided in favour of petitioners and against the respondents to the effect that the case accident was caused at the above said

date, time and place due to the rash and negligent driving of R1 of the offending vehicle and further that the injured was also guilty of

contributory negligence to the extent of 20% in causing the accident.

4. The Site Plan prepared by the police is as under:-

5. It shows that the motor accident occurred virtually in the middle of the road at a trisection, but more on the left side of the road. Therefore, the

scooterist was not entirely at fault. In the circumstance, for the learned Tribunal to have apportioned 20% contributory negligence upon the scooterist

does not call for any interference.

6. The learned counsel for the appellant next contends that recovery rights should have been granted against the driver of the insured four-wheeler i.e.

Tavera car bearing registration no. DL-1Y-B-1091, because he was under the influence of alcohol. This contention was rejected by the learned

Tribunal because the degree of alcohol in the driver's blood was not tested i.e. it was not proven that whether it was above the permissible limit of

30mg per 100ml of blood. Likewise, the blood of the deceased-scooterist too was not tested and the contention that he was under the influence of

alcohol, is not supported by any evidence either. The conclusion that the deceased-scooterist was under the influence of alcohol is only hearsay and

not proven.

7. In view of the above, there is no reason to interfere with the impugned order. The appeal is without merit and is accordingly dismissed. The pending

applications too are dismissed.

8. The statutory amount, alongwith interest accrued thereon, be deposited into the AASRA Fund created by this Court.