SUPREME COURT OF INDIA

Sudhir Kumar Rana

Vs.

Surinder Singh

C.A.No.3321 of 2008

(S.B. Sinha and Lokeshwar Singh Panta JJ.)

06.05.2008

JUDGMENT

S.B.Sinha, J:

1. Leave granted.

2. Appellant was driving a two-wheeler bearing registration No.DL-45 AQ 0731 on 30.10.2003. He was aged about 17 = years. He met with an accident, as allegedly respondent No.1 was driving a mini-truck rashly and negligently. He suffered the following injuries in the said accident:

> "1. Crush injury over right root.
>
> 2. Fracture fifth M.T. bone and joint.
>
> 3. Fracture P.P. little toe. (Total 3 fractures)
>
> 4. Abrasions over left side trunk, right-foot, right-leg, right-hand and left-knee
>
> 5. Profusely Bleeding.
>
> 6. Abrasions and blunt injuries all over body."

3. Appellant filed a claim petition under Section 166 of the *Motor Vehicles Act, 1988* (for short "the Act"). The Tribunal opined that as the appellant did not possess a driving licence, he must be held to have contributed to the accident. Although a sum of Rs. 30,000/- was awarded by way of compensation, in view of the finding that he was guilty of contributory negligence on his part, found to be entitled to a sum of Rs. 12,000/- only. The High Court by reason of the impugned judgment has dismissed the appeal preferred by him under Section 173 of the Act.

4. The question which arises for consideration is as to whether the appellant can be said to have guilty of contributory negligence. Ordinarily, the doctrine of contributory negligence is not applicable in case of children with the same force as in the case of adults.

5. We do not intend to lay down a law that a child can never be guilty of contributory negligence but ordinarily the same is a question of fact. [See *Muthuswamy and another v. S.A.R. Annamalai and others*[1] .

6. A contributory negligence may be defined as negligence in not avoiding the consequences arising from the negligence of some other person, when means and opportunity are afforded to do so. The question of contributory negligence would arise only when both parties are found to be negligent.

7. The question is, negligence for what? If the complainant must be guilty of an act or omission which materially contributed to the accident and resulted in injury and damage, the concept of contributory negligence would apply. [See *New India Assurance Company Ltd. v. Avinash*[2]] In *T.O. Anthony v. Kavarnan & Ors.*[3], it was held

> "6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.
>
> 7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore where the injured is he partly liable, the principle of 'composite negligence' will not apply nor there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error."

8. 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 which was being driven 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.

9. The matter might have been different if by reason of his rash and negligent driving, the accident had taken place.

10. We, therefore, are of the opinion that the impugned judgment cannot be sustained which is set aside accordingly. Appellant is entitled to the said sum of Rs. 30,000/- by way of compensation with interest at the rate of 7=% per annum from the date of the award till making of the payment. Even otherwise there is no reason as to why in view of the nature of the injuries he has suffered, he should be deprived of even the petty sum of Rs.30,000/- by way of compensation. The appeal is allowed with the aforementioned direction. No costs.

[1][1990 ACJ 974]
[2]1988 ACJ 322 (Raj.)
[3][(2008) 3 SCC 748