

Devisingh Vs. Vikramsingh and ors.

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Court : Madhya Pradesh

Decided On : Oct-17-2007

Reported in : 2008ACJ393; AIR2008MP18; 2007(4)MPHT535; 2008(1)AIRKarR349(FB)(MP); 2008AIHC400; (MP)(FB)

Judge : A.K. Patnaik, C.J., ;A.M. Sapre and ;S.K. Seth, JJ.

Appellant : Devisingh;united India Insurance Co. Ltd.

Respondent : Vikramsingh and ors.;devisingh and ors.

Judgement :

ORDER

A.K. Patnaik, C.J.

1. The relevant facts leading to this reference are that one Devisingh was a pillion rider on a motor cycle bearing registration No. MP-09-LF-1486 driven by Meharbansingh. The motor cycle met with an accident with a jeep bearing registration No. MP-09-W-2291 driven by Vikramsingh. As a consequence of the accident, the driver of the motor cycle as well as the two pillion riders on the motor cycle sustained injuries and they filed claim petitions under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

2. The Tribunal awarded a compensation of Rs. 1,95,100/- with interest at the rate of 6% per annum from the date of filing of the claim petition in favour of Devisingh after holding that the negligence on the part of the jeep driver was 80% and the

negligence on the part of the motor cycle driver was 20%. Aggrieved by the award, the United India Insurance Co. Ltd. filed M.A. No. 314/2007 and Devisingh filed M.A. No. 670/2007. When the appeals were heard by the Division Bench, a contention was raised on behalf of the United India Insurance Co. that Section 128 of the Act provides that no driver of a two wheeled motor cycle shall carry more than one person in addition to himself on the motor cycle and in the present case, the driver of the motor cycle was carrying two pillion riders in violation of Section 128 of the Act and, therefore, the compensation awarded by the Tribunal in favour of Devisingh, who was one of the two pillion riders, should have been reduced on account of his contributory negligence.

3. In its order dated 24-8-2007 passed in the present appeals, the Division Bench found that in *Manjo Bee and Ors. v. Sajjad Khan and Ors.* 2000 ACJ 737, a Division Bench of this Court has taken a view that carrying more passengers than one on motor cycle is in violation of Section 128 of the Act but by carrying more persons, one cannot be said to be negligent as a person having more than one pillion rider can also be more careful than a person going alone on a motor cycle and accordingly repelled the plea of contributory negligence on behalf of the driver of the motor-cycle raised in that case. The Division Bench further found that in *National Insurance Co. Ltd. v. Smt. Uma Tiwari and Ors.* 2007 (I) MANISA 204 (M.P.), another Division Bench of this Court accepted the contention that the deceased who was driving the scooter along with three other persons by violating the provisions of Section 128 of the Act was negligent and had accordingly determined the liability on the owners of the jeep and the scooter in the proportion of 70 : 30 and another Division Bench of this Court in *Kanti Devi Sikarwar and Ors. v. Om Prakash and Ors.* 2007 (1) MPWN 88 = 2007 (1) M.P.H.T. 447 has held that Section 128 of the Act bars riding of more than one pillion rider on the motor cycle and in that case the deceased who was driving the motor cycle in violation of the provisions of Section 128 of the Act was guilty of contributory negligence. By the order dated 24-8-2007, the Division Bench accordingly referred the following two questions to a Larger Bench:

(1) Whether by violation of Section 128 of the Motor Vehicles Act, 1988 by a motorcyclist, a presumption can arise with regard to his negligence and thereby

making it contributory as far as he is concerned?

(2) Whether a pillion rider while being carried in a motor cycle in violation of Section 128 of the Act contributes to the causation of the accident simply because of statutory violation, or negligence as a matter of fact should arise and further whether he can put forth the stance that there has been a composite negligence by the offending vehicle as well as by the driver of a two wheeled motor cycle?

4. Mr. G.M. Chaphekar, learned Senior Advocate, appearing for the appellant relying on the Ratanlal & Dhirajlal, The Law of Torts, 25th Edition 2006 by Justice G.P. Singh submitted that negligence on the part of the plaintiff which can be described as contributory negligence must have a causal connection with the damage suffered by him and hence violation of Section 128 of the Act by itself does not amount to contributory negligence. He submitted that the decision of the Division Bench in Manjo Bee and Ors. v. Sajjad Khan and Ors., that violation of Section 128 of the Act by itself does not amount to contributory negligence on the part of the driver of the motor cycle or the pillion riders, therefore, lays down the correct law.

5. Mr. V.P. Khare, learned Counsel, appearing for the United India Insurance Co. Ltd., on the other hand, cited the decision in Managing Director, Tamil Nadu State Transport Corporation Ltd. v. Abdul Salam and Ors. 2004 ACJ 1827, in which a Division Bench of the Madras High Court has held that motor cycle and any other two wheeler is meant only for two persons, the rider and a pillion rider and if more than two persons travel on a motor cycle or any other two wheeler, undoubtedly, such action of the individual would become illegal and unauthorized and the rider of the two wheeler cannot have complete control over the vehicle. He also relied on Ratanlal & Dhirajlal, The Law of Torts by Justice G.P. Singh and submitted that the test to be applied is to find out whether the plaintiff or the deceased had failed to take reasonable care of his own safety which had contributed to the damage. He referred to the judgment of the Supreme Court in Jacob Mathew v. State of Punjab and Anr. : 2005 CriLJ3710 , wherein one of the meanings of the word 'negligence' as stated in Charlesworth & Percy (Tenth Edition, 2001) has been quoted as breach of duty to take care that is imposed by either common or statutory law.

According to Mr. Khare, Section 128 of the Act imposes a statutory duty on the driver as well as the pillion rider of a motor cycle and provides that in a motor cycle, in addition to the rider, there can be only one pillion rider and whenever breach of this statutory duty occurs, there is negligence on the part of the driver or the pillion riders.

6. Mr. M. Jindal, learned Counsel, appearing for the United India Insurance Co. in a connected Miscellaneous Appeal supported the arguments of Mr. Khare and further submitted that Rule 123 of the Central Motor Vehicles Rules, 1989 (for short 'The Rules') will show that the motor cycle is made in such a manner that it can accommodate only the driver and one pillion rider and this is why Section 128 of the Act provides that only a driver and a pillion rider can travel in a motor cycle. He submitted that if a driver or pillion rider violates Section 128 of the Act, he commits a breach of duty to take care of his own safety and is guilty of the negligence when an accident takes place.

7. In *Ratanlal & Dhirajlal, The Law of Torts* by Justice G.P. Singh, the following propositions of law regarding contributory negligence have been stated:

It has to be noted that negligence of the plaintiff which can be described as contributory negligence must have causal connection with the damage suffered by him.

The question simply is whether the plaintiff or the deceased (in case of claims arising out of death) had failed to take reasonable care of his own safety which had contributed to the damage.

Thus, there has to be some causal connection with the damage suffered by the claimant to hold that the conduct of the claimant amounted to contributory negligence. Similarly, there has to be some conduct on the part of the claimant showing absence of reasonable care of his own safety which had contributed to the damage.

8. The meaning of 'Contributory Negligence' as distinct from the 'Negligence' has been very aptly brought out in the judgment of K.G. Balakrishnan, J. (as His

Lordship then was) in *Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak and Ors.* : AIR 2002 SC2864 in the following words:

The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as 'negligence'. Negligence ordinarily means breach of a legal duty to care, but when used in the expression 'contributory negligence' it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an 'author of his own wrong'.

It will be clear from what has been held by Balakrishnan, J., that negligence ordinarily means breach of legal duty to take care, whereas contributory negligence means the failure by a person to use reasonable care for the safety of either of himself or his property, so that he becomes blameworthy in part as an 'author of his own wrong'.

9. In a decision of the Supreme Court in *Municipal Corporation of Greater Bombay v. Laxman Iyer and Anr.* : AIR 2003 SC4182 , Arijit Pasayat, J., relying on Charlesworth on Negligence, has explained the meaning of 'contributory negligence' thus:

Where an accident is due to negligence of both parties, substantially there would be contributory negligence and both would be blamed. In a case of contributory negligence, the crucial question on which liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequence of other's negligence. Whichever party could have avoided the consequence of other's negligence would be liable for the accident. If a person's negligent act or omission was the proximate and immediate cause of death, the fact that the person suffering injury was himself negligent and also contributed to the accident or other circumstances by which the injury was caused would not afford a defence to the other. Contributory negligence is applicable solely to the conduct of a plaintiff. It means that there has been an act or omission on the part of the plaintiff which has materially contributed to the damage, the act or omission being of such

a nature that it may properly be described as negligence, although negligence is not given its usual meaning. (See Charlesworth on Negligence, 3rd Edn., Para 328).

Pasayat, J., further relying on 'Pollock on Torts' also explained 'composite negligence' in the following words:

Where a person is injured without any negligence on his part but as a result of combined effect of the negligence of two other persons, it is not a case of contributory negligence in that sense. It is a case of what has been styled by Pollock as injury by composite negligence. (See Pollock on Torts, 15th Edn., p. 361).

10. In *Oriental Fire & Genl. Ins. Co. Ltd. v. Sudha Devi and Ors.*, S.B. Sinha, J., as a learned Judge of the Patna High Court (as He then was) was called upon to decide whether violation of Section 85 of the Motor Vehicles Act, 1939, which is in pari materia with Section 128 of the Act, amounts to contributory negligence on the part of the driver of a two wheeler and His Lordship held in Para 55 at Page 11 of the judgment as reported in the ACJ that violation of the provisions of the Motor Vehicles Act may not have anything to do with the theory of contributory negligence unless the vehicle is driven in violation of the traffic regulations.

11. Section 128 of the Act and Rule 123 of the Rules are quoted herein below:

Section 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.

Rule 123. Safety devices in motor cycle.--No motor cycle which has provision for pillion rider, shall be constructed without provision for a permanent hand grip on

the side or behind the driver's seat and a foot rest and a protective device covering not less than half of the rear wheel so as to prevent the clothes of the person sitting on the pillion from being entangled in the wheel.

12. A plain reading of Section 128 of the Act quoted above, would show that Sub-section (1) casts a duty on the driver of a two wheeled motor cycle not to carry more than one person in addition to himself on the motor cycle. Similarly, Rule 123 of the Rules quoted above mentions the safety devices to be provided while manufacturing a motor cycle. These provisions obviously are safety measures for the driver and pillion rider and breach of such safety measures may amount to 'negligence' but such negligence will not amount to 'contributory negligence' on the part of the pillion rider or 'composite negligence' on the part of the driver of the motor cycle, unless such negligence was partly the immediate cause of the accident or damage suffered by the pillion rider as would be clear from the authorities discussed above.

13. Thus, we are of the considered opinion that if the damage in the accident has not been caused partly on account of violation of Section 128 of the Act by the pillion rider of the motor cycle, the pillion rider is not guilty of contributory negligence. Similarly, if the damage suffered by the pillion rider has not been caused partly on account of violation of Section 128 of the Act by the driver, the pillion rider cannot put up a plea of composite negligence by the driver. In other words, if breach of Section 128 of the Act, does not have a causal connection with the damage caused to the pillion rider, such breach would not amount to contributory negligence on the part of the pillion rider of the motor cycle or composite negligence on the part of the driver of the motor cycle.

14. Accordingly, our answers to the questions referred to us are:

(1) Violation of Section 128 of the Act, per se, by a motor cyclist does not raise a presumption of contributory negligence on his part;

(2) similarly, violation of Section 128 of the Act per se does not amount to contributory negligence on the part of the pillion riders.

(3) A pillion rider cannot put up a plea of composite negligence by the driver of the motor cycle, if the driver only violates Section 128 of the Act.

15. We also hold that the view taken by the Division bench of this Court in Manjo Bee and Ors. v. Sajjad Khan and Ors. 2000 ACJ 737, is correct in law and the view taken by the Division Bench in National Insurance Co. Ltd. v. Smt. Uma Tiwari and Ors. 2007 (I) MANISA 204 (M.P.) and in Kanti Devi Sikarwar and Ors. v. Om Prakash and Ors. 2007 (1) MPWN 88 : 2007(1) M.P.H.T. 447, is not correct in law.

Since we have answered the questions referred to us, the matter will now be placed before the appropriate Division Bench for hearing.

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