Dinesh Kumar J. @ Dinesh J, vs National Insurance Co. Ltd on 15 December, 2017

Equivalent citations: AIR 2017 SC (SUPP) 990, 2018 (1) SCC 750, (2017) 4 CIVILCOURTC 671, (2018) 2 BANKCAS 149, (2018) 182 ALLINDCAS 103 (SC), (2018) 69 OCR 543, (2018) 1 RECCIVR 394, (2018) 1 UC 564, (2017) 6 ANDHLD 256, (2018) 1 ICC 52, (2018) 2 JCR 97 (SC), (2017) 14 SCALE 364, (2018) 1 ORISSA LR 601, (2018) 1 TAC 337, (2018) 1 ANDHLD 206, (2018) 1 WLC(SC)CVL 202, (2018) 127 ALL LR 190, (2018) 1 CURCC 140, (2018) 1 ACC 150, (2018) 1 ACJ 535, (2018) 181 ALLINDCAS 708 (HYD), 2018 (1) SCC (CRI) 495, (2018) 2 BOM CR 377

Author: D Y Chandrachud

Bench: D Y Chandrachud, A M Khanwilkar, Dipak Misra

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REPORTABL

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 22966 OF 2017
[Arising out of SLP (C) No. 27398 of 2016]

SRI DINESH KUMAR. J. @ DINESH J, ...APPELLANT

Versus

NATIONAL INSURANCE CO. LTD & ORS. .....RESPONDENTS

JUDGMENT

Dr D Y CHANDRACHUD, J 1 Leave granted.

2 The present appeal arises from a judgment of the High Court of Karnataka dated 13 April 2016.

3 On 18 June 2012, the appellant who was riding a motorcycle bearing registration No.KA-04/EL-4782 met with an accident with a mini lorry belonging to the Second and Third respondents. The lorry was insured with the First respondent. As a result of the accident, the appellant suffered grievous injuries. The medical certificate issued by the Bangalore Baptist Hospital (Exhibits P-13 and P-14) indicate spinal injuries.

4 The appellant was twenty six years of age on the date of the accident and was working as a patroller in a private company. His income was Rs.11,000/- per month. The appellant filed a claim for compensation before the Motor Accident Claims Tribunal, seeking compensation in the amount of Rupees 40 lakhs. The appellant examined a doctor (PW 5) who deposed that the extent of permanent physical disability of the spine was thirty four per cent. The tribunal did not accept that the disability was thirty four per cent, noting that the doctor in his cross examination admitted that he had not personally treated the appellant and that the medical evidence did not provide a cogent determination of the extent of disability. The Tribunal assessed the disability at ten per cent. The income of the appellant was taken at Rs 11,000 per month and a multiplier of seventeen was applied. The loss of income due to disability was computed at Rs 2,25,000. Medical expenses were computed at Rs 3,85,000. The Tribunal computed the total compensation (including conventional heads) at Rs 9 lakhs. However, the tribunal held that the appellant was guilty of contributory negligence to the extent of forty per cent and hence granted sixty per cent of Rs 9 lakhs amounting to Rs 5.40 lakhs. In appeal, the High Court has enhanced the award of medical expenses by a further sum of Rs 1,77,775 on the basis of the bills produced by the appellant. On the aspect of contributory negligence, the High Court affirmed the finding of the tribunal. The award of compensation of Rs 9 lakhs has been enhanced to Rs 10,77,775 and, after making a deduction of forty per cent towards contributory negligence, the appellant has been held entitled to an amount of Rs 6,46,665. All the respondents have been held to be jointly and severally liable.

5 The respondents have been served in these proceedings. None has appeared.

6 On behalf of the appellant, it has been submitted that both the tribunal and the High Court were manifestly in error in holding the appellant to be guilty of contributory negligence to the extent of forty per cent. It has been submitted that the tribunal as well as the High Court proceeded on the erroneous premise that since the appellant had failed to produce the driving licence, an adverse inference on the aspect of contributory negligence would have to be drawn. Moreover, it was submitted that the entire discussion on contributory negligence is conjectural and is not worthy of acceptance. In this regard, reliance was placed on the judgment of this Court in Sudhir Kumar Rana v Surinder Singh1. 7 Both the tribunal, and in appeal in the High Court, have found fault with the appellant for not having produced his driving licence. The tribunal noted that the appellant had admitted in the course of his cross-examination that the road where the accident took place was a two way road and that on each side, three vehicles could pass at a time. A suggestion was put to the appellant that while trying to overtake another vehicle, he had approached the offending lorry from the right side as a result of which the accident took place. The appellant denied the suggestion. The award of the tribunal indicates that absolutely no evidence was produced by the insurer to support

the plea that there was contributory negligence on the part of the appellant.

8 Insofar as the judgment of the High Court is concerned, the Division Bench has placed a considerable degree of importance on the fact that there was no visible damage to the lorry but that it was the motor cycle which had suffered damage and that there was no eye-witness. We are in agreement with the submission which has been urged on behalf of the appellant that plea of contributory negligence was accepted purely on the basis of conjecture and without any evidence. Once the finding that there was contributory negligence on 1 (2008) 12 SCC 436 the part of the appellant is held to be without any basis, the second aspect which weighed both with the tribunal and the High Court, that the appellant had not produced the driving licence, would be of no relevance. This aspect has been considered in a judgment of this Court in Sudhir Kumar (supra) where it was held as follows :

> "9.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 who was driving 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...
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> 10. The matter might have been different if by reason of his rash and negligent driving, the accident had taken place." 9 In view of the above position, we are of the view that the deduction of forty per cent which was made on the ground of contributory negligence is without any basis. Accordingly, we direct that the appellant shall be entitled to an additional amount of Rs 4.60 lakhs which was wrongly disallowed.
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> 10 We direct that the respondent shall accordingly pay an additional amount of Rs 4,60,000, over and above the amount which has been awarded by the High Court. This amount shall also carry interest at the rate of eight per cent per annum as awarded by the High Court, from the date of the petition until realization. The insurer shall deposit the amount before the tribunal within 3 months which shall be released to the appellant.
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> 11 The appeal is allowed in the above terms. There shall be no order as to costs.

.....CJI [DIPAK MISRA] .....J [A M KHANWILKAR] .....J [Dr D Y CHANDRACHUD] New Delhi December 15, 2017