CASE NO.:
Appeal (civil) 3321 of 2008

PETITIONER:
Sudhir Kumar Rana

RESPONDENT:
Surinder Singh & Ors

DATE OF JUDGMENT: 06/05/2008

BENCH:
S.B. Sinha & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO.   3321   OF 2008
[Arising out of SLP (Civil) No. 8262 of 2007]

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 [1990 ACJ 974]
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 1988 ACJ 322

(Raj.)]

In T.O. Anthony v. Kavarnan & Ors. [(2008) 3 SCC 748, 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 himself partly liable, the
principle of 'composite negligence' will not apply
nor can 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.