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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ MAC.APP. 278/2010 & CM APPL. 7935/2010

DEPARTMENT OF POSTS Appellant
Through: Mr. Rajinder Nischal, Adv.

versus

RADHEY SHYAM GUPTA & ANR Respondent
Through: None.

CORAM:
JUSTICE SHIV NARAYAN DHINGRA

ORDER
29.04.2010

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Present appeal has been preferred against an award dated 19th March, 2010. Various grounds have been taken in the appeal. However, the Counsel for the appellant i.e. Department of Posts, press^{ed} this appeal on the grounds that there was discrepancy in the evidence of injured but the Tribunal ignored the same. While, the injury was on the left leg, during evidence, the witness deposed at one place that the injury was on the right leg. The other discrepancy in the evidence pointed by the Counsel is that the Tribunal has taken into account the factum of initiation of departmental action against the driver, while no inference should have been drawn by the Tribunal against the driver on this ground. Another ground of appeal is that the injured instead of going to nearby St. Stephen's Hospital or a government hospital, went for his treatment to Bhagwati Hospital and took treatment there. The treatment and medicine bills of Bhagwati Hospital were on higher side.

I consider that none of the above was a valid ground for appeal. An injured is primarily concerned about his health at the time when he receives injury in an accident

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and is at liberty to choose hospital or doctor which he considers right and get treatment there. He cannot be denied a right to approach a particular doctor or a particular hospital if he has confidence in such doctor or hospital. The amount has been awarded by Tribunal on the basis of hospital bills. There is no allegation that the bills of hospital or medicines, were fake. I, therefore, consider that there was no ground for appeal on this ~~count~~ The other grounds raised are also baseless. Some discrepancies in evidence are but natural. Initiation of departmental proceedings, action taken and result of criminal case are all relevant pieces of evidence.

The other grievance raised by the appellant is that learned Tribunal made Mr. R.K. Tripathi, Respondent No. 2, personally liable to pay a part of the interest on the ground that a wrong written statement was filed by him in the court. It is submitted by the appellant that the written statement was filed by Mr. Tripathi on the basis of records provided to him. It was not a statement filed by him of his own knowledge. He therefore should not have been held personally liable to pay the interest.

If the department considers that Mr. R.K. Tripathi was not at fault and the written statement filed by him was as per record provided to him, the department is at liberty to pay the amount which the Tribunal has made Mr. Tripathi liable to pay personally. The award is modified to that extent. Rest of the award is upheld.

The amount of Rs. 25,000/- deposited by the appellant, shall be refunded to the appellant on appellant's satisfying the award before the Tribunal.

APRIL 29, 2010
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SHIV NARAYAN DHINGRA, J