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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 24th February, 2014

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MAC.APP. No.536/2010

ORIENTAL INSURANCE CO. LTD.

..... Appellants

Represented by: Mr.Pradeep Gaur, Advocate

Versus

CHHOTE LAL & ORS.

..... Respondents

Represented by: Ms.Padmini Gupta,
Advocate for Respondent
No.1.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The present appeal is directed against the impugned award dated 19.03.2010 whereby, the learned Tribunal has granted compensation for a sum of Rs.1,74,000/- with interest at the rate of 7.5% *per annum* from the date of filing of the claim petition till realization of the amount.

2. Brief facts of the case are that on 29.01.2007, at about 7.00 p.m., the respondent No.1/claimant was returning to his house on foot from Gopal Pur and when he reached near Gali No.1, Gopal Pur, suddenly the offending 'red colour maruti car' bearing no. DL-6CD-0002 being driven by respondent No.2/Satender Singh in a rash and negligent

manner, hit the respondent no. 1 from behind with a great force. Due to the forceful impact, the respondent No. 1 fell down and sustained multiple injuries. His son Mithlesh, who was accompanying him, removed him to the Trauma Center.

3. It was stated by the respondent No.1 before the learned Tribunal that the doctors of the hospital in connivance with all the respondents deliberately made a non-MLC case of his injuries and mentioned in the casualty sheet that the respondent No.1 had sustained injuries due to fall from stairs. It was also stated that the doctor also demanded Rs.25,000/- for treatment as a steel rod had to be affixed since he had sustained fracture. Since the respondent No.1 had sustained multiple fractures, therefore, without the recommendation of the doctor he was shifted to Lok Nayak Hospital and doctors of the said Hospital also misbehaved with wife of the respondent No.1. He made a complaint in PS Timarpur but no FIR was registered, thereafter, he made a complaint against the Medical Superintendent of Lok Nayak Hospital and SHO PS Timarpur as well to the DCP (North) and it was only thereafter the FIR bearing No.221/07 was registered against the respondent No.2 under section 279/337 of the Indian Penal Code.

4. Further the case of the respondent no.1 before the Tribunal was that he was 50 years of age at the time of accident and being a rickshaw puller by profession he was earning Rs.6,000/- per month. It was stated that due to the injuries sustained by him in the accident, he had suffered a permanent disability to the extent of 20% of the right leg. He further stated that due to the injuries sustained by him in the accident, he suffered pecuniary and non-pecuniary losses.

5. Learned counsel appearing on behalf of the appellant submitted that while reaching to the conclusion that the respondent No.1 sustained injuries in the accident in question, completely ignored the MLC dated 29.01.2007 issued by Lok Nayak Hospital wherein it was clearly mentioned that the injured fell down from the stairs and sustained injuries. Even the doctor examined from the said hospital categorically stated the said facts and also deposed that as per record, the son of the respondent No.1 had got him released from Trauma Centre at his own risk.

6. Ld. Counsel further submitted that the Ld. Tribunal failed to consider that in the present case the FIR was lodged with police station Timar Pur vide FIR No. 221 dated 02.04.2007 on the statement of wife of the injured, i.e., after two months from the date of alleged accident. However, the respondent No.1/injured did not produce any documentary evidence to prove the fact that they approached the police station either by making a call on 100 No. or by lodging any complaint with the concerned police station about the said accident against the driver of the offending car. Even as per the contents of FIR, the complainant did not disclose the number of the alleged offending car. She categorically stated at the time of lodging the FIR that her husband could not note down the number of the vehicle. However, during examination the respondent No.1/injured categorically deposed that he noted down the number of the alleged offending vehicle at the time of the accident. Thus, the injured cooked up a story to take the claim by filing a petition before the Ld. Tribunal on the basis of the fabricated facts, whereas he actually sustained injuries by falling from stairs.

7. Learned counsel for the appellant further submitted that neither the

alleged offending vehicle was involved in the alleged accident nor the respondent No.2/driver of the offending vehicle was negligent in driving the said vehicle, therefore, the present appeal deserves to be allowed and the impugned award dated 19.03.2010 be set aside.

8. On the other hand learned counsel for the respondent No.1/injured submitted that the appellant Insurance Company has not led any evidence to prove that the offending vehicle was not involved in the accident and the injured did not receive injuries in the accident in question. However, Satender Singh, respondent No.2/driver of the offending vehicle admitted that he was driving the offending vehicle at the time of the alleged accident. He also admitted that the abovementioned FIR was lodged against him and chargesheet was also filed and he is facing trial in a criminal court.

9. Ld. Counsel further submitted that the injured appeared as PW1 and testified his affidavit Ex.PW1/1 that the accident had taken place due to rash and negligent driving of the offending vehicle by the respondent No.2. He placed on record the copies of FIR, RC of the offending vehicle, DL of respondent No.2, seizure memos of the DL and that of offending car, the site plan, copy of insurance policy, copy of superdarinama, admission card and OPD card as well. He, subsequently, brought on record the copy of the permanent disability certificate issued from Hindu Rao Hospital as Ex. PW1/1 and the entire medical records as Ex.P-2.

10. Ld. Counsel submitted that in his cross-examination the respondent No.1 stated that the accident had taken place on 29.01.2007 that at about 4.00 pm when after parking the rickshaw in the garage he

was coming from Gopal Pur. After the accident, he had requested public persons to call the Police but none came to his help. He had noted the number of the offending vehicle and one rickshaw puller had taken him to the hospital. He had not become unconscious after the accident, though he was lying on the road and that the offending car had also remained at the spot for about 15 to 20 minutes. He specifically stated that the offending vehicle was in red colour and denied the suggestion that the colour of the vehicle was white.

11. Moreover, Mrs. Urmila, wife of the respondent No.1 entered in the witness box as PW2 and deposed on affidavit as Ex.PW2/A. She corroborated the averments made by the respondent no.1 on all material particulars. She stated that the FIR was not registered in the instant case initially because the respondents were influential and rich. In her cross-examination she admitted that on the date of accident, she was in her native village and it was about 18 days later that her son informed her telephonically. She further stated that she made a complaint in the Police Station concerned on 19.02.2007 but FIR was not registered.

12. Ld. Counsel further submitted that Mithlesh, son of the respondent No.1/injured entered in the witness box as PW3 and proved his affidavit Ex. PW3/A. He deposed that he was the eye-witness of the accident being present with the respondent no. 1 on 29.01.2007, after his father had parked the rickshaw at the rickshaw garage and was returning from Gopal Pur to his house at Sangam Vihar. He further deposed that when they were walking through Gali No.1, Gopal Pur, the offending maruti car which was red in colour and on which it was written in bold letters “K.K. Motors Drivers” having registration No. DL-6CD-0002, struck the respondent No.1 from behind, causing multiple injuries to him. In his

cross-examination he specifically stated that he did not receive any injury since he was on the other side. He had taken his father to the Trauma Center. He further stated that the respondent no. 2/driver of the offending vehicle had got off from the car after causing the accident.

13. Ld. Counsel further submitted that PW4, Dr. Deepak Kumar Singh, CMO from Sushrut Trauma Center entered in the witness box and deposed that the casualty sheet had been prepared by a Junior Resident. He also deposed that as per record, the son of the respondent No.1 had got him released from the Trauma Centre.

14. Ld. Counsel submitted that PW 5, HC Ram Kesh entered in the witness box and deposed that he was a IO of the case FIR No. 211/07 charge sheet of which was filed under section 279/337 of IPC. He deposed that the injured Chhote Lal had left the hospital of his own accord after preparation of the MLC and the nature of the injuries opined by the doctor to be simple.

15. Ld. Counsel further submitted that SI Rakesh Kumar was summoned as a Court witness No. 1 who deposed that he was the third IO of the case bearing FIR No.221/07 and had filed the chargesheet against the respondent No.2/driver under section 279/337 IPC. He deposed that he investigated the matter; and produced the entire criminal record of the case as per which the FIR was registered on 02.04.07. Further deposed that on the basis of the complaint of Smt. Urmila, wife of the respondent no.1/injured dated 09.02.07 to the effect that her husband sustained injuries in the accident on 29.01.07 by the maruti car bearing No. DL-6 CD-0002. He deposed that he recorded the statement of the respondent No.1 on 15.04.07 in which he stated that he had

sustained injuries on 29.01.07 in the accident caused by the offending vehicle.

16. I have heard the learned counsels for the parties.

17. It is pertinent to note that the learned Tribunal framed issue No.1 as under:-

“Whether the petitioner Chhote Lal sustained injuries in a road accident which took place on 29.01.07 at 7.00 pm due to rash and negligent driving of the car bearing no. DL-6CD-0002 by respondent No.1”.

18. The testimonies of the injured PW1 and his son PW3, who was also the eye witness of the accident, are clear to the effect that the accident occurred due to rash and negligent driving of the offending car bearing no. DL-6CD-0002 being driven by the respondent No.2 Satender Singh. Though, respondent no. 2 stated that he was not the driver of the offending vehicle and was present in his office, but he was not able to establish his defence either by way of any documentary evidence or by producing any witness which would have acted as his *alibi*. Respondent no.2 also failed to prove that he was not present on the spot or was not driving the offending vehicle at the time of the accident.

19. A written statement was filed on behalf of the respondent no. 3 M/s K.K. Motors Driving School, through its Proprietor Sh. Kamal Kapoor, who admitted that he was the proprietor of M/s K.K. Motors Driving School. In response to Para 16 of the petition in which the name of the driver of the offending vehicle was mentioned as Satender Singh, the respondent no.3 evaded said Para by saying that it did not concern to

respondent no.2 Satender Singh. If the vehicle had not been driven by respondent no.2 then it was for the respondent no.3 to disclose the name of the driver of the offending car. However, he chose to be evasive and, therefore, the learned Tribunal opined that the offending vehicle was being driven by respondent no.2 at the time of the accident.

20. It is pertinent to note that the injured and his son are illiterate/ semi-literate poor persons who were earning their livelihood by pulling rickshaw or running a tea stall. PW1 and PW3 both have given the details about the number of the offending vehicle, its colour as well as its main identifying feature that on the offending car “K.K. Motors” was written.

21. Moreover, both respondent nos. 2 and 3 have not alleged any malice, motive or ill-will of the respondent no.1 and his son against them. There is no complaint to the higher officers of implicating respondent no. 2 in the above mentioned criminal case. The police investigated the case and thereafter filed the chargesheet against respondent no.2/driver of the offending vehicle, therefore, there was no occasion before the learned Tribunal not to rely upon the evidence on record and coming to the conclusion that the alleged offending vehicle and its driver respondent no.2 was involved in the accident and caused injuries to respondent no.1 Chhote Lal.

22. In view of the above discussion, I do not find any merit in the instant appeal. The same is accordingly dismissed.

23. Consequently, the Registry of this Court is directed to release the statutory amount in favour of the appellant/Corporation and the balance compensation amount in favour of the respondent no.1/claimant in terms

of the impugned award dated 19.03.2010 on taking necessary steps by him.

SURESH KAIT, J.

FEBRUARY 24, 2014

RS/jg