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

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Judgment delivered on: 02.05.2017

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MAC.APP. 257/2017

UNION OF INDIA

..... Appellant

Through: Mr Jitesh Srivastava, Adv. with Mr.
Chandan, Pairvi Officer.

versus

RAJIYA @ RAZIYA & ORS

..... Respondents

Through: Mr. Qayam-Ud-Din, Adv. with
respondent no.1 in person.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

MAC. APP. 257/2017 & CM No. 10217/2017

1. At joint request, the matter is taken up for final hearing today. The Award dated 08.10.2016 passed in Suit No. 368/15 awarding a compensation of Rs. 7,46,200/- to respondent no. 1, has been impugned on the ground that the appellant's vehicle bearing registration no. 04P015933N was not involved in the accident; rather it was a motorcycle which injured respondent no.1 resulting in the amputation of her right leg above the knee. The accident occurred on 15.07.2015 and the statement of respondent no.1 was recorded by the I.O. in the Detailed Accident Report (DAR).

2. The DAR records that on the said date at about 10.30 a.m. when respondent no.1 was trying to cross the road, a motorcycle suddenly came in

front of her and while she tried to save herself, she fell on the road and before she could recover a truck-like vehicle, which appeared to be government owned, being driven rashly and negligently injured her and drove away. Respondent no.1 further stated that thereafter she lost consciousness and some unknown person had slipped the vehicle's number in her bag, which was taken home by her son. She had reiterated that the vehicle was being driven at a great speed, negligently and rashly, and she promised to give the number of the vehicle to the I.O. The report further states that the vehicle was identified as being owned by the appellant. It was impounded and subsequently released. The driving license of the driver Mr. Jai Prakash, as well as the documents of the vehicle were taken by the police; the mechanical inspection of the vehicle revealed that the front bumper had been scratched/scrapped; the vehicle was released on *superdari* upon orders of the Court and proceedings were initiated against the driver under Sections 279/ 338 of the Indian Penal Code.

3. The learned counsel for respondent no.1 submits that the driver has been chargesheeted by his employer. In reply to the claim petition, no written statement/ defence was filed and it was so recorded by the Tribunal on 18.01.2016. Resultantly, the appellant's right to file a written statement/ defence was closed. The written statement was filed much later thereafter, however, it was not taken on record. The subsequent application for condonation of delay too was disallowed. In effect, the appellant did not respond to the claim petition.

4. In the cross-examination the appellant sought to dispute the claim of respondent no.1 by referring to her cross-examination, which reads as under:

“..... I am 63 years old. I was self employed and working as Dai. I used to go to houses of ladies to attend delivery and earning Rs. 10,000-15,000/- p.m. The accident took place around 11.00 AM. I came down from the auto and going by walk on the road to go to Lajpat Nagar. I was hit by a water tanker from behind. The water tanker was stopped by the public going nearby. I was going on my foot, I was hit from behind. I did not see the vehicle at the first instance but when I fell down I saw various public persons had caught hold of the driver of the water tanker and the driver fled from the spot and went to the ITBP Camp. The driver was caught hold of within a gap of 50 meters. The road was jammed and I myself did not see the driver but the public told me. The PCR parked their vehicle in front of the Tanker and noted down the number of the vehicle and thereafter they took me to Trauma Center....”

5. The Court is unable to see how the aforesaid statement of the victim could come to the aid of the appellant since she had specifically stated that she was hit by a water tanker which, after injuring her, was stopped by the public nearby. Furthermore, the fact that the vehicle was stopped by people is something which would have come to her knowledge subsequently. In this regard, the Tribunal has considered the statement of the driver as under:

“..... 6. Respondent no.1 Jai Prakash examined himself as RW1. He tendered in evidence his affidavit Ex.RWI/A. He stated that on 15.07.2015 he was detailed by WOIC MT detail (WO L Singh) to perform the duty for supply of water to Vayusenabad by the service vehicle Swaraj Mazda (Water Tanker) vehicle BA no. 04P015933. He stated that he is in possession of valid driving licence. He stated that he was going towards Vayusenabad while following M.B. Road. There was heavy traffic on the road. He was driving the vehicle very slowly close to the divider. He further stated that when he reached in front of ITBP Gate no.1, he saw one motorbike (Pulsar) trying to overtake his vehicle from left

side. He was given hand signal to stop his vehicle by a civilian and also heard the shouting of people to stop the vehicle. He further stated that he stopped the vehicle and came down from it. He looked back and saw a black colour Bajaj Pulsar Motorcycle was lying on the left side of his vehicle. He further stated that the rider of the motorcycle was also lying on the road few meters behind the motorcycle and was trying to get up from the spot. He further stated that after few moments the motorcycle rider got up, picket his motorcycle-and ran away from the spot from the same motorcycle. He further stated that he also observed that an old lady who had sustained injuries was also lying on the road away from his vehicle. The crowd gathered there and moving towards him. He further stated that he found the situation tense, so, he ran towards the ITBP gate. He further stated that the civilians available at ITBP Gate informed him that old lady who was injured and lying on the road was run over by some vehicle which fled away. He further stated that he is totally innocent and have not caused any accident or any wrong or offence at any point of time in any manner whatsoever towards the petitioner.

During cross-examination he admitted that, the vehicle no. 049015933 i.e. Water Tanker was found where the accident took place. He denied that the public has not cordoned him after the accident. He stated that he was arrested by the police and thereafter, released on bail. He further stated that he has not filed any application before any Court for quashing the FIR. He further stated that he has not gone to investigating officer to state that he is not an accused in this case.

7. Sh. R.K. Tripathi, Junior Warrant Officer at 7, BRD Air Force Station, Tughlakabad, New Delhi was examined as RW3. He tendered in evidence his affidavit Ex.RWS/A. He stated that on the day of incident, when he reached near ITBP Gate no.2, on that day he saw one speeding motorcycle hitting one woman, few meters ahead of him and ran away.

He further stated that he saw one lady falling on the road and meanwhile one vehicle came in front of him and obstructed his sight. He further stated that when he reached at the spot, he saw one lady lying injured on the road and one AF vehicle Water Bowser bearing BA no. 049015933 was standing there. He further stated that he informed the matter to MT Section. Two policemen from Air Force reached at the accident site and he came back to MT Section on the instructions of IVITO.

During cross-examination he stated that he had seen the place of accident. It is a two side road. Its a 30-40 feet wide road. He further stated that on the date of accident, he was going to SMC hospital after discharging his duty. He was going to hospital from the same side of the road where the accident took place. It was mere 30-40 meters in front of his motorcycle where the accident took place. He further stated that the accident took place by an unknown motorcycle. He further stated that there was so rush that he could not see the rider of the motorcycle. He further stated that he had not gone to the police to state about the accident and neither he made his statement recorded to the I.O. or in the Court. He further stated that he is not a summoned witness and is appearing on behalf of department on his own.

6. Apropos respondent no.1, the Tribunal recorded as under:

“...10. PW-1 has Stated that on 15.07.2015 at about 10.55 AM she was going on foot. When she reached in front of ITBP Gate, by the side of M.B. Road, in the meantime, a water tanker BA No. 04P-15933N came at a high speed, being driven in a rash and negligent manner and hit her. As a result of which she sustained crush injury on her right foot and other multiple injuries all over her body. She was removed to JPN Apex Trauma Centre where he remained hospitalised for 25 days. Her right leg above knee was amputated. During cross-examination she stated that she came down from the auto and going by walk on the road to

go to Lajpat Nagar. She was hit by a water tanker from behind. The water tanker was stopped by the public going nearby. She further stated that she was going on foot. She was hit from behind. She further stated that she did not see the vehicle at the first instance but when she fell down she saw various public persons had caught hold of the driver of the water tanker and the driver fled away from the spot and went to the ITBP camp. She further stated that the driver was caught hold of within a gap of 50 meters. She further stated that the PCR parked their vehicle in front of Tanker and noted down the number of the vehicle and thereafter they took her to Trauma Center. In the present case the SHO of the police station Sangam Vihar has also filed a Detailed Accident Report. The investigating officer alongwith DAR has also filed charge sheet, FIR, site plan, arrest memo, seizure memo etc. In the present case the petitioner was hit from behind by the offending vehicle. Hitting from behind in itself shows negligence on the part of the offending vehicle, if not explained properly. The charge sheet was filed against the respondent no.1. Respondent no.1 in his testimony has specifically stated that he has not made any complaint to any higher officer of police or any Court regarding his alleged false implication in-the present case. Nothing material has come in the testimony of RW1 and RW3 to dis-believe the version of PW-1. Even on the MLC history of road traffic accident has been mentioned. So, it is established that the petitioner sustained injuries on 15.07.2015 due to rash and negligent driving of vehicle no. 04P015933N by the respondent no.1....”

7. From the preceding evidence i.e. the statement of the claimant and the police report, what emanates is that the respondent was injured by the appellant’s vehicle. The statement of Mr. R.K. Tripathi, Junior Warrant Officer is only about his witnessing a motorcycle hitting one woman a few meters ahead of him and speeding away. He saw the lady falling on the road but he could not see what happened to her since a vehicle came in front of

him and his sight was obstructed and therefore what the vehicle did to the lady was not clear. Nevertheless, the vehicle was identified as belonging to the Indian Air Force and when he reached at the accident's site, he found it stationed next to the injured lady who was lying on the road. The respondent's statement is that she had been hit by the motorcycle and before she could recover, the appellant's water tanker injured her severely. Thereafter, she fainted and she was taken away to the Trauma Centre. However, the DAR, chargesheet, FIR, site plan, arrest and seizure memo clearly show that the aforesaid vehicle of the Air Force and its driver were involved in the motor accident. The driver who had so far denied his involvement in the accident had not made any complaint to any authority apropos his alleged false implication in the aforesaid accident. Therefore, the reasoning and conclusion of the Tribunal for holding the offending vehicle i.e. vehicle no. 04P015933N and its driver liable under the Motor Vehicles Act cannot be faulted. Hence, the Court finds no reason to interfere with the award. The appeal is without merit and is, accordingly, dismissed.

8. Of the statutory deposit made, Rs. 20,000/- shall be released to the appellant and the balance sum of Rs. 5,000/- shall be given to injured respondent no.1.

CM No. 14720/2017 (by R-1 u/S. 151 CPC for directions)

9. The accident happened in July, 2015. The injured person i.e. respondent no.1 has not received any compensation till date. The learned counsel for respondent no.1 seeks release of an amount of Rs. 1,46,200/- for the purposes of fitment of a prosthetic.

10. The Court finds reason in the respondent victim's demand for the said monies to be released to her for the aforesaid purpose from the awarded amount. Since respondent no.1 was injured by a vehicle belonging to the appellant, it would be only just and proper that they provide her with a prosthetic limb with a lifetime warranty. Respondent no.1 is present in Court. She is on a wheel-chair. A just award would entail providing proper rehabilitation to her, in particular the fitting of a prosthetic. The award does not cover the expenses for a prosthetic. Hence the liability for providing such prosthetic is fastened upon the appellant whose vehicle severely injured the respondent. Before the injury, the respondent moved about freely, naturally and at will, something which she is now unable to do. The respondent, who assisted in bringing life into the world as a *dai*/midwife is now confronted with the reality of living an afflicted life at the mercy of others' assistance. Rehabilitation, to the extent possible, must be explored and provided. Provision and fitment of a prosthetic is an essential step in such rehabilitation. It is for the appellant to provide her a prosthetic limb of the best possible nature with a lifetime warranty so that the respondent victim can live a normal life with dignity. The respondent submits that in Delhi, prosthetic limbs and rehabilitative therapy for armed forces personnel are provided by the Army Hospital (Research & Referral), Delhi. For further rehabilitation, the respondent will appear before the Medical Superintendent of the aforesaid hospital on 17.05.2017 at 10.00 a.m. and such other dates as the Medical Superintendent may indicate. The latter shall take necessary steps for fitment of a prosthetic limb on the respondent, with lifetime warranty. The expenses for the prosthetic limb and the related costs shall be borne by the appellant, who shall issue a letter if at all required

by the aforesaid R & R Hospital. However, the non-issuance of such a letter shall not forestall the process of rehabilitation and fitment of the prosthetic limb.

11. The application is disposed off in the aforesaid terms.

NAJMI WAZIRI, J

MAY 02, 2017/_{kk}

