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

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Decided on: 17th May, 2017

+ **MAC.APP. 364/2017 & CM Nos.14236 & 14360/2017**

THE ORIENTAL INSURANCE CO LTD. Appellant
Through: Mr. S.P.Jain and Mr. Himanshu
Gambhir, Advocates.

Versus

RAJENDER & ORS. Respondents
Through: Mr. S.N. Parashar, Advocate.

+ **MAC.APP. 373/2017 & CM No.14465/2017**

THE ORIENTAL INSURANCE CO LTD. Appellant
Through: Mr. S.P.Jain and Mr. Himanshu
Gambhir, Advocates.

Versus

BALRAM & ORS. Respondents
Through: Mr. S.N. Parashar, Advocate.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. At joint request, the appeals are taken up for disposal.
2. MAC. APP. No.364/2017 and MAC. APP. No.373/2017 impugn the Award dated 25.01.2017 passed in Suit No.5172/16 and Suit No.4914/16 granting a compensation of Rs.12,69,000/- and Rs.45,000/- in favour of respondent No.1/injured Rajender and Balram, respectively alongwith interest at the rate of 9% per annum from the date of filing of the claim

petition i.e. 10.01.2013 till realization of amount. Since both these appeals have arisen from the same accident that occurred on 08.08.2012, they are being disposed off by this common judgment.

3. The facts of the case are that on 08.08.2012 a motor vehicle accident occurred near the Main Bus Stand, Village Pooth Khurd, Delhi, which was recorded as DD No.78-B in Police Station Bawana. The injured were taken to the Hospital for treatment. There was no eye witness to the accident. The pillion rider viz. Rajender (respondent No. 1 in MACA No.364/16) was injured alongwith his driver viz. Balram (respondent No. 1 in MACA No.373/16). The police reached the accident spot but since they did not find any eyewitness, they went to Maharishi Valmiki Hospital in the PCR Van and collected the MLC of the injured. Although it was specifically stated by the doctors that one of the injured – Balram, was fit to give his statement at the time, their statements were recorded 53 days later i.e. on 30.09.2012 when the complainants/ injured had gone to the Police Station with the details of the offending vehicle, the names of its driver and owner alongwith with their respective fathers' names. The DAR proceedings were filed about three months thereafter on 10.01.2013, which identified the offending vehicle as DL-8SL-1703, a two-wheeler scooter insured with the appellant. Since the appellant had not examined either the owner or the driver of the offending vehicle, an inference has been drawn against them for not having disputed the statement of Balram. The DAR and the FIR were taken as sufficient evidence to hold the insurer liable. The Tribunal reasoned as under:-

“9. Petitioner in his affidavit (Ex.PW2/A) filed in evidence reiterated the facts of his claim petition, as described above.

According to him, motorcycle no HR-26Y-1727; on which he was riding was being driven by his friend Balram, in a proper manner. When they reached near DSIDC office, Village Kliird Pooth Bawana Road, respondent no. 1 came there suddenly, driving his scooter no. DI-8SL-1703, in a rash, negligent and .dangerous way and hit their motorcycle from left side. He suffered serious injuries, mainly on his legs. He was taken to Maharishi Valmiki Hospital, for treatment. He suffered permanent disability to the extent of 44%.

The facts as disclosed by petitioner Sh. Rajender are supported by other injured Balram, in his affidavit (Ex.PW1/A). Being injured, both of these witnesses are natural eye witnesses of accident. No contradiction appeared in their deposition, despite cross-examination by counsel for respondent no. 3, I have no reason to disbelieve their testimonies. In his cross-examination, petitioner explained that he became unconscious after the accident. He did not know as who took him to hospital.

It is explained by Id. Counsel for petitioner that his client suffered severe injuries which pained for long time and hence, he could not give any statement to the police and it was reason for delay in FIR.

As mentioned above, according to respondents no. 1 & 2, accident in question was caused due to negligence of driver of motorcycle i.e. Balram. No evidence was adduced by said respondents to prove this fact. Considering evidence on record, as discussed above, it is well established that accident in question was caused due to rashness or negligent driving of scooter no. DL-8SL-1703 by respondent No.1 (Main Pal).

Apart from deposition of petitioner and other injured, the fact that petitioner suffered injuries is also supported by his medical record i.e. MLC, discharge slip, medical bills and from disability certificate (Ex.PW2/14).

This issue is therefore, decided in favour of petitioner and

against the respondents.”

4. Mr. S.P. Jain, the learned counsel for the appellant states that the DD Entry itself does not specify which vehicle was involved. A detailed complaint was made by the injured 53 days after the accident with the readymade details of the offending vehicle. According to him, if the case was so simple and clear i.e. the identity of the offending vehicle was known on the day of the accident, then a statement to this effect, i.e. merely of two lines could have been made when the policemen reached the Hospital to meet the injured, as per the DD entry. However, there is no evidence in this regard. The Court notes that this issue has not been dealt with in the impugned order. Therefore, for it to conclude that the alleged offending vehicle was the one involved in the accident is without any basis.

5. Counsel further contends that the claim petitions were cooked-up stories against the insurer primarily because why would a bonafide injured person want a reduction of the awarded amount. The claimants have sought such rejection because they suspected that the case would be taken up in appeal – hence they had filed a review application seeking reduction of the awarded amount. The review application was rejected on 23.02.2017.

6. From the aforesaid facts, it is apparent that it was a hit and run case, the offending vehicle was never identified by the injured party and its identification to the police 53 days later was at leisure and perhaps to unjustly inure to their benefit.

7. The story of a two-wheeled scooter is fanciful because a simple statement that the offending vehicle was a scooter or its registration number could have been given to the police when the injured were in the hospital

immediately after the accident and the doctors had opined that they were fit to give their statements i.e. they were conscious and could speak cogently. However, choosing not to speak of an offending vehicle which had caused them such hurt and injury would only mean that there was no such offending vehicle. Besides, the old scooter/two wheeler itself would not be of much value i.e. less than Rs.50,000/-, but, the compensation award of Rs. 12,69,000/- for Rajender and Rs. 45,000/- for Balram would have more than compensated a pliable party for the value of the insured scooter. From the preceding discussions, the claim petitions reek of suspicion and are without any basis. The appellant's liability is not made out. Hence the appeals are allowed. The impugned orders are set aside. The pending applications also stand disposed off.

8. The statutory deposits be returned to the appellant.

NAJMI WAZIRI, J.

MAY 17, 2017

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