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

Decided on: 19th September, 2017

+ MAC.APP. 631/2017 and CM APPL.25758/2017

UNION OF INDIA & ORS. Appellants

Through: Mr. Vijay Joshi, Senior Panel Counsel

Versus

ANAND PRASAD

..... Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The tribunal's record has been perused.
2. Heard.
3. The appellants not only raise the issue of absence of proper proof of negligence, but also question the computation of compensation, it being pointed out that the accident having occurred on 18.02.2010, the claimant had been certified to be fit for duty on 30.05.2010 and yet, he has been granted loss of income for four months due to absence of leave.
4. A perusal of the tribunal's record reveals that as per the claimant's case he was moving on his motorcycle bearing registration No.BR-08B-1655 on 18.02.2010 and when he was approaching

Rajghat from the junction of Shanti Van, at about 8:30 p.m., his motorcycle was hit from behind by the motor vehicle of the appellants, it having been described as Tata 407 bearing registration No.DL-1LM-2490. The claim case was filed attributing negligent driving on the part of the third appellant, he being an employee of the first and second appellants, the owner of the said offending vehicle. It is noted that, by their pleadings, the appellants had not disputed the factum of collision of the two vehicles but had denied negligent driving of the offending vehicle being the cause of the accident.

5. During the inquiry, the claimant (respondent) and the third appellant, driver of the offending vehicle appeared as witnesses, each attributing blame on to the other, claimant's evidence being based on his affidavit (Ex.PW-1/A) and that of the third appellant by his affidavit (Ex.R1W1/A). The testimony of the claimant (PW-1) was primarily to the effect that the offending vehicle had come and hit from behind, it having been driven at high speed in violation of the traffic rules. During his cross-examination, it was attributed to (but denied by) him that the accident had occurred since he was trying to overtake the offending vehicle from the left side in contravention of traffic rules, though indicator lights had been used by the offending vehicle.

6. A perusal of the written statement particularly, of the third respondent would show that there were no pleadings set out to above effect as the defence, it having been vaguely stated that the claimant himself was responsible for the accident since he had "*hitted himself*

his (sic) bike in the mail van on the running road without caring for any traffic rules or speed zig-zag manner” which is also the effect and import of the testimony of the third respondent (R1W1).

7. It does appear that the third respondent had been prosecuted on the criminal charge for offence punishable under Section 279/338 of Indian Penal Code, 1860 (IPC) in the criminal case arising out of report under Section 173 of the Code of Criminal Procedure, 1973 (CrPC), submitted on conclusion of investigation into the FIR No.41/2010 and that the court of Metropolitan Magistrate by judgment dated 22.09.2015 had acquitted him. It is stated that in the course of the said criminal prosecution, statement made by the claimant as first informant was at some variance from the one made in the inquiry before the tribunal, respecting sequence of events. But then, it has to be borne in mind that the test applicable to the inquiry before the accident claims tribunal is not the same as the one applied by the criminal court where proof beyond reasonable doubt as to the culpability has to be adduced. It is noted that the claimant was cross-examined by the appellants on 28.09.2015. But he was not confronted with the statement made by him before the criminal court assumably given before the said date. Without such exercise having been undertaken, the appellants cannot be allowed to argue that there has been a contradictory position taken by the claimants in the two cases.

8. In the case of the fact that the evidence of the claimant (PW-1) about the offending vehicle having hit his motorcycle from behind has

gone unimpeached, the finding on the issue of negligence returned by the tribunal cannot be faulted.

9. The other contention touching upon the computation of compensation also is found to be devoid of substance. Being fit for discharge, as per medical opinion, is not same as actually joining duty. The evidence of the claimant rather showed that he had remained immobile due to continued treatment for as many as seven months.

10. For the foregoing facts and circumstances, the appeal with accompanying application is dismissed *in limine*. The stay against the execution of the award is vacated.

11. The amount of compensation deposited by the appellants shall be released to the claimant.

12. The statutory amount shall be refunded to the appellant.

SEPTEMBER 19, 2017

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R.K.GAUBA, J.