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

Decided on: 17th August, 2017

+ MAC.APP. 9/2017

CHIEF MANAGER, R.S.R.T.C. Appellant

Through: Dr. Ritu Bhardwaj, Advocate

versus

MUFID ALAM & ANR. Respondents

Through: Mohd. Yusuf, Advocate for R-1
along with R-1 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 13.06.2012, at about 3:30 p.m., a motor vehicular accident is stated to have occurred in which the first respondent (the claimant) driving his motorcycle bearing registration No.DL-8SAA-7631 (motorcycle) was hit by bus bearing registration No.RJ-24PA-2058 (the bus) of the appellant, driven by its employee (second respondent), at the downward slope of Lajpat Nagar flyover. The claimant was accompanied at that time by his sister Firdosh Praveen (R1W1). It appears that information about the accident had reached the police through police control room (PCR), it resulting in DD Nos.61-B and 72-B being logged at about 3:49 p.m. and 4:57 p.m. respectively in Police Station Lajpat Nagar. The claimant had been taken by his sister

to Vimhans Hospital, which referred him to Trauma Centre of All India Institute of Medical Sciences (AIIMS) where MLC No. 314230 was recorded at 4:31 p.m. on 13.06.2012 stating history to be road traffic accident involving collision between the motorcycle and the bus, it resulting in the claimant suffering external injuries including crush injury on the left foot with muscle and bone being exposed. The police did not register a case (First Information Report) closing the matter with DD No.28-A logged at 8:45 p.m. on 13.06.2012 noting that the injuries were minor and the matter had been amicably settled, this on the basis of statement of Firdosh Praveen.

2. The injuries suffered by the claimant, however, turned down to be serious and, in the protracted medical treatment that he had to undergo, his left lower limb had to suffer amputation rendering him disabled, his disability having been certified on 12.12.2014 by a board of doctors of Pandit Madan Mohan Malviya Hospital to be to the extent of 49%.

3. On his complaint, under Section 156 of the Code of Criminal Procedure, 1973 (Cr.P.C.), submitted on 22.02.2013, under directions of the court of Metropolitan Magistrate, the SHO Police Station Lajpat Nagar eventually registered FIR No.157/2013 on 31.05.2013. The Detailed Accident Report (DAR) on the basis of evidence gathered during investigation that followed was submitted before the tribunal on 24.01.2014. The claimant pressed the claim for compensation on the basis of DAR. The tribunal held inquiry and, upon its conclusion, by judgment dated 16.09.2016, awarded compensation in the total sum

of Rs.7,96,700/- fastening the liability on the appellant to pay the same with interest @ nine per cent (9%) per annum.

4. The appeal raises grievances that the matter had been amicably settled wherein the second respondent (driver of the bus) had paid Rs.7,000 as compensation on the spot and that though there was no collision between the two vehicles and that there was no occasion for the accident to have occurred due to negligence on the part of bus driver, a false case has been propped up after long gap, the story set out being an afterthought. During the course of submissions in this regard, the counsel for the appellant, also stated that no opportunity was given to the appellant or its employee (driver), to put across their side of the story.

5. The arguments to above effect do not impress this court. Firdosh Praveen, the sister of the claimant had no authorization from him to settle the matter by taking the paltry sum of Rs.7,000/-. It is not correct on the part of the appellant to argue that the injuries were minor. The MLC shows the injuries were quite serious, the left lower limb having been crushed, the damage being such as had resulted in muscle and bones being exposed. The state of the claimant at that stage was not such where he could have visualized the consequences that were to follow. Despite medical treatment, the damage could not be contained and he had to undergo partial amputation of the left lower limb which renders it to be not a case that could be settled in the manner stated.

6. It is indeed unfortunate that the police did not rise to the occasion or discharge its responsibilities in the way expected to be performed at the crucial stage. A case of this nature could not have been put under the carpet simply on the basis of a DD entry recorded by the police official noting that the matter had been compromised. The least that the police official was expected to do was to meet the injured person, see his medical condition, ascertain opinion from the medical authorities under whom he was being treated and also record his version. Merely because the police official did not perform his duty does not mean that the claimant is to be disbelieved. He did what was possible for him to do so. He approached, when he was in a fit condition to do so, the court of Metropolitan Magistrate with the complaint under Section 156(3) Cr.P.C. seeking appropriate directions. It is the said directions which eventually forced the hand of the police, it resulting in the FIR being registered and the investigation being taken up.

7. The argument raised by the counsel for the claimant that there was no opportunity given by the tribunal for the version of the driver of the bus to be brought on record is against the proceedings on the file of the tribunal. The claimant had led his evidence concluding it on 23.11.2015. The case had remained at the stage of respondents' evidence till 14.09.2016. The counsel representing the appellant and the driver submitted on that date that no further evidence was to be adduced beyond the three witnesses who had been examined, they not including the driver. Thus, the appellant and its employee (the driver) consciously took a decision not to have the version of the driver of the

bus to be brought on record. This must result in adverse inference being drawn against them.

8. For the foregoing reasons, the contentions of the appellant about there being no collision between the two vehicle or there being no negligence on the part of the bus driver or that the matter could not have been taken up further after the settlement with the sister of the claimant must be rejected.

9. No other point was pressed at the hearing.

10. In view of the above, the appeal is found without substance and is dismissed.

11. The appellant has deposited the awarded amount with interest with the tribunal in terms of the order dated 03.03.2017. The same shall now be released to the claimant in terms of the impugned award.

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

AUGUST 17, 2017

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R.K.GAUBA, J.