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

Decided on: 1st August, 2017

+ MAC.APP. 734/2015 and CM APPL.20919//2015, 15073/2017

NATIONAL INSURANCE CO LTD Appellant

Through: Ms. Harsh Lata, Advocate for
Ms. Shantha Devi Raman,
Advocate

Versus

KADAM GOPAL RAO & ORS Respondents

Through: Mr. Piyush Prabhakar,
Advocate with
Mr. S.N. Thakur, Advocate for
R-1 along with R-1 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. This appeal seeks to assail the judgment dated 28.07.15 of the Motor Accident Claims Tribunal (the tribunal) directing the appellant (insurer) to pay compensation to the first respondent.

2. The first respondent (the claimant) claiming to be then a resident of Delhi working for gain in private establishment described as Ambika Auto Industries, Naiwala, Karol Bagh, New Delhi, is stated to have suffered injuries in a motor vehicular accident that had occurred on 06.05.2007 at Tharmaajupalli village, near Panyam on National Highway no.18 in State of Andhra Pradesh, it becoming subject matter of FIR No.55/2007, registered by Police Station

Panyam for offences under Sections 279/337/338 IPC. It is stated by him that the accident had involved collision between two motor vehicles, one being the motor cycle which he was riding on the pillion and the other described as mini lorry no.AP-03U-9976. Pertinent to note here that the particulars of the motorcycle were not mentioned by the first respondent (the claimant) either in the petition or in the course of his testimony. Be that as it may, he filed an accident claim case (Suit No.131/2012) five years after the occurrence, on 25.04.2012, before the Motor Accident Claims Tribunal (the tribunal) at Delhi, though his native address is of District Ranga Reddy in State of Andhra Pradesh. In the said claim petition, he impleaded the second and third respondents herein as party respondents no.1 and 2 on the plea that they were driver and owner respectively of the mini lorry and that the accident had occurred due to negligent driving of the said vehicle. The appellant insurance company had admittedly issued the insurance policy covering third party risk in respect of said vehicle and was also impleaded in the array before the tribunal as third respondent. The first and second respondents (residents of District Chittoor, State of Andhra Pradesh) appear to have suffered the proceedings *ex parte*, the only contest being on behalf of the appellant insurance company.

3. During the inquiry, the claimant examined himself as PW-1 on the strength of his affidavit Ex.PW-1/A. With the said affidavit, he placed on record proof of his identity and address, copies of election Identity Card (Ex.PW1/1), ration card (Ex.PW-1/2), salary certificate

purporting to have been issued by his previous employer (Ex.PW-1/3) and salary certificate issued by Shri Ram Engineering, another entity with which he claims to have later joined (photocopy found on the Tribunal's record after page no.181 and before page no.185), the said document neither bearing page number nor any exhibit or endorsement of the tribunal. He also filed copy of PAN card, referring to it as Ex.PW-1/5, though such document (at page 193 on the tribunal's record) is bearing endorsement as Ex.PW-1/4. He further submitted with the said affidavit copies of medical records (Ex.PW-1/6, collectively) and of bills showing purchase of medicines reflecting expenditure on that account (Ex.PW-1/7, collectively). He also tendered his petition in evidence (as Ex.P1). On the said affidavit, he was cross-examined by the counsel for the third respondent (the insurer) disputing the claim with regard to private employment with the above-mentioned entity (Ambika Auto Industries).

4. The tribunal considered the evidence and accepted the claim about injuries having been suffered due to negligent driving of the lorry and computing the compensation in the following manner:-

“9. Petitioner is an injured and hence a natural eye witness of accident. No contradiction appeared in his statement, despite being cross-examination by ld. counsel for respondent no.3. I have no reason to disbelieve his testimony. Considering the same as well as medical record of petitioner i.e. wound certificate (Ex.PW1/5), medical prescriptions (Ex.PW-1/6, Ex.PW1/7 & PW-1/8), it is well established that petitioner suffered injuries in accident in question caused due to rash and negligent driving of vehicle

no.AP-03-U-9976 by respondent no.1. It is not disputed that said vehicle was owned by respondent no.2 and insured with respondent no.3. In such a circumstance, petitioner is well within rights to claim compensation from the respondents.

10. As per petitioner (PW1), he was working as Foreman in Ambika Auto Industries, at the time of accident and was drawing a salary of Rs.12,500/- p.m. He was constrained to leave his job, due to this accident. It is admitted by petitioner in his affidavit, he has taken another job now. He is working as a DIA maker with Shree Sai Ram Engineering and is getting Rs.13,758/- as salary per month. The petitioner stated further that he got treatment for 8 years continuously and could not attend his work during this period. Trite it to say that accident in question occurred on 06.05.2007. According to petitioner, he joined Shree Sari Ram Engineering in October, 2011. This fact was not contradicted by respondents as petitioner was not cross-examined by them on this point. In this way, after accident in question, petitioner remained unemployed for 53 months. According to him, petitioner was working with Ambika Auto Industries before the accident and was getting Rs.12,500/- (Rs.10,250/- + 2000 as Petrol/conveyance charges) per month as salary. Taking Rs.10,500/- per month excluding conveyance charges, petitioner could be presumed to have suffered a loss of Rs.5,56,000/- (10,55 x 53).

11. Although, petitioner has claimed to have spent Rs.2 lacs on his treatment, medical bills of Rs.2,945/- only have been put on file. This amount i.e. Rs.2,945/- is granted to petitioner as medical expenses. Petitioner also claimed a sum of Rs.50,000/- as special diet and Rs.25,000/- as expenses to travel hospital during his treatment. Petitioner has suffered grievous injuries including fractures, seeing nature of injuries and period of treatment, these amounts of Rs.50,000/- + 25,000/- (on special diet as well as travelling expenses) do not appear unreasonable. Same are also allowed. Apart from all this, petitioner is granted Rs.50,000/- for pain and suffering and again Rs.50,000/- for

loss of enjoyment of life due to accident, making a total sum of Rs.7,34,445/-.”

5. This court finds the reasoning set out in the afore-quoted paragraphs of the impugned judgment strange and disturbing. The mere word of the claimant as to his private employment with Ambika Auto Industries, the terms on which he was so engaged and the reasons for leaving the said job have been accepted without any scrutiny. There is not a shred of paper submitted confirming that the injuries suffered by the claimant were such as would have rendered him unable to continue with gainful employment for 53 months. The claimant had himself placed on record of the tribunal disability certificate issued by Dr. Baba Saheb Ambedkar Hospital of the Govt. of NCT of Delhi on 31.08.2012 (page 165 of the tribunal's record) clearly confirming that he has not suffered any disability, leave alone permanent physical impairment. The said certificate dated 31.08.2012, copy of which has been submitted again with the affidavit sworn on 29.07.2017 and placed on record during the hearing today pursuant to the directions contained in the last order of this court, only indicates that the claimant would complain of pain in the right leg. But then, there is no evidence whatsoever submitted indicating any connection between the said pain as was reported in August, 2012 with the injuries suffered in the accident that had occurred on 06.05.2007.

6. The fact that the claimant had joined service with Shri Ram Engineering at Prahlad Pur Bangar, Delhi in October, 2011, after a gap of 53 months, due to medical inability is also not substantiated by any

formal evidence. As noted above, the copy of the salary certificate purporting to have been issued by the said entity, though mentioned in the affidavit, was not proved as salary certificate in original was not even tendered with the affidavit.

7. The tribunal has not applied mind nor set out any reasons, leave alone sound ones, for awarding non-pecuniary damages in the sum of Rs.50,000/- each towards special diet, pain and suffering or loss of enjoyment of life.

8. During the hearing, the learned counsel for the appellant insurer submitted that the finding on the issue of negligence is also not a result of proper appreciation of evidence by the tribunal. The learned counsel for the claimant responded by saying that no issue on the question of negligence was framed and, therefore, there was no burden on the claimant to prove such fact. In a claim case presented under Section 166 of the Motor Vehicles Act, 1988, it is the duty of the tribunal to inquire and return a clear finding on the question of negligence. The burden to prove negligence is squarely the responsibility of the claimant. (*Oriental Insurance Company Limited vs. Meena Variyal & Ors.*, AIR 2007 SC 1609).

9. At this stage, the learned counsel for the claimant submitted that he concedes that the tribunal has not conducted a proper inquiry. At the same time, he submitted that on account of some deficiency in legal assistance, the claimant was unable to bring home the requisite evidence. He, thus, urged that the impugned award/judgment may be

set aside but the matter may be remanded to the tribunal for further inquiry.

10. While recording strong disapproval over the manner in which the inquiry in the present case has been conducted by the tribunal, bearing in mind the interests of justice and, so as not to deny to the claimant his just due, the request of the claimant is accepted. The impugned judgment is set aside. The claim case is remanded to the tribunal for further inquiry in the course of which the claimant will be called upon first to lead additional evidence and, thereafter, opportunity shall be given to the opposite parties to lead evidence in rebuttal.

11. Having regard to the facts and circumstances noted above, caution must be added that the tribunal will be obliged to subject the evidence to a very close scrutiny before rendering its fresh judgment.,

12. The parties are directed to appear before the tribunal on 30th August, 2017.

13. By order dated 23.09.2015, the appellant had been directed to deposit the entire awarded amount with the Registrar General of this court within the time specified and out of such deposit fifty percent (50%) was allowed to be released to the claimants in terms of the award. It is noted that half of the amount awarded was directed by the tribunal to be kept in fixed deposit receipts. The amount lying with the bank in the form of fixed deposit receipts, along with balance lying in deposit made by the appellant insurance company, shall be

presently refunded to it. The amount already released to the claimants shall be liable to be adjusted in case the tribunal, in its fresh adjudication, returns a finding accepting the claim on the principle of fault liability. Conversely, the tribunal would issue necessary directions in such regard.

14. With these observations, the appeal along with pending applications stands disposed of.

15. The statutory amount, if deposited, shall also be refunded to the appellant insurance company.

16. *Dasti.*

AUGUST 01, 2017
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R.K.GAUBA, J.