

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

% **Judgment delivered on: 21st December, 2018**

+ MAC.APP. 711/2017, CM APPL. 32446/2018 & CM APPL. 38908/2018

SANJEEV KUMAR BHARDWAJ ...Appellant

Through: Mr. Saurabh Kansal Ms. Pallavi S. Kansal, Mr. Dishank Dhawan and Mr. Deepak Pandey, Advocates.

versus

SANJAY KUMAR ... Respondent

Through: Mr. Peeush Sharma and Mr. Bharvi Thakur, Advocates.

**CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA**

JUDGMENT

I. S. MEHTA, J.

1. The appellant has challenged the impugned award in DAR No. 14510/15 dated 13.04.2017 passed by the Additional District Judge (NE) Motor Accident Claims Tribunal (Pilot Court), Karkardooma Court, Delhi whereby the compensation of Rs.99,317/- alongwith interest at the rate of 9% p.a. on the total compensation amount from the date of filing of petition till realization has been awarded in favor

of Respondent/Complainant.

2. The facts alleged are that on 10.03.2013 at about 12 PM injured Sanjay Kumar (Complainant/Respondent) was driving his motorcycle bearing no. DL-8SAM-9594 towards Shahdra reached near Petrol Pump, ISBT Road, Delhi. Sanjeev Kumar Bhardwaj (Appellant) was driving car bearing No. UP-16T-0847 (*hereinafter called the offending vehicle*) rashly and negligently and hit the motorcycle resulting in Respondent receiving injury on his person. Respondent fell down and sustained injuries. He was taken to Jag Parvesh Chandra Hospital, Shastri Park, New Delhi at 12:32 PM vide MLC No. 1021/13 and was attended by Dr. V.K. Gautam. On diagnosis his left leg was found swollen with abrasion on left ankle joint and was referred for X-Ray. Respondent got his X-Ray conducted from Sushruta Trauma Centre, New Delhi, report of the same was shown to Dr. V.K. Gautam on 10.05.2013 which was opined to be grievous in nature. On 19.03.2013 FIR No. 92/13 under Section 279, 337 IPC got registered at PS New Usman Pur, Delhi.

3. On the basis of pleadings and evidence led by the parties, impugned award dated 13.04.2017 was passed by Motor Accident Claims Tribunal (*henceforth referred to as the Tribunal*) of Rs. 99,317/- alongwith interest at the rate of 9% p.a. on the total compensation amount from the date of filing of petition till realization. The breakup of compensation awarded is as under:-

1.	Compensation towards pain and suffering.	Rs. 30,000/-
2.	Compensation towards amenities of life.	Rs. 0/-

3.	<i>Loss of future Income due to disability</i>	<i>Nil</i>
4.	<i>Loss of Income during treatment (51 Days)</i>	<i>Rs. 49,317/-</i>
5.	<i>Towards Servant/Attendant Charges</i>	<i>Rs. 10,000/-</i>
6.	<i>Towards Conveyance</i>	<i>Rs. 5,000/-</i>
7.	<i>Towards Special Diet</i>	<i>Rs. 5000/-</i>
8.	<i>Towards Medical Bills</i>	<i>Rs. 0/-</i>
	<i>TOTAL</i>	<i>Rs. 99,317/-</i>

4. The appellant has challenged the impugned award on the ground he was falsely implicated in the present case, FIR No. 92/13 under Sections 279, 337 IPC. The Ld. counsel of the appellant has submitted that the appellant was in Garh Ganga, UP i.e. more than 100 kms away from the place of the incident where he also got his car pollution checked vide Pollution Control Certificate Ex.DW1/A. The FIR was got registered after a gap of nine days after the incident. The Tribunal without looking into the pollution control certificate believed the statement of the claimant without any proof. The respondent being a police official has all the ways to misuse the state machinery to implicate the appellant. The Tribunal erred in ignoring the categorical statements of the witnesses of him being away from the place of incident and not being present at the spot of incident. The Tribunal relied on the records of criminal case which is yet pending adjudication without any evidence except delayed statement which he made at a later stage i.e. on 19.03.2013, despite being fit on the date of the accident. The respondent having met some minor accident, if any, planned to extort compensation from appellant and made false statement in a well planned manner. The Tribunal's award of

compensation is made without any basis and in absence of documents to prove quantum of loss such as the statement of income, prescription in support of the leave taken and is merely based on surmises and conjectures and prayed that the order dated 13.04.2017 passed by the Tribunal in DAR No. 14510/15 titled Sanjay Kumar Vs. Sanjeev Bhardwaj be set aside.

5. Per contra, learned counsel for respondents supports the impugned Award and submits that the compensation awarded is just and fair. So, it is submitted that this appeal deserves to be dismissed.

6. The complainant has examined himself as PW1 and has filed affidavit Ex.PW1/A as Examination-in-Chief. The respondent Appellant has examined himself as RW1 and has filed affidavit Ex.RW1/1 as Examination-in-Chief. The Appellant has examined Smt. Santosh Bala (R1W2), his sister and has filed affidavit Ex.R1W2/A as Examination-in-Chief. The complainant in his affidavit Ex.PW1/A has specifically stated that he met with an accident due to the rash and negligent driving of the appellant who was driving the offending vehicle on 10.03.2013 near petrol pump, ISBT Road, Delhi and he received injury on his person and was later hospitalised.

7. It is admitted fact that Respondent was hospitalised in JPC Hospital vide MLC No. 1021/13 and later in Sushruta Trauma Centre for conducting X-ray. The plea of Appellant that the complainant due to personal grudge gave vehicle No. UP-16T-0847 as offending vehicle does not seems to be correct.

8. The appellant in his affidavit in Para No. 7 has alleged that the complainant threatened him over a telephonic call and thereby tried to extort money or otherwise face consequences, this plea, loses its significance for want of CDR. Further, plea of the Appellant a quarrel broke between him and complainant 15 days before the alleged incident took place also does not seems to be correct. The Appellant has not put any suggestion to the complainant regarding the reason of quarrel. Mere saying so is an afterthought version to create artificial evidence.

9. The fact on record establishes that the incident took place on 10.03.2013 at around 12 PM. Thereafter, the injured/complainant was taken to JPC Hospital which is duly supported with MLC No. 1021/13 and was duly hospitalised. Thereafter, his ankle joint was X-Rayed and report was given. The FIR discloses the vehicle No. UP-16T-0847 which was being driven by the appellant rashly and negligently which caused the accident.

10. Plea of Alibi, onus to prove the alibi is on the appellant, appellant has neither examined the source of the pollution Control Certificate Ex.DW1/A, nor he has examined anyone from the issuing authority to prove that offending vehicle was present at the pollution check point on the relevant time and at the relevant place. Further, The witness for Appellant, Smt. Santosh Bala (sister of Appellant) was examined by the appellant who has not stated anything about the offending vehicle being pollution checked at Phoolwati Paryavaran Sewa Samiti, Krishna Service Station, Delhi-Garh Road, Kuchesar

Chopla, Hapur. Mere saying that he was away from Delhi is not sufficient unless he discharges his onus to this effect.

11. The Complainant/Respondent has furnished document showing his leave from 10.03.2013 to 29.04.2013 vide Order No. 11782-11826 dated 04.09.2013 Ex.PW1/1 which shows that Complainant took leave only after the date of accident. Moreover, His medical treatment in Sushruta Trauma Centre vide discharge summary Ex.PW1/2 and MLC No. 1021/13 shows that the injury was grave in nature for which the Complainant naturally would require bed rest. The Inspection report of the complainant's motorcycle bearing No. DL-8SAM-9594 dated 19.03.2013 shows signs of accident which shows that accident occurred. His salary slip for the month of March Ex.PW1/3 is also on record according to which the Tribunal passed the compensation.

12. As discussed above I find no infirmity with the impugned award passed by the Tribunal. Therefore, the present petition is dismissed and impugned award is upheld.

13. Let one copy of this judgment be sent to the concerned Court.
No order as to costs.

I.S.MEHTA
(JUDGE)

DECEMBER 21, 2018