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

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Decided on: 16.07.2019

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MAC.APP. 211/2019 & CM No.5895/2019

SHIRIRAM GENERAL INSURANCE CO LTD. Appellant

Through: Mr. Amit Kumar Mahajan, Advocate.

Versus

MANOJ KUMAR & ORS. Respondents

Through: Mr. S. N. Parashar, Advocate for
Respondent No.1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The appellant has impugned the award of compensation of Rs.13,34,000/- for the injuries suffered by respondent no. 1 – Manoj Kumar in a motor vehicular accident. It was the claimant's case that the injuries occurred on account of the insured vehicle being driven in a rash and negligent manner on the wrong side of a public road. The accident had happened in broad daylight, at about 1.45 pm on 26.05.2014, when the claimant riding his motorcycle reached Raj Nagar Extension, Ghaziabad, Uttar Pradesh, suddenly a mini truck, driven in a rash and negligent manner, came from the wrong side of the road, struck against his motorcycle and caused him grievous injuries. He was taken to a hospital in Ghaziabad where he received treatment. A complaint was lodged in Police Station Sihanigate, Uttar Pradesh.

2. Having considered the FIR No. 483/14, registered at Police Station Sihanigate, Uttar Pradesh, the learned MACT has noted that the driver of the offending vehicle has been charge-sheeted; it has recorded that: *“Certified copies of chargesheet is part of record and is comprising of FIR, complaint, bail order, release of offending vehicle on superdari and site plan, etc, which has prima facie involvement of the respondent No. 1 in causing this accident.”*

3. In effect, the learned Tribunal has considered the chargesheet; FIR, complaint, bail order, release of offending vehicle on superdari, the site plan, etc. which *prima facie* showed the involvement of driver of the offending vehicle in causing the accident. The injured-Manoj Kumar was an eye-witness and the learned Tribunal found no reason to disbelieve his version of the accident. It found that the site plan had proven that the offending vehicle was being driven on the wrong side of a public road; this itself would be considered as sufficient evidence of rash and negligent driving of a motor vehicle. For the injuries suffered by the claimant, the owner of the offending vehicle and the Insurance Company would be liable for the tortious activity of its driver.

4. Apropos fastening the liability to pay compensation to, the learned Tribunal has reasoned as under:-

*“18. **Liability:** Petitioner has proved that the offending vehicle was insured with the insurance company. Respondent No. 1 was driving the offending vehicle and caused the accident due to (sic) he is definitely liable to pay this amount of compensation. Respondent No. 2 i.e. owner is also vicariously liable to pay this compensation jointly or severely. Since vehicle was insured with the Respondent No. 3, due to*

(sic) Respondent No. 3 is liable to reimburse the owner against this compensation arising out of rash and negligent driving of the offending vehicle by the Respondent No. 1. Respondent No. 3 has failed to prove any violation of the insurance policy. However, counsel for insurance (sic) has argued that petitioner has not proved documents of criminal prosecution to prove that respondent no. 1 was involved during accident. However, this argument has no substance. Respondent No. 3 has not disputed this accident in its WS and Respondents No. 1 and 2 have also taken a simple plea that this accident took place by the fault of injured. After taking this plea, it cannot be said that accident is disputed. In the absence of criminal record, this claim can be definitely decided and is not subject to criminal prosecution of respondent No. 1. Similarly, the claim cannot be dismissed on the ground that injured has preferred not to implead the insurance company of his vehicle as it was not required at all. In fact, accident was caused by offending vehicle and it (sic) driver, owner and Insurance Company have already been impleaded which is sufficient to determine this compensation and has no defence. Further the plea of delay in FIR is also not a ground to deny compensation especially when injured was hospitalized in serious condition. As such, Respondents (sic) No. 3 is liable to pay this compensation.”

5. What emanates from the above is that a motor accident was caused on account of the insured vehicle coming from the wrong direction, in broad daylight and striking against the motorcycle which the injured was riding, thereby causing him serious injuries. Thus both the accident itself and the cause of injury are not in doubt.

6. The order has been impugned on the ground that though the injured was conscious after the accident, FIR was lodged by his father after a delay of 5 days.

7. The Court finds the said argument untenable because when a person is as seriously injured, as the claimant was, the delay in lodging the FIR can hardly be held against the injured; he was immediately rushed to a hospital. Access to prompt medical care was the first need. It is only when the injured regains his/her bearing that any corollary action could be expected from the injured. The accident itself is not in question and the Insurance Company had not raised this issue before the learned Tribunal.

8. The next argument is that an error has been committed by the learned Tribunal in calculating the “loss of dependency”. Admittedly, the respondent no. 1 has suffered 60% disability in his right lower limb, although it was argued on his behalf that he had suffered 100% functional disability. But the learned Tribunal considered it only 35% towards his whole body. It is the appellant’s case that it was never proved as to what was the nature of work the injured was doing. The injured had claimed that he was working as a painter of buildings, etc. with one Dilshad Bhai at Ashok Nagar, New Delhi. The injured being in the unorganized sector and working on daily wages now and then, would not necessarily have any documentary evidence for the same.

9. Be that as it may, while calculating the “loss of dependency”, the minimum wages applicable to an unskilled worker at the relevant time was taken into consideration and the loss towards earning capacity has been considered as 35% and not 100% or even 60%, as claimed by the claimants.

10. The Court is of the view that the learned Tribunal has been fair in taking the functional disability as 35% apropos the whole body of the injured because debilitation of 60% of the right lower limb would make the

movement of the injured person that much more difficult, less effective and deficient to undertake such work which he was carrying out or discharging in his capacity as a painter.

11. In the circumstances, the Court finds no reason to interfere with the impugned order. The appeal is without merit and is accordingly dismissed alongwith pending applications.

12. The awarded amount which has been deposited by the Insurance Company shall be released to the beneficiary(ies) of the award in terms of the scheme of disbursement specified therein.

NAJMI WAZIRI, J.

JULY 16, 2019

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