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

% *Decided on: 12.09.2019*

+ MAC.APP. 388/2019, CM APPL. 13129/2019 & CM APPL.

37390/2019

NATIONAL INSURNACE CO LTD

..... Appellant

Through: Mr. Pankaj Seth, Advocate.

versus

RAVI KUMAR SRIVASTAVA & ORS

..... Respondents

Through: Mr. Navneet Goyal, Advocate for R-1.

Mr. Vaibhav Verma and Mr. Indrajeet, Advocates for R-2 & R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation on the ground that the FIR was registered after 140 days of the alleged accident. Therefore, the FIR itself cannot form the basis of either negligence or the substratum for award of compensation.
2. The learned counsel for the claimant submits that the FIR was only a corroborative document and did not form the very basis of the claim. The disability suffered is not in doubt. It has been duly proven that the claimant is 100% disabled, i.e. paraplegic in terms of the disability certificate issued by Guru Teg Bahadur Hospital, Delhi.

3. The impugned order has dealt with issue as under:

“9. PW1 Ravi Kumar is the main injured as well as eye witness to this accident and has duly proved that on 13.7.2015 at about 11.30 pm, he along with other pilgrims was returning after performing worship in Balaji Mandir by a bus bearing No. UP-17T-0509 via Yamuna Express Way and reached near Bajna cut, under the jurisdiction of PS Naujheel, UP when suddenly the offending vehicle bearing No. UP-17T-0509 being driven by the respondent No. 1 in rash and negligent manner hit against the truck going ahead to bus and caused this accident which resulted into sustaining multiple injuries by him. It is further proved that injured was initially removed to Kailash Hospital where his MLC was prepared and thereafter was referred to Max Hospital where he received treatment for 7 days and has suffered 100% permanent disability. This testimony of PW1 is almost unrebutted on the aspect of rash and negligent driving of the offending vehicle by respondent No. 1. Rather respondents have left no stone unturned to extract all the information in favor of the petitioner /injured regarding this accident. The cross examination conducted by the insurance company is just an eye wash and nothing was put to the witness including suggestion to dispute this accident. On the other hand, the cross examination conducted by the respondent No. 1&2 is only confined to the treatment aspect, spending and reimbursement instead of disputing this accident, and again nothing was put to this witness to extract the truth about the mode and manner of this accident. There was a delay of about 140 days during this accident and lodging of this FIR i.e. accident took place on 13/07/15 and FIR was lodged on 29/11/15, but no suggestion has been put to this witness as to why he did not get lodged this FIR in time. Even no explanation is tendered

by injured as well, but respondents have not done anything except supporting the injured on the aspect of rash and negligent driving of the driver.”

4. At this stage, the learned counsel for the appellant submits that he does not contest the quantum of the award. The only grievance is apropos the observations made in the order as under:

“31. Before parting with this judgment, this Court considers appropriate to discuss the conduct of the respondents, especially Respondent No.3 i.e. Insurance Company which is main contestant to this case. It has already been discussed about the mode and manner of conducting the cross examination of the injured by insurance company, especially when the respondents No. 1 & 2 have conducted in collusive manner. However, insurance company did not bother to contest this connivance and rather has contributed to this connivance to help the injured on the one ground or others. This court has awarded this claim just keeping in view the purpose of this beneficial legislation and also that the injured has suffered 100% permanent disability, but this court cannot forget that insurance company must contest every case with sincerity to bring out the truth and also to rule out any doubtful claim. However, in this case, FIR was lodged after a delay of about 140 days and offending vehicle was involved out of sudden, but still insurance company has virtually not contested this case on merit and conducted only symbolic cross examination of PW1. Further, insurance company is duty bound to investigate every matter to ascertain authenticity of claim but this claim was never investigated or if investigated, it was not brought into the notice of this court and was contested for name sake. In fact, the conduct of Nodal Officer / Insurance Company to whom this case was entrusted is questionable and is liable to be brought into the notice of the Higher Insurance Authorities. Copy of this judgment

be sent to the General Manager, National Insurance Company Ltd. to conduct an enquiry into this case to ascertain as to whether there was any connivance between the petitioner and insurance company, if so to take suitable action, and to file a report within the period of 8 weeks before this court positively.”

The learned counsel for the appellant contends that the learned MACT has acted unfairly in making the aforesaid observations.

5. The Court is not persuaded by the said contention, because a Court of law cannot close its eyes where it finds something amiss in the manner in which the proceedings have been conducted before it. If the General Manager of the insurance company looks into the matter and he finds nothing amiss in the way the insurer has pursued its case, then the case will be deemed to be closed, but there is no reason to alter the directions of the learned Tribunal to the senior management of the government owned insurance company.
6. The learned counsel for the appellant submits that it is the counsel who conducts the cross-examination and not the officer of the insurance company. The General Manager is not aware of the day-to-day proceedings and about the manner in which the trial is held. When a case is entrusted to a counsel, the client has full faith in the ability and competence of the counsel.
7. Nevertheless, if the manner of prosecution of the case has led to the formation of such an impression by the learned Tribunal, then surely it should be a matter of concern for the insurance company and it ought to take corrective steps to ensure that there is never a likelihood of its recurrence.

8. The appeal, alongwith pending applications, is dismissed, with the aforesaid observations.
9. The statutory amount alongwith interest accrued thereon be paid to the beneficiary of the award towards litigation expense of this appeal.

NAJMI WAZIRI, J

SEPTEMBER 12, 2019

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