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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 01.08.2019

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MAC.APP. 666/2019 & CM No.31175/2019

NATIONAL INSURANCE COMPANY LTD. Appellant

Through: Ms. Shantha Devi Raman, Advocate.

Versus

DHARMENDER @ DHARAM SINGH & ORS. Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The appellant impugns the award of compensation on the following grounds:-

- (i) That there was no eye-witness to the accident which resulted in unfortunate amputation of the right arm of the victim.
- (ii) That injured – Dharmender is admittedly an illiterate person, therefore, he could not have taken down the number of the offending vehicle.
- (iii) That since he was hit from behind by the offending vehicle, and having fallen down violently, he could not possibly have seen or noted the number of the offending vehicle.

- (iv) That the complaint was made to the police one whole day later and the evidence of the alleged pillion rider viz. Shiv Charan, was found untrustworthy. Indeed, the claim of compensation preferred by Shiv Charan has been dismissed.
- (v) That the police complaint was filed on the basis of an intimation given by Deepak, who was told by the uncle of Shiv Charan, who actually witnessed the accident.

While the aforesaid arguments may look attractive at first instance, nevertheless, on examination they are without basis.

- 2. These issues have been dealt with by the learned Tribunal as under:-

“9. In an action founded on the principle of fault liability, the proof of rash and negligent driving of the offending vehicle is sine qua non. However, the standard of proof is not as strict as applied in criminal cases and evidence is tested on the touchstone of principle of preponderance of probabilities.

10. In order to establish the case, petitioner examined himself as PW4 being eye-witness of the accident. He deposed that on 12.02.2017 at about 05:30 p.m., he was coming to Baghpat, U.P., along with his friend for some work on his motorcycle and when they reached near Mandola Village, Tronica City, a truck bearing registration no. HR-55W-0193 came from behind at a high speed while being driven in rash and negligent manner and hit them, as a result of which they fell down and his right arm was crushed under the offending vehicle. Further, he deposed that he was shifted to nearby hospital but due to his serious condition, he was referred to LNJP Hospital, Delhi and during treatment, his right arm was amputated. It is observed that witness was cross-examined in detail by all the respondents, however, accident in question between the offending vehicle and motorcycle of petitioner has

not been disputed. On behalf Of respondent no. 1&2, only a suggestion was given to PW1 that their motorcycle was being driven in rash and negligent manner and not the offending truck. Further, factum of accident has also been admitted by R2W1 Vinod Kumar (owner/respondent no. 2) in his testimony. He has also mentioned in his cross-examination that he was informed by the driver after about 1/2 hour of the accident and he had not made any complaint regarding false implication of his vehicle. He also mentioned that driver had informed him that two persons were injured in the accident.

11. It is further observed that technical inspection report EX.PW4/D also-makes it clear that left side of the bumper of the offending vehicle got scratch in the accident. It is also not disputed that offending truck had hit the motorcycle from back side. Though, it has been alleged by respondent no. 1&2 that the accident had happened due to rash and negligent driving of the motorcycle but it has not been explained as to how the motorcycle was responsible for accident. In view of above, it becomes clear that offending truck was being driven in rash and negligent manner and was responsible for the accident.”

3. Referring to the affidavit of the injured Dharmender and his cross-examination, wherein he admits that the place where the accident happened was littered with gravel, Ms. Raman, the learned counsel for the appellant, submits that it is, therefore, possible that the injured had fallen/skidded on the gravel as a result of his driving at a high speed and thus injured himself grievously. Alternatively, he should have stopped and/or slowed the vehicle down, which could have prevented the alleged accident by skidding. In either case, there would be contributory negligence by him and some of the awarded amount should be deducted. The said argument is untenable because gravel could be of any size, it does not necessarily mean that the person should stop his vehicle or that motorcycle cannot be driven on gravel. What was the size of the gravel, how far or how loosely it was littered? Was

it so dangerous that the rider should have slowed down entirely? All these aspects are not in the realm of the present examination because it was for the Insurance Company to have brought evidence to show that the rider of the motorcycle was driving in a rash and negligent manner and thus contributed to the unfortunate debilitating accident. What is plausible is that because of the loose gravel, as a prudent driver, the injured may have slowed his vehicle down, which was then hit by the rashly driven offending insured vehicle. Corroboration of such a hit, as found in the technical examination of the left side front bumper of the offending vehicle, is there. If the offending vehicle had a scratch on the left side of its front bumper, then it means that the injured rider of the motorcycle was on the left side of the offending vehicle i.e. the lane in which slow moving vehicles are meant to ply. That itself would lead to the logical conclusion that the offending vehicle was being driven in a rash and negligent manner.

4. Having gone through his affidavit and the cross-examination, this Court is of the opinion that, the claimant has withstood the cross-examination, and his testimony that he was hit by the offending vehicle remains unshaken. Furthermore, the contention that simply because he was hit from behind, he may not have been able to note down the number of the offending vehicle and that other people at the site, may also not have noted it down and that the injured being illiterate could not have taken down the number, are the arguments without basis, because a mere glance at the number of the offending vehicle is not ruled out and such number is likely to haunt the injured for a long time. Absolute illiteracy to recognize vehicle number plates is not proven.

5. The lacuna in the inquiry or investigation by a police officer, cannot in any way undermine the claim of an injured or aggrieved party because the claim petition has to stand on its own legs. The police report could be of corroborative assistance but wherever it may be lacking in the investigation, would not necessarily mean that the claim petition asserting a fact is not believable simply because the police investigation is silent and has missed out on that detail. If the assertion is proven or plausible and not ruled out in the police investigation, there would be no reason to exclude the assertion so as to defeat the claim petition itself. In the present case, there is nothing shown from the statement of the police officer, which could have defeated the case set up by the claimant.

6. In view of the above, the appeal is without merits and is accordingly dismissed.

7. The statutory amount alongwith interest accrued thereon be returned to the Insurance Company.

NAJMI WAZIRI, J.

AUGUST 01, 2019

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