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

% *Judgment delivered on: 02.09.2019*

+ **MAC.APP. 762/2019**

NATIONAL INSURANCE CO LTD Appellant

versus

LOKESH VERMA & ORS Respondents

+ **MAC.APP. 763/2019**

NATIONAL INSURANCE CO LTD Appellant

Versus

LOKESH VERMA & ORS Respondents

Through: Mr. Sanjay Rawat, Advocate for
appellant.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

MAC.APP. 762/2019, CM APPL. 39298/2019 & CM APPL. 39299/2019
MAC.APP. 763/2019, CM APPL. 39359/2019 & CM APPL. 39360/2019

1. The award of compensation dated 31.05.2019 passed by the Ld. MACT in MACP No. 81/2016 is impugned on the ground that the injured himself has stated that his motorcycle had been hit from behind by a tempo. Therefore, the impugned order has erred in awarding compensation apropos the same accident having been caused by the insured Santro Car bearing

Registration No. DL7CE6876. Mr. Rawat, the learned counsel for the appellant, submits that the best eyewitness is the injured himself who had stated that he saw the tempo which hit their vehicle from behind, his own testimony would be of utmost importance and should not be lightly dealt with or discarded. He, thus, submits that the injured motorcyclist has improved upon his first testimony which may have led to the confusion of whether the said motor- vehicular accident was caused by a tempo or the insured car.

2. The facts are that on 10.07.2015 at about 9:15 a.m., the claimant was riding his motorcycle on which his wife was sitting as pillion rider. They were hit by a motor vehicle from the rear side which resulted in them being flung off from the motorcycle. The wife suffered fatal injuries and later succumbed to the injuries in a hospital. The motorcyclist/husband received injuries but has survived.

3. Claimant had stated that after being flung from the motorcycle, he first looked for his wife and then he saw a tempo going by from the side. So according to him, it was the tempo that had hit them from the rear side with great force. This issue has been dealt with in the impugned order as under:-

“11. To prove the accident, petitioner has examined 3 eye witnesses i.e. petitioner Lokesh Verma (PW2), Mohd. Aslam (PW1) and Manish Kumar Agnirash (PW-5). All have mentioned that the offending vehicle had hit the motorcycle bearing registration No. DL-5S-BV-7017, which was being driven by petitioner and deceased Ruchi Verma being the pillion rider, from the back side and due to the impact, they fell down on the road and thereafter the deceased was ran over by the said car. Further, it is mentioned that the driver of the said car stopped after some distance but she did not help the injured

and fled away from the spot. The case of the claimants have been challenged on the ground that petitioner has mentioned in the FIR that accident had been caused by an unknown tempo and only for the purpose of claiming compensation, offending vehicle was roped in later on and false cases were filed against respondents.

12. It is evident that in FIR, it was mentioned by the petitioner Lokesh Verma that an unknown tempo had hit their motorcycle from back side while being driven in rash and negligent manner and at fast speed. On this aspect, petitioner has explained in paragraph 7 of his affidavit EX.PW2/X that after the impact from back side, he alongwith his deceased wife fell down on the road and immediately he got up and tried to hold and check his deceased wife and then he saw a tempo which was just passing from the side and that gave him an impression that tempo had hit his motorcycle. Further, he mentioned that he told same fact to the police in the hospital but then he was not in his full senses. In view of this court, considering the manner in which the accident had happened, it was not very easy for the petitioner to ascertain the identity of offending vehicle. The facts that petitioner was injured and his wife was lying unconscious on the road on account of serious injuries suffered in an accident; caused by a vehicle hitting their moving motorcycle from back side, can be considered sufficient to incapacitate him to judge the sequence of events leading to accident and those may easily create confusion that a vehicle, which was passing through the spot and first seen by the injured immediately after the accident, was responsible for accident. It is noteworthy that in this regard a clarificatory statement of petitioner under section 161 Cr.PC was also recorded on 15.07.2015. Moreover, it is pertinent to mention here that the petitioner has honestly admitted in his cross examination that he did not know as to which vehicle had-hit from behind and he was only told by the persons who had gathered there that the accident was caused by a car. In view of this, it becomes clear that the testimony of petitioner is not sufficient to prove the identity of the offending vehicle and therefore, testimony of other eye witnesses is required to be scrutinized for this

purpose.

13. Another eye witness Mohd Aslam (PW1) mentioned that at the time of accident, he was going to his office on his scooty and after crossing the Karkari bridge, he saw that one motorcycle, having two occupants, was going a little ahead of him and suddenly a Santro car came from behind and knocked down the said motorcycle. Further, he stated that after crushing the pillion rider, the said car stopped at some distance and then he asked lady driver of the car to help the injured persons but she refused and left the spot. It is also mentioned that one of the persons gathered there had taken the photograph of the number plate / rear portion of the car and then he called police at 100 number. During cross-examination, PW-1 stated that his statement was not recorded by the police and he had given the registration number of the offending car to the police at the spot.

14. To rule out any doubts regarding the presence of PW-1 at the spot, the Tribunal had examined few witnesses. CW-1 has clarified that Mohd Aslam (PW-1) was employed as driver in Delhi Jal Board, Mayur Vihar, Phase-II, Delhi, and on the date of incident, he marked his presence through biometric at 9.20 a.m. Further, CW-4 proved that the mobile No. 9899199436 was issued in the name of Mohd. Aslam. Further, CW-7 mentioned that a call was received at police control room, PHQ, ITO, Delhi from aforesaid mobile No. 9899199436 and information of accident was provided by the caller. Further, CW-5 also confirmed that Mohd. Aslam was present at the place of accident when he reached there in PGR van immediately after receiving information of accident. Thus, the aforesaid evidence corroborate the case of petitioner that PW1 was present near the spot at the time of accident and he had informed the police about the accident immediately thereafter. Further, nothing could be brought on record to discredit the version of PW-1 and thus it is held that his testimony is reliable.

15. Third eye witness Manish Kumar Angirash (PW5) has deposed that at the relevant time, when he reached Karkari mor flyover, he saw that a Santro car on his opposite lane had hit a

motorcycle and due to that impact, the driver and the pillion rider suffered injuries. Further, he mentioned that immediately after that he stopped his car and went to the spot after crossing the divider and he saw that the offending vehicle had stopped at some distance from the place of accident and then he requested the driver of the offending vehicle, who was a female, to assist the injured persons but she refused. During cross-examination, he mentioned that he is an advocate by profession and neither he informed the police nor he provided the registration number of offending vehicle to the police and for the first time he provided the details of offending vehicle on 10.08.2015 in MACT Cell, at DCP office. He further disclosed that he went to the MACT Cell, on his own and he was not called by the IO. Further, suggestion was given that route taken by this witness while going to his house was longer one and it suggests that he was not present at the spot at the time of accident. This court is with an agreement with the submissions made by Ld. Counsel for the respondents that testimony of PW-5 is not very convincing for many reasons. First of all, it is observed that at the time of accident, this witness was on the opposite lane and therefore, it was very difficult for him to observe the exact sequence of events resulting in the accident from a distance. Secondly, it is difficult to believe that in a very short time, he parked his vehicle, crossed the busy road and went to opposite side and further went towards offending vehicle, which stopped at some distance and requested female driver to provide assistance to the injured persons. In view of this court, generally no driver at fault, would stop the offending vehicle for more than few seconds, specially when the accident had resulted into serious injuries and public persons have gathered there. Thirdly, PW-5 has not furnished proper explanation as to why he had not provided the registration number of offending vehicle to the police at the spot or telephonically and why he took a month to share the information about the accident with the police, especially when he was supposed to know duty of a responsible citizen being a lawyer.

16. Further, it is found that corroborating material collected during investigation indicate towards involvement of offending

vehicle. First of all, the mechanical inspection report of the offending vehicle EX.CW9/A clearly indicate that there were signs of front impact and fresh damages in the form of cracks and scratches on front bumper, scratches on left fender etc. The said mechanical inspection was done on 20.07.2015 i.e. within 10 days of the accident and therefore, it is difficult to imagine that the said damages might have been resulted after the accident. Moreover, the explanation furnished by respondent No.2 (CW-9) that these damages were of period before the date of alleged accident, is not very convincing. It is also not disputed that the owner of the vehicle has given his reply to the notice under section 133 M.V. Act EX.CW9/B that respondent No. 1 was driving the vehicle at the relevant time. Further, it is not disputed that charge sheet under section 279/337/304A IPG Ex.PW2/4 filed against respondent No. 1 in the court of Ld. MM has not been challenged in any manner so far.

17. Further, it is worth noticing that the driver of the offending vehicle has not appeared in the witness box to corroborate her defence taken in written statement and thus adverse inference has to be drawn against her. Further, there is nothing on record to show that claimants had any enmity with the driver of the offending vehicle so as to falsely implicate her in a criminal case or this case.”

4. What emanates from the preceding discussion is that the injured claimant had initially said that he saw a tempo going-by while he was looking for his wife in the immediate aftermath of the forceful impact from the rear, caused by the offending motor vehicle. After the sudden and immense impact caused due to the offending motor vehicle hitting the rear side, it is understandable for anybody who meets with such a serious accident, would be in a state of deep shock and disorientation. Furthermore, such person would not only be concerned about his limbs being in order but also the safety and security of his wife, whom he was going to drop-off to

her office would have been of paramount concern to him. The shock of the accident, the physical pain of the injuries, the disorientation, compounded by him discovering the limp body of his wife lying by the roadside, would have only added to his not being able to focus on what was happening around him. It is in this frazzled state of mind that he stated that he saw a tempo going by and assumed that the tempo was the offending vehicle that caused the calamitous accident. The better eyewitness at that time, would be the other road users or passersby, because 9:15 a.m. is a peak rush hour time. The eyewitnesses who have deposed, were persons who were using the road at that time. The impugned order has relied upon their testimonies.

5. In view of the above, the Court finds no reason to interfere with the impugned order.

6. The appellant further argues that the damage to both the vehicles is oddly shown on the front side. Therefore, if the motorcycle had been hit from the rear side, there should be telltale signs of the damage to the vehicle from the rear side and its front headlight and other visor assembly, etc., should not have been in a damaged condition. However, the Court would note that as per the Mechanical Inspection Report, the following damages were noted on the car:

*“22. Details of damage on the vehicle (**Fresh Damages**)*

- 1. Front bumper scratched/Cracked/ Number plate scratched*
- 2. Left fender scratched/left side board dented*
- 3. Left 1st and 2nd doors dent/scratched/ rear QTV panel dent/scratch*
- 4. Right fender scratched/Right lower side scratched/dented Rt rear QTV panel dent/scratched*
- 5. Brakes ok*
- 6. Vehicle on Road*

7. Right Back light damaged/rear bumper scratched.”

7. Whereas for the motorcycle, the following damages were noted:

*“22. Details of damage on the vehicle (**Fresh Damages**)*

- 1. Front head light & visor Assembly & Right Indicator/ scratched*
- 2. Right side lower/ Mutha/Goal/ Scratched*
- 3. Brakes ok*
- 4. Vehicle on Road*
- 5. Rear Number Plate dented & Rear down Reflector (Red) damaged*
- 6. Rear right side silencer exhaust scratched.”*

8. The important fact to be seen is that the offending vehicle had damages in its front side and whether there was corresponding damage to the motorcycle which was hit at a high speed from behind. Fresh damages were noted apropos its rear number plate which was dented and rear right side silencer was scratched. For a smaller two-wheeler vehicle, a simple nudge or a touch by a fast-moving larger vehicle is sufficient to send it tossing over and the consequential damage to its headlight and visor assembly and right indicator is a corollary damage which is quite likely when the vehicle lands down forcefully after being flung away. Damages to the front of the motorcycle would not come in the way of being a result of the impact from the right rear side. There is no merit in the argument. Hence, it too is rejected.

9. Lastly, the appellant contends that the computation of the award on the basis of the gross salary of the deceased has been wrongly computed.

The deceased spouse was working as an office executive. Her salary had been increased in 2015; her gross take-home salary was Rs. 31,800/- in July, 2015 as deposed by PW3. No TDS was deducted on the said amount, it would be assumed that TDS was not deductible on her annual salary. Income up to the amount of Rs. 4,00,000/- for a female assessee would be tax exempted or otherwise tax would not be payable on the said amount because of tax saving schemes as provided under law. In view of the above, no case is made out on this ground, either.

10. The Court would note that in terms of *Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.* 2018 SCC OnLine SC 1546 each of the two claimants would be entitled to an award of compensation at the rate of Rs. 40,000/- and Rs. 50,000/- towards 'loss of consortium' and 'loss of love and affection' respectively. The impugned order has only awarded Rs. 40,000/- towards 'loss of consortium', same would have to be supplemented by another Rs. 40,000/- towards "loss of consortium" and Rs. 1,00,000/- towards "loss of love and affection" (Rs. 50,000/-x2).

11. In view of the above, let the enhanced amount of Rs. 1,40,000/- be deposited by the insurance company before the learned Tribunal at the same rate of interest and from the same date as specified in the Award, within three weeks from date of receipt of copy of this order to be released to the beneficiaries of the Award as per the scheme of disbursement specified therein.

12. The appeals are disposed-off in the above terms.

13. Let a copy of this order be given *dasti* to the learned counsel for the appellant under the signatures of the Court Master.

NAJMI WAZIRI, J

SEPTEMBER 02, 2019

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