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

% *Decided on: 18.10.2019*

+ **MAC.APP. 827/2019 & CM APPL. 45862-63/2019**

RELIANCE GENERAL INSURANCE CO LTD Appellant

Through: **Mr. A.K. Soni, Advocate.**

versus

VERNITA GARG & ORS

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This appeal impugns the award of compensation dated 19.08.2019 passed by the learned MACT in MACP No. 14/18, on the ground that the injured, who was crossing the road at a place where there was no zebra crossing for the pedestrians was herself negligent and she put her life and limb at risk of her own volition.

2. The Court finds the aforesaid argument untenable, because the reasoning and conclusion of the learned Tribunal is based on the evidence of CCTV footage and the deposition on behalf of the parties. It has reasoned as under:-

“ There is no dispute that the petitioner was first hit by one XUV 500 car and was flung away and then was ran over by the offending vehicle i.e. Mahindra Scorpio bearing no. DL 3C AS 0311. The contention of the

respondents is that the offending vehicle was not at all negligent as after being hit by the untraceable XUV 500 car the petitioner all of a sudden came in front of the offending vehicle and was hit. Now, the question is whether the offending vehicle was not negligent in causing the accident and the accident was caused due to the negligence of the untraced XUV 500 car. In her statement the petitioner states that the XUV 500 car and the offending vehicle Mahindra Scorpio were racing against each other in high speed and hit her after jumping red light. As such, when the offending vehicle was racing against the untraced XUV 500 car and jumped the red light, its driver i.e. the respondent no.1 was definitely negligent. Had the speed of the offending vehicle was in control and the offending vehicle not jumped the red light, the accident would have easily been avoided despite the fact that after being hit by the untraced XUV 500 car the petitioner came in front of the offending vehicle.

One of the contentions of the respondents is that the petitioner was herself negligent as she was not crossing the road at a proper place. The site plan shows that there is no zebra crossing on the spot from which the petitioner could cross the road properly.

Further, the facts as stated by the petitioner are almost the same as stated by Mr. Ranjeet Singh Rathor, on whose statement the FIR was registered. Although, Mr. Ranjeet Singh Rathor has not been examined but his statement u/s 161 Cr.P.C. is relevant as it duly supports the statement of the petitioner. Ranjeet Singh Rathor also clearly stated to the Investigating Officer that at the time of accident he was behind the petitioner. He further stated that the two vehicles i.e. Mahindra XUV 500 white colour and one dark green colour Scorpio were coming in very

high speed and being driven by their drivers in rash and negligent manner and Mahindra XUV 500 hit the petitioner and the Scorpio ran over the petitioner.

The police examined two more witnesses i.e. Mr. Pawan Kumar Jha and Mr. Anant Kumar Chaudhary who gave the same statement as given by the petitioner and Ranjeet Singh Rathor.

Considering the statement of the petitioner, Ranjeet Singh Rathor and other witnesses, the Tribunal concludes that the accident happened due to the rash and negligent driving of the offending vehicle bearing no. DL 3C AS 0311 by the respondent no.1. Documents placed on record shows that the vehicle was owned by respondent no.2 and insured with respondent no.3.”

3. What emanates from the above is that the injured was first hit by an XUV 500 car and was flung away from it and thereafter the offending vehicle i.e. Mahindra Scorpio bearing No. DL 3C AS 0311, which was racing against the XUV 500 and was being driven in a rash and negligent manner ran over her and crushed her. It was due to only such wanton and reckless manner of driving that the lady, who was in the prime of her life, was grievously injured. Had the offending vehicle been driven in a cautious, careful and diligent manner, perhaps the injury to the claimant may not have happened.

4. Furthermore, it is a matter of record that on the entire stretch of road, there was no designated zebra crossing. Therefore, the appellant's argument apropos zebra crossing is misconstrued. What is to be determined is whether there was negligent and rash driving of the offending vehicle. It stands

proven that the said vehicle was being driven rashly and negligently. Hence, there is no ground to apportion any blame upon the injured/claimant.

5. The accident has resulted in multiple disabilities and inconvenience to the claimant for the rest of her life. Apropos her disability, the learned Tribunal has recorded as under:-

“ As per the disability certificate the petitioner has suffered 84% permanent disability in relation to her left upper limb and left lower limb and visual disability. The disability on the person of the petitioner is such that she may not be able to do the job of dietician with the efficiency which she was doing before the accident. Although, being a dietician the petitioner may simply sit and give advise and work as a dietician but her condition is such that she may not even get a job. Further, the condition of the petitioner is such that her movements have been restricted. Further, she has suffered visual disability also.”

6. On a bright July morning, a young lady, barely 29 years of age, brimming with hopes, dreams and aspirations had set-off for her work place at the hospital across the road. Little did she know, that moments later two vehicles being driven in a rash and negligent manner would render her debilitated for the rest of her life, reducing to shambles her dreams, aspirations and ambitions. One offending vehicle first hit her and fled from the spot; by this impact she was flung in the air and landed some paces away. The second offending vehicle (insured by the appellant) crushed her mercilessly, resulting in her becoming visually disabled and virtually half of her body i.e. the left side, also permanently disabled. The Court would note that the accident happened on 31.07.2017 in broad daylight at about 7:10 a.m.; it is the time of year when the sun rises up early. The offender could

have clearly seen the young lady and avoided the accident. There can never be any justification apropos to the “zebra crossing” argument with respect to the grievous accident which has reduced the life of the young lady, who was in the prime of her life, to such misery.

7. In view of the above, the Court finds no reason to interfere with the impugned order. The appeal is without merit and is, accordingly, dismissed.

8. The statutory amount, alongwith interest accrued thereon, be deposited into the ‘AASRA’ Fund opened by this Court.

OCTOBER 18, 2019

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NAJMI WAZIRI, J



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