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

% ***Judgment delivered on:10th January,2019***

\+ MAC.APP. 348/2016 & CM APPL.14928-14930/2016 & CM APPL.38469/2017

ORIENTAL INSURANCE COMPANY LTD ...Appellant

Through: Mr. Saurabh Kumar Tuteja and Mr. Tarkeshwar Nath, Advocate.

versus

1. JITENDER KUMAR VERMA
   S/o Shri Om Prakash Verma,
   R/o H. No. C-2/88, Sector-16,
   Rohini, Delhi- 110085
2. ASHOK KUMAR YADAV (DRIVER)
   S/o Shri Devendra Yadav,
   R/o J- Block, H.No. 401,
   Jahangir Puri, Delhi.
3. RAMESHWAR DASS (OWNER)
   Through its LRs Sh. Vikas Singhal,
   S/o Rameshwar Dass,
   R/o H. No. C- 184, Sainik Nagar,
   Mansha Ram Park Road, Uttam Nagar,
   New Delhi. ... Respondents

Through: Mr. Siddhartha Nanwal, Advocate for R-1. Mr. Rajiv K. Garg, Mr. Ashish Garg and Mr. Govind Singh, Advocates for R-3.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. The appellant has challenged the award in MACT Case No. 227/14 dated 05.01.2016 passed by the Additional District Judge Motor Accident Claims Tribunal, Rohini Court, Delhi (*hereinafter called as "The Tribunal"*) whereby the compensation of Rs.3,19,034/- alongwith simple interest of 9% p.a. on the total compensation amount from the date of filing of petition till realization has been awarded to respondent no.1/Claimant.

2. The brief facts are that the petitioner Jitender Kumar Verma (*respondent no.1 herein*) S/o Sh. Om Prakash Verma has filed application under Section 166 read with 140 of the Motor Vehicles Act, 1988. The petitioner has alleged in his petition that he was residing at C-2/88, Sector-16, Rohini. The petitioner in his petition has stated that he was 33 years old and was working as Marketing Executive with Hardeep Elect. Industries, Badli Industrial Estate, New Delhi and was earning a sum of Rs. 9,000/- per month. As per the complaint, the petitioner met with accident at Badli Mor on 09.07.2005 at about 03:40 PM. The respondent No.1 was riding his motorcycle No. DL-8SNA-0701, a truck bearing No. DL- 1GA-2232 (*hereinafter called the offending vehicle*), being driven by Ashok

Kumar Yadav (*respondent no.2 herein*) came in a rash and negligent manner and hit the motorcycle. Respondent No.1 fell down and sustained injuries. He was admitted in hospital on 09.07.2005 and was on two months bed rest and a sum of Rs.5 lacs were incurred on his treatment. FIR No. 562/05 under Section 279/338 IPC was registered at PS Shalimar Bagh, Delhi. The accident has taken place due to the rash and negligent driving of Respondent no.2. It is alleged that the offending truck was insured at the time of accident.

3. The Oriental Insurance Company Ltd. (*Appellant herein*) has filed written statement and has taken the preliminary objection that the driver was not holding valid and effective driving license at the time of accident and claim of amount of Rs.15,00,000/- (Rupees Fifteen Lacs only) compensation is highly exaggerated and further submitted that respondent No.3 would take opportunity under Section 149(2) and 170 of the Motor Vehicles Act at any stage. Appellant has further taken additional plea of disowning his liability under the Motor Vehicles Act 1988.

4. On merits the Appellant has admitted that the offending vehicle was insured in the name of respondent no.3 vide Policy No.271400/2005/4213 and Cover Note No.2A NO/42836 valid for the period from 12.11.2004 to 11.11.2005.

5. The Respondent No.3 owner of the offending vehicle too has filed his Written Statement and denied the demand of the Claimant/Respondent No.1and submitted that claim petition is without

cause of action. The offending vehicle is already insured with Appellant Company. The claim of the medical treatment and claim filed by the claimant is a false claim. The Driver/Respondent no.2 did not file Written Statement and his defense was struck off. The claimant has not filed replication. Issues were framed on 06.07.2009 by the Tribunal.

6. Both the parties have led their evidences before the Tribunal and the Claimant/Respondent No.1 has examined himself as PW1 and filed affidavit Ex.PW1/A in support of its claim and he has also examined Dr. Srikant Kaushik as PW2 and Dr. Sanjeev Gambhir as PW3. Thereafter, petitioner evidence was closed on 02.04.2012.
Owner of the offending vehicle, Respondent No.3 has examined himself as R2W1.

Appellant Oriental Insurance Company Ltd. has examined Sh. Vikram Singh as R3W1 and Shri Santosh Kumar as R3W2. Thereafter, Appellant evidence was closed on 24.08.2015.

7. On the basis of pleadings and evidence led by the parties, impugned Award was passed by Motor Accident Claims Tribunal and the breakup of compensation awarded is as under:-

1.	*Loss of Income*	*Rs. 43,800/-*
2.	*Loss of future income*	*Rs. 1,78,704/-*
3.	*Pain and suffering*	*Rs. 40,000/-*
4.	*Medical Expenses*	*Rs.7,530/-*
5.	*Loss of enjoyment of amenities of life*	*Rs.25,000/-*

6.	*Conveyance and Special Diet*	*Rs.20,000/-*
7.	*Attendant Charges.*	*Rs.4,000/-*
	Total	***Rs.3,19,034/-***

8. The Appellant/Respondent No.3 aggrieved from the impugned award has filed the present appeal on the following grounds: -

i. That the Tribunal while assessing "loss of Income", the Tribunal has erred in granting the loss of income to the claimant for period of six months irrespective of the facts on record which shows that he was bed ridden for only two months.

ii. That the Tribunal has erred in making addition of 50% towards "future prospects" irrespective of having taken any evidences in this regard.

iii. That the Tribunal has erred by holding that no witness from concerned licensing authority was examined in this case to prove that driving license of the driver (Respondent-2) which was fake or invalid at the time of accident as per the Ex.R3W1/7.

9. The learned counsel has relied upon the following judgments:-

i. ***National Insurance Company Ltd. v. Pranay Sethi***, (2017) 16 SCC 680.

ii. ***National Insurance Co. Ltd. v. Geeta Bhat,*** 2008 (12) SCC 426.

iii. ***National Insurance Co. Ltd. v. Shadab,*** 2014 (1) AD (Delhi).

10. Per contra, learned counsel for the respondents have submitted that the compensation awarded is just and fair and deserves to be dismissed.

11. The petitioner Jitender Kumar Verma has examined himself as PW1 and relied upon his affidavit Ex.PW1/A in his examination-in-chief. The Claimant/Respondent No.1 Jitender Kumar Verma deposed that he met with an accident at Badli Mor on 09.07.2005 at about 3:40 PM. When the offending vehicle was being driven in rash and negligent manner by Respondent No.2 Ashok Kumar Yadav hit him, as a result of which he sustained multiple injuries on his person. Thereafter he was taken to BJRM, Hospital, Jahangir Puri, Delhi. He was admitted in hospital vide MLC No. 523/MLC/BJRM (Ex.PW1/4) and due to accident, he received 16% permanent disability.
FIR was registered under Section 279/338 IPC Ex.PW1/5.
He incurred expenses to the tune of Rs.5 lacs for his treatment and medical bill worth Rs.7,599.89/- Ex.PW1/7 to Ex.PW1/21.
He remained on bed for two months and incurred expenses for the daily service of attendant.
He lost the job and the future prospective got affected.
The accident was caused due to the negligence of the respondent No.2 Ashok Kumar Yadav. He was driving the truck negligently and caused injuries on person of Respondent No.1.

12. The offending vehicle was having permit Ex.R3W2/A which was valid in NCR Delhi on 09.07.2005.

13. The Appellant/Oriental Insurance Company was given sufficient opportunities to examine witness from the office MLO, Hazaribagh despite giving sufficient opportunities on 27.08.2015 neither the respondent witness of Oriental Insurance Company Ltd. was present on 27.04.2015 nor his counsel was present, which compelled the learned Tribunal to close the respondent evidence on 24.05.2015.

14. The present appeal is contested by Oriental Insurance Company Ltd. on the ground that the driver was not holding valid and effective license at the time of the incident and amount of Rs. 15 lacs is exaggerated amount and Appellant is not liable to pay the same.

15. In support of his plea the Oriental Insurance Company Ltd. has examined Vikram Singh, AO, Oriental Insurance Company Ltd. rather than the competent official from licensing authority, Hazaribagh to prove that driving license Ex.PW1/6 was not valid. Sh. Santosh Kumar R3W2, dealing Assistant from State Transport Authority, Rajpur Road, Delhi has proved the permit of the truck i.e. permit no. P-10370/2000 was valid on 09.07.2005 for the state of NCR Delhi.

16. The date of the incident was 09.07.2005 and no other witness has been examined on this point to prove the driver of the offending vehicle was not holding valid license. Mere argument that the driver was not holding the valid license on the date of incident is neither here nor there without consequential effect in presence of seizure memo

Ex.R3W1/6. The seizure memo shows that the Driver Ashok Kumar Yadav of the offending vehicle was having a valid driving license for HMV till 03.09.2006 and incident took place on 09.07.2005. The seizure memo Ex.R3W1/6 is proved by Vikram Singh, who is a witness of the Appellant.

17. Once the Appellant's own witness has proved on record that driver was having a valid driving license which was seized vide seizure memo Ex.R3W1/6, the Appellant-Insurance Company later cannot be allowed to take different stand.

18. So far, the plea of the appellant for exaggerated compensation amount is concerned the same loses its significance as no specific amount has been determined in this regard. The Tribunal reached the conclusion on the basis of the statement of Vikram Singh R3W1 and Dr. Srikant Kaushik PW2 and on the basis of the exhibits MLC No.523/MLC/BJRM Ex.PW1/4 and disability certificate Ex.PW3/A issued by Dr. Sanjeev Gambhir PW3. Therefore, the learned Tribunal Court has determined the compensation amount which was awarded on 05.01.2016. Hence, there is no requirement to interfere with the compensation amount which is already been determined.

19. Reliance placed by the Appellant on ***National Insurance Co. Ltd. v. Geeta Bhat*** *(Supra)*,***National Insurance Company Ltd v. Pranay sethi****(supra)* and ***National Insurance Co. Ltd. v. Shadab*** *(Supra)* is misplaced.

20. Therefore, I find no merit in allowing additional evidence to

prove the driving license is fake. Once the Appellant witness has proved the driving license of the offending vehicle was valid till 03.09.2006 for HMV, no second thought be given to take a different stand and putting the injured for unwanted litigation for no cause of his.

21. Consequentially, the appeal of the appellant is dismissed. Further, all pending applications are accordingly disposed of.

22. The balance awarded amount be released to the claimants after proper application being made by the claimants in this regard and to the satisfaction of the tribunal. LCR File be sent back.

23. Let one copy of this judgment be sent to the concerned Court.
No order as to costs.

I.S.MEHTA

(JUDGE)

JANUARY 10, 2019