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

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Judgment delivered on: 04.09.2019

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MAC.APP. 557/2017

IQBAL SINGH

..... Appellant

Through: Ms. Neha Kapoor and Mr. Mohit Bhadu,
Advocates

versus

SUBHASH CHAND

..... Respondent

Through: Mr. Rakesh Bhugra and Mr. Rakesh Sharma,
Advocates along with respondent in person.**CORAM:****HON'BLE MR. JUSTICE NAJMI WAZIRI****NAJMI WAZIRI, J (Oral)****MAC.APP. 557/2017 & CM APPL. 23626 & 23628/2017**

1. The present appeal impugns the award of compensation dated 06.03.2017 passed by the learned MACT in MACP No. 4647/2016, on the ground that: (i) the appellant's vehicle was not involved in the accident. (ii) three FIRs were registered in relation to the present case and (iii) the registration numbers of the alleged offending vehicle differs in the FIRs.
2. It is the case of the claimant/ complainant that the offending vehicle, Toyota Qualis caused the accident in the year 2005, which resulted in 90% disability to his right lower limb.
3. On a query being put to the learned counsel for the appellant as to what is the discrepancy in the three FIRs, she states that the second last digit of the registration number of the vehicle has been changed from '6' to '8' and there is overwriting in the FIRs as well. What is important to note is

that the injured has all along stated that a vehicle of Toyota Qualis make was involved in the accident and its number was 'HR-51H-7884', however, in one of the FIRs, the writer of the FIR had written the registration number as 'HR- 51H-7684'.

4. The discrepancy so pointed out is of one digit in one of the FIRs. The Court is of the view that this cannot be a ground to raise doubt with respect to the identity of the vehicle, as there is only one Toyota Qualis bearing registration no. 'HR-51H-7884'. Moreover, there is no Toyota Qualis registered with registration no. 'HR-51H-7684'. The claimant on being verified and on having cross-checked the registration number from the record of the Regional Transport Authority, it has been found that the appellant's vehicle bearing registration no. 'HR-51H-7884' was involved in the said motor-vehicular accident. The trial court has recorded reasons to this effect, which are as under:

"21. Though respondent No. 2 has filed a copy of FIR as Mark 'A' wherein different registration number i.e. HR-51H-7684 is mentioned stating that certified copy of Mark 'A' was destroyed by the IO in the office of ACP in the presence of ACP, but he has not filed any receipt for applying certified copy of FIR from concerned criminal court to prove that in fact he had a certified copy of Mark 'A'. Even, there is no impression of any seal of Certifying Agency Branch in Mark 'A' which should have been there if the same was photocopy of a certified document. Further, respondent No. 2 has filed complaint Ex. R2W1/4 regarding fraud and forgery in the criminal case to the Commissioner of Police on 01.08.2005 and departmental enquiry was also initiated against the IO, but there is nothing on record regarding the conclusion of said enquiry. Respondent has deposed that investigation was conducted by Crime Branch also, but again there is nothing on record regarding conclusion of investigation conducted by Crime Branch. Further, respondent No. 2 has claimed that he

visited Faridabad Transport Authority and found that there is no such four wheeler bearing registration No. HR-51H-7684. He has deposed in his cross-examination that while replying to the notice under Section 133 of Motor Vehicle Act given by the IO, he had given in writing that aforesaid registration number is not of a four wheeler, but his reply was destroyed / torned by the IO. Though respondent No.2 has claimed that vehicle bearing registration No. HR-51H- 7684 is not a four wheeler and he visited concerned authority to verify the same, but in the present case offending vehicle is HR-51H-7884 and not HR- 51H-7684. Further, he has himself admitted during his cross-examination that he has not obtained any certificate from Faridabad Transport Authority regarding verification. Even otherwise, his claim that his reply to notice under Section 133 of Motor Vehicle Act wherein he has mentioned that vehicle bearing registration No. HR-51H-7684 is not a four wheeler was destroyed/ torned by the IO seems to be wrong as his reply to said notice would have been procured by the IO which should have been filed alongwith charge sheet before the concerned criminal case. Respondent No. 2 has also admitted during his cross-examination that he has not filed any complaint in any court against the officials who torned (sic) his complaint and that he has not filed any petition before Hon'ble High Court of Delhi against the FIR in question. Respondent No. 2 also got examined R2W3 Ms Pushpa, Assistant Ahlmad in the court of Shri Satish Kumar Arora, CMM/SE/Saket/New Delhi who brought the judicial case file of FIR No. 482/05 PS Kalkaji titled 'State Vs. Munna Tiwari' to prove manipulation in FIR in respect of registration number of offending vehicle. This witness has proved copy of FIR as Ex. R2W3/1 and deposed that Mark 'A' and Ex. R2W1/2 both are different from Ex. R2W3/1 as there is some difference in the number of vehicle. However, this witness has deposed in her cross-examination that she cannot say anything about the different versions (vehicle number) mentioned in the FIR which is on record and the certified copy of FIR shown to her and the same can be clarified by the IO. She has also deposed that vehicle was got released on superdari by respondent No. 2. Thus, respondent No. 2 himself got the vehicle released on

superdari falsifying his claim for manipulation in vehicle number and that no accident took place.”

(emphasis supplied)

5. In view of the above, the contention of the appellant that his vehicle was not involved in the motor vehicular accident is untenable and is rejected.

6. The second argument of the appellant is that the award is without basis, inasmuch as Rs.50,000/- has been granted as compensation towards ‘medical expenses’ when there is no proof of such expenses having been incurred by the claimant. The learned counsel for the appellant submits that if any payments have been made, bills apropos the same ought to have been filed before the learned MACT. The learned MACT has dealt with this issue, as under:

“26. R2W2 Rajbir Singh has deposed that OPD record, Admission Card, Discharge Summary and Fitness Certificate of petitioner has been destroyed by the hospital since they retain the originals only for the period of five years as per the guideline of DGHS. While replying to a query put up by counsel for respondent No. 2, this witness has deposed that he cannot say whether the treatment record filed on record are forged and fabricated, however, the same appears to be the record of the hospital. R2W4 Ritu Goel has proved the OPD Card No. 5599 of petitioner which is already Ex. PW-1/D6. She had also brought the OPD Register wherein the name of petitioner was mentioned and the copy of the same was proved as Ex. R2W4/A. She has deposed that she cannot confirm whether the OPD Ticket Ex. PW-1/D6 was issued from ESIC Hospital or not. There was some overwriting and cutting of insurance number in OPD Ticket Ex. PW-1/D6 at point 'X' and R2W4 has deposed that she cannot say anything about those cuttings and overwriting at point 'X'. She has also

deposed that Ex. PW-1/D6 shows that it was from ESIC Dispensary and not from the hospital. She has admitted during her cross-examination that she cannot tell anything about the record of ESI Dispensary as she has come from ESIC Hospital. R2W5 Suraj Prakash has deposed that he has checked the records of dispensary and found that no such insurance number i.e. 5200513 as mentioned in OPD Ticket Ex. PW-1/D6 exists. He has deposed that Hospital Referral-cum-OPD Ticket was made on the basis of ESI Card produced by the patients wherein no photograph of card holder were required to be affixed in the year 2005. Whenever a person visits the OPD with the ESI Card, there is no way to verify whether the same belongs to the said person as there used to be no photograph of card holder on the card in the year 2005. He has verified that OPD Ticket Ex. PW-1/D6 bears the signatures of Dr. Gauri Agarwal, the then In-Charge of their Dispensary at point Z. He has deposed that he is not aware as to why cuttings have been made at point X in Ex. PW- 1/D6 and that what is the relevance of No. 18521 mentioned in Ex. PW-1/D6. He has also deposed that he cannot say why 'Chand' is written in different hand writing in Ex. PW-1/D6. Though R2W5 has deposed that no record of insurance number 5200513 as mentioned in Ex. PW-1/D6 was found in dispensary, but this witness has deposed that OPD Ticket Ex. PW-1/D6 was indeed signed by Dr. Gauri Aggarwal, the then In-Charge of their dispensary which proved the authenticity of said document. This witness has deposed that whenever a person visits the OPD with the ESI Card, there is no way to verify whether the same belongs to the said person as there used to be no photograph of card holder on the card in the year 2005. It should be kept in mind that since there was no provision of affixation of photo of card holder on ESI Card in the year 2005, all patients' cards should have been without photographs and case of petitioner is not special and he would have also received treatment as other patients would have received. In all, nothing came either in the deposition or in the cross-examination of R2W2; R2W4 and R2W5 which could prove that treatment documents of

petitioner are forged and fabricated.

27. *Petitioner has suffered 90% temporary disability in respect of his right lower limb. This condition was likely to improve with treatment and re-assessment was recommended after a period of one year. Petitioner has not filed any document/ Disability Certificate to show that he underwent re-assessment after a period of one year of issuance of Disability Certificate Ex. PW-3/A. PW-3 Dr. Jogender Kumar, Sr. Resident, Pt. Madan Mohan Malviya Hospital, New Delhi has also deposed that at the time of examination by the medical board, a temporary disability certificate was issued. Petitioner was advised to get the implant removed and go for arthroplasty of treatment as per present situation of his right hip. The condition of petitioner after above-said treatment will have negligible percentage of disability if he had undergone the treatment at that time. Further, accident took place in the year 2005 and Disability Certificate Ex. PW-3/A is dated 10.03.2011 which shows that petitioner went for disability assessment after a period of about 06 years of his accident. In view of above discussions, case of petitioner is treated as of 'injury' and not of 'disability'.*

28. *Medical Expenses:- PW1 has deposed that after the accident, he was taken to AIMS Hospital, New Delhi. As per MLC Ex. PW-1/D3 issued from AIIMS Hospital, petitioner suffered grievous injuries. As per Discharge Summary Ex. PW-1/D4, petitioner was admitted in AIIMS Hospital on 15.05.2005 and was discharged on 16.05.2015. As per Discharge Summary Ex. PW-1/D7, petitioner was again admitted in AIIMS Hospital on 01.10.2015 and was discharged on 18.10.2015. He underwent operation on 10.10.2015. During proceedings, petitioner was examined for disability. Disability Certificate Ex. PW-3/A issued by Pandit Madan Mohan Malviya Hospital opined that petitioner suffered 90% disability in respect of right lower limb. This condition was likely to improve with treatment and re-assessment was recommended after a period of one*

year. PW-3 Dr. Jogender Kumar, Sr. Resident, Pt. Madan Mohan Malviya Hospital, New Delhi has deposed that petitioner was advised to get the implant removed and go for arthroplasty of treatment as per present situation of his right hip. The condition of petitioner after above-said treatment will have negligible percentage of disability if he had undergone the treatment at that time. He has also deposed that in the event of petitioner undergo treatment from government set up, he has to bear the cost of implant which may be about Rs.50,000/-. Entire treatment of petitioner was done in AIIMS Hospital which is a government hospital. Petitioner has also not filed any original medical bill for his treatment. However, PW-3 has opined that cost of implant in government set up would be Rs.50,000/- which petitioner has to bear. In such circumstances, petitioner is awarded a sum of Rs.50,000/- towards medical expenses.”

7. What emerges from the above discussion is that the claimant was treated at the All India Institute of Medical Sciences (AIIMS) in two phases – one on the date of the accident and the second on 18.10.2015. His treatment including the implantation of a metal plate/rod inside his right leg and hospitalization for two weeks is not in doubt. The cost for the said medical treatment has been estimated to Rs.50,000/-, on the basis of the deposition of the senior doctor of the said hospital. The insured was an ESI Cardholder, but ESI has not paid any monies towards the treatment nor did it reimburse the claimant the cost of the abovesaid treatment.

8. The claimant contends that there has never been any re-imbursement of any such medical treatment either by the ESI or by any authority.

9. The Court has no reason to doubt the testimony of the senior doctor of AIIMS that the expenses involved would be approximately Rs.50,000/-. It is also a fact that this operation was carried out. The accident leading to the

injury occurred in the year 2005; the claim petition was filed in the year 2009; the evidence was led in the year 2015, by which time, record of the hospital [AIIMS] was destroyed, hence, the claimant was unable to produce any document to support the expenses incurred by him apropos the treatment in AIIMS, but the same cannot be held against him for the reason that at times under such circumstances people do not keep the records of their medical treatment, including bills, etc., as the victim is just happy to have survived the unfortunate accident. In such cases as the present, where the injured had suffered 100% disability of the right lower limb the primary objective would have just been to be able to recover and move about. The statement of the senior doctor of AIIMS does not call for any doubt, therefore, there is no reason to interfere with the impugned order to this extent.

10. In view of the above, no case is made out. The appeal is accordingly, dismissed. All pending applications shall also stand dismissed.

11. Should the appellant come across any information to the effect that the claimant has already availed any benefit apropos the amount granted by the impugned order, it would be open to the appellant to pursue his legal remedies, as may be available in law.

12. The amounts deposited in this court shall be released to the beneficiary of the award in terms of the scheme of disbursement specified in the award.

NAJMI WAZIRI, J

SEPTEMBER 04, 2019

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