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

% *Decided on: 26.11.2019*

+ MAC.APP. 556/2017 & CM APPL. 23621/2017

NATIONAL INSURANCE CO LTD Appellant
Through: Mr. Pankaj Seth, Adv.

versus

NITESH SHRAMA & ANR Respondents
Through: Mr. S.N. Parashar, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 01.03.2017 passed by the learned MACT in Suit No. 4347/16, on the ground that the manner in which the motor accident occurred ought to have been established. In other words, it was for the claimant to prove that the vehicle was being driven in a rash and negligent manner which led to the accident and the resultant injury. But this issue was never framed by the learned Tribunal. The only issues framed were as under:

“(i) Whether respondent no. 2 is not liable to pay any compensation to petitioner, driver of offending vehicle having no valid DL? OPR-2.

(ii) Whether petitioner is entitled to get compensation as prayed? OPP.”

2. The issue which ought to have been framed was: Whether the accident had occurred on account of rash and negligent driving of the

alleged offending vehicle? In this regard, the learned Tribunal has reasoned as under:

“11. Petitioner in his affidavit (Ex. PW3/A), reiterated facts of his claim petition, as described above. According to him, offending motorcycle was being driven by respondent no.1 rashly, negligently, in a zigzag manner and on very fast speed. It hit him against his leg. No contradiction appeared in deposition of petitioner despite cross-examination by counsel for respondent no.2.

12. Petitioner disclosed in his cross-examination that he was alone at the time of accident and was driving his motorcycle on left side of road. He was hardly half feet inside road from its left edge. Driver (respondent no.1) did not adduce any evidence to rebut deposition of petitioner. Same did not file even a reply/written statement.

13. Considering all this, it is well established that accident in question took place due to rash or negligent driving of motorcycle no.DL-11SA-0113 by respondent no.1.”

3. When the fundamental question of fault of the insured vehicle was not framed as an issue to be determined, no finding could be returned in that context and no liability could be affixed on the insurer. There is insufficient discussion on the issue; site plan of the accident, if any, has not been discussed or referred to. In the circumstances, the awarded amount is unsustainable and is accordingly set aside. The case is remanded to the learned Tribunal for determination of the issue as to whether the accident which resulted in the injury to the

claimant was on account of rash and negligent driving of the offending vehicle.

4. Should this issue be held in favour of the claimants, the aforesaid awarded amount would then become valid and payable. The learned counsels for the parties submit that evidence in this regard is already on record. Since the accident occurred in August, 2012 i.e. almost 7½ years ago, the learned Tribunal is requested to endeavour to dispose-off the case, preferably within a period of six months from the date when the case is next listed before it. The learned counsel for the parties submit that they would also endeavour to assist the learned Tribunal on every date when the case is listed and will not take any adjournment whatsoever.

5. The parties shall appear before the learned Tribunal on 17.12.2019.

6. The appeal is allowed and disposed off in the above terms.

7. The statutory amount, alongwith interest accrued thereon, shall be returned to the appellant.

NAJMI WAZIRI, J

NOVEMBER 26, 2019

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