

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

% **Judgment delivered on: 5th February, 2019**

+ **MAC.APP. 930/2017**

1. NARESH KUMAR (REGISTERED OWNER)
S/o Satya Pal Gupta
 2. PARMOD KUMAR (DRIVER)
S/o Sh. Raghubir Singh
- ...Appellants

Through: Mr. Anuj Soni, Advocate.

versus

RINKU
S/o Sh. Vishun Pal

... Respondent

Through: Mr. J.P. Singh, Advocate
with Mr. Baljeet Singh,
Advocate.

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

JUDGMENT

I. S. MEHTA, J.

1. The appellants have challenged the impugned award dated 11.09.2017 in MACT Case No.237/16 passed by Motor Accident Claims Tribunal (*henceforth referred to as the Tribunal*) awarding Rs.4,86,518/- alongwith interest at the rate of 9% p.a. on the total compensation amount from the date of filing of petition till realization in favour of claimant by the appellants.

2. The brief facts stated are that injured Rinku stopped his motorcycle bearing No. DL-5S-AL-0810 at 5th Pusta red light main road, Usman Pur, Delhi on 30.04.2015 at about 4 PM. One Scorpio Car bearing registration No. DL-3C-AS-0223 (*hereinafter called the offending vehicle*) driven by Parmod Kumar (*Appellant No.2 herein*) came from back side at fast speed in a rash and negligent manner and hit the Claimant (*Respondent herein*). As a result he fell down on the road and received grievous injuries on his person. He was taken to Jag Pravesh Chandra Hospital where he was medically examined vide MLC No. A-92/15, doctor opined grievous injuries on his right lower leg. Thereafter, the claimant was admitted in St. Stephen Hospital, Delhi where he remained admitted from 03.05.2015 to 15.05.2015. FIR No. 491/15 under Section 279/338 IPC was registered on 03.05.2015 at P.S. New Usman Pur, Delhi.

3. The claim petition was filed on 05.05.2016 against the driver of the offending vehicle (*Appellant No.2 herein*) and registered owner of the offending vehicle (*Appellant No.1 herein*). Claimant claimed compensation of Rs. 20 Lakhs from Appellants jointly and severally.

4. Appellants filed a joint written statement, denying the allegation made in the claim petition and stated petition is not maintainable as there is no cause of action arisen in favour of the claimant. The claimant fell down at the red light as he could not control his motorcycle which was loaded with goods. The

respondents were not liable for the negligence of claimant himself. Further, FIR registered against respondents is an afterthought version of claimant in connivance with the police. However, the offending vehicle was not insured as the same was to be disposed of, being a 10 year old diesel car.

5. On the basis of the pleadings of the parties, issues were framed on 09.10.2015 in DAR No. 162/15 by the learned Tribunal.

6. Claimant filed his affidavit by way of evidence Ex.PW1/1 and examined himself as PW1 in support of his claim and relied upon the documents i.e. Photocopy of election ID card Ex.PW1/A, DAR Ex. PW1/B, copy of medical papers/bills Ex.PW1/C, original bills Ex.PW1/D and original disability report Ex.PW1/E. Thereafter, Petitioner evidence was closed on 18.08.2017.

7. Appellant No.2 (Driver) and No.1 (Owner) examined themselves as R1W1 and R2W2 by way of affidavits Ex. R1W1/A and Ex.R2W2/A respectively. They also examined Sh. Anil Kumar and Sh. Manoj Sharma as R2W3 and R2W4 by way of affidavit Ex.R2W3/A and Ex.R2W4/A and the said witnesses have relied upon the documents i.e. Aadhar card Ex.R2W3/1 and Ex.R2W4/1. Thereafter, Respondents evidence was closed on 04.09.2017.

8. On the basis of pleadings and evidence led by the parties, impugned award dated 11.09.2017 was passed by Tribunal awarding Rs.4,86,518/- alongwith interest at the rate of 9% p.a.

on the total compensation amount from the date of filing of petition till realization. Aggrieved from the award appellants preferred the present appeal.

9. Learned counsel for the Appellants submitted that Tribunal did not appreciate the evidence on record which itself indicates that accident occurred due to the negligence of the claimant. He submitted Ld. Tribunal misread the evidence and did not appreciate the statement of Manoj Sharma R2W4 who specifically stated that the claimant fell down on his own and Appellant No.2 offered assistance to him on the spot but the claimant himself denied such offer. He submitted Ld. Tribunal failed to appreciate the Mechanical inspection report of Manohar Lal Dhyani R2W3, in which no fresh defect/scratch was found on the said offending vehicle. He submitted entire case of the Respondent/Claimant is based on false story and the Appellants were wrongly impleaded for no fault of their.

10. Per contra, learned counsel for the claimant has submitted that the accident occurred due to the negligence of Appellant No.2 Parmod Kumar, driver of the offending vehicle and relied on judgment of this Court in ***U.P. State Roadways Transport Corpn. v. Shanti Devi***, AIR 1997 Delhi 342. He further submitted that the compensation awarded is just and fair and present appeal of the Appellants deserves to be dismissed.

11. Claimant Rinku in his Examination-in-chief Ex.PW1/1 stated that on 30.04.2015 at about 4 PM he reached at 5th Pusta

red light main road, Usman Pur, Delhi on his motorcycle bearing No. DL-5S-AL-0810 and stopped at the red light, offending vehicle came from behind at fast speed in a rash and negligent manner and hit the Claimant. As a result of which he fell down on the road and received grievous injuries on his person and the driver of the said offending vehicle after hitting him from back side and causing injuries on his person ran away from the spot and someone from the public called at 100 number. Later he was taken to Jag Pravesh Chander Hospital by the police/PCR and admitted vide MLC No. A-92/15 and received grievous fracture injury on his right leg and Ankle besides multiple injuries on his body. Thereafter, he was admitted in St. Stephen Hospital, Delhi and remained there from 03.05.2015 to 15.05.2015 due to injuries sustained in the said accident. The copy of MLC No. A-92/15 and the copy of Medical Papers/Bills are Ex.PW1/C. Later FIR, FIR No. 491/15 under Section 279/338 IPC was registered at P.S. New Usman Pur, Delhi on 03.05.2015. Due to the incident he received 42 % physical disability Ex.PW1/E.

12. Appellants filed joint written statement to rebut claim petition and statement of Rinku PW1, wherein Appellants have admitted the presence of the offending vehicle at the spot. Further, Appellants have not denied that the offending vehicle was not insured. The said written statement does not disclose the name of alleged witnesses i.e. Manoj Sharma and Anil Kumar. The MLC indicates that the injured was taken to JPC

Hospital by HC Pramod and the aforesaid MLC does not disclose the presence of aforesaid witnesses.

13. The statement of Manoj Sharma R2W4 and Anil Kumar R2W3 was recorded after a gap of 8 months and their presence at the spot is not corroborated with statement of respondents neither in written statement nor in the MLC, even the FIR does not disclose the presence of the aforesaid witness at the spot. The statements of aforesaid witnesses are unreliable as the same requires an independent corroboration to show that they were present at the spot soon after the incident and they offered help to claimant after he received injuries on his person. The affidavit Ex. R1W1/A is a result of an afterthought version created by Appellants without any consequences.

14. On the contrary, statement of Claimant Rinku PW1 is corroborated with the MLC, Medical bills, FIR and the presence of Scorpio Car is not disputed even in the written statement and the name of the offending vehicle is shown in the MLC in DAR file Ex.PW1/B as Scorpio Car.

15. Contention of the learned counsel on behalf of the appellants that mechanical inspection does not connect the accident and the same loses its significance as claimant has claimed claim petition on the ground of receiving grievous injuries on his person due to the negligent driving on the part of the driver of the offending vehicle. Non showing of any defect/ scratch on the part of the offending vehicle does not absolve Appellants from their tortious liability.

16. It cannot be said that said vehicle was not involved in the accident. Moreover, it is not necessary to have scratches on the Scorpio Car after the accident. The fact on records does not suggest gaining of scratches on the offending vehicle i.e. Scorpio car at the time of the accident.

17. Therefore, the plea taken by the Appellants is without consequence and after looking into the above facts and discussion I find no infirmity with the impugned award dated 11.09.2017 passed by the Tribunal. Reliance is placed on ***U.P. State Roadways Transport Corpn. v. Shanti Devi***, AIR 1997 Delhi 342. Thus, the present appeal and application is accordingly dismissed and impugned award is upheld.

18. The balance awarded amount be released in terms of the impugned award.

19. Let one copy of this judgment be sent to the concerned Court.

No order as to costs. LCR File be sent back.

I.S.MEHTA
(JUDGE)

FEBRUARY 05, 2019