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

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Decided on: 31.07.2019

+ **MAC.APP. 1074/2018 & CM Nos. 50452/2018, 13084/2019,
34222/2019**

ICICI LOMBARD GENERAL INSURANCE CO LTD

..... Appellant

Through: Mr. Sandeep Jha, Advocate.

Versus

SATISH KUMAR & ORS.

..... Respondents

Through: Mr. Yogesh Dagar and Mr. Ashok Kansal, Advocates for Respondent No.1.

Mr. Pradeep Ahlawat, Advocates for Respondents No. 2 and 3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation on the ground that there is contributory negligence on the part of the injured – victim, which has not been considered in the impugned order. The respondent no.1 – claimant was riding on a motorcycle when he met with an accident in a head-on collision with a motor car insured by the appellant. The Detailed Accident Report (DAR) was considered in the impugned order as under:-

“2. According to DAR, on 11.10.2015 at about 10:00 pm, the petitioner was going back to Sonapat from Narela on motorcycle no. HR10N-1856. When he reached at Safiyabad

Road, Narela, Delhi, one Car bearing registration no. HR10U-3708 which was being driven by its driver at very high speed and in rash and negligent manner, came and hit against the aforesaid motorcycle. As a result thereof, he fell down on the road and sustained grievous injuries. He was removed to SRHC Hospital, Narela, Delhi, where he was medically examined vide MLC No. 3976/15. Thereafter, he was referred to Max Super Speciality Hospital, Shalimar Bagh, Delhi for further treatment, where he was treated and operated several times and was discharged on 31.01.16. The aforesaid vehicle i.e. Car was found to be owned by respondent no. 2 and it was insured with ICICI Lombard General Insurance Company Ltd./respondent no. 3 during the period in question.”

2. The accident happened at about 10.00 p.m. in the night. The said accident was witnessed also by PW1 - Sh. Lakhpat Singh, who had deposed that one Maruti Alto 800 car, the insured vehicle, which was being driven at a fast speed in a rash and negligent manner, hit the claimant who was riding a motorcycle at a normal speed on the left side of the road. The insured vehicle came from the opposite direction and hit the motorcycle. As a result thereto, the motorcyclist fell down. The persons nearby ran to assist the motorcyclist. The impugned order has dealt with this issue as under:-

“8. For the purpose of this issue, the testimonies of PW1 & PW2 are relevant. PW1 Sh. Lakhpat Singh (alleged eyewitness) has deposed in his evidence by way of affidavit (Ex. PW1/A) that his nephew was having his shop at Safiabad Road and he used to visit his shop. He further deposed that after taking his meal, he used to walk in front of the shop at Safiabad, Narela Road. He deposed that on 11.10.15 at about 9:45 - 10:00 pm, he was walking in front of the aforesaid shop, meanwhile, he saw that a rider on motorcycle was going from Narela to Safiabad at normal speed at left side of the road, when suddenly one Maruti Alto 800 came from Safiabad to Narela side, which was being driven by its driver in rash and

negligent manner and at high speed and hit against the motorcycle from his right side. As a result thereof, the motorcyclist fell down. He alongwith other persons ran towards the spot in order to help the motorcyclist. After seeing him and other persons, the driver of the car ran away. He categorically deposed that the accident was caused due to sole negligence of the driver of Maruti Alto Car. During his cross-examination on behalf of respondent no. 3, he deposed that he did not know the number of shop of his nephew. He denied the suggestion that no such shop exists as stated by him in para 2 of his affidavit and that is why, he did not know the address of said shop and he had not brought any paper of said shop. He further deposed that his residence was about 1 km away from the said shop. One public person had informed the police but he did not know his name and address. Police had not recorded his statement. He denied the suggestion that he was not present at the spot and he had not witnessed the accident. He admitted that Satish was overtaking another vehicle when the accident took place. Police had not recorded statement of any witness in his presence. He denied the suggestion that the accident took place due to rash and negligent driving on the part of petitioner. Respondents no. 1 & 2 did not cross-examine this witness, both being exparte.”

3. Deposition of the alleged eye-witness, Sh. Lakhpat Singh (PW1) was found to be in line with the deposition of father of the injured (PW2). Both of them have withstood their testimonies in the cross-examination. Therefore, the learned Tribunal found their version creditworthy and awarded compensation to the claimant – victim, who is now stated to be in a vegetable state and is bed ridden i.e. he cannot move about.

4. In the circumstances, 100% functional disability considered by the learned Tribunal while granting compensation cannot be faulted.

5. The learned counsel for the claimant submits that there is no error in the impugned order. He refers to the site plan prepared and filed by the Investigating Officer alongwith DAR, which shows the position of the injured more on to the left side of the road. Indeed, the DAR itself goes on to conclude that the accident happened because of the rash and negligent driving of the insured vehicle. The said Report has not been challenged and for the purposes of compensation, it would be a relevant factor which has been duly considered by the learned Tribunal while awarding the compensation.

6. In view of the above, the Court finds no merit in this appeal. It, alongwith pending applications, stands dismissed.

7. The statutory deposit of Rs.25,000/-, alongwith interest accrued thereon, shall be deposited in the 'AASRA Fund'.

NAJMI WAZIRI, J.

JULY 31, 2019

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