

\$~10

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

%

Decided on: 07.01.2020.

+ MAC.APP. 4/2020, CM APPL. 105/2020, CM APPL. 106/2020 &
CM APPL. 107/2020

SATISH CHAND GUPTA

..... Appellant

Through: Mr. Ashish K. Kulshreshtha and Ms.
Seema, Advocates.

versus

SHYAM SAINI & ANR

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 21.08.2019 passed by the learned MACT in MACP No. 1385/16, on the ground that the amounts awarded are exorbitant and the liability has been fixed on the owner and the driver of the vehicle. However, apart from this, the learned counsel for the appellant is unable to substantiate any of the aforesaid arguments. In this regard, the impugned order has held as under:

“2. Brief facts as made out from the petition are that on 09.11.2013 at about 7:30 PM, petitioner Shyam Saini was going on his scooty towards Palam and when he reached near Malaria hospital, Sec.8 Dwarka, New Delhi, the offending vehicle i.e. motorcycle bearing no. DL 9SV 1330, being driven by its driver,

came from opposite direction and hit the scooty of the petitioner and as a result of which, petitioner sustained extensive injuries on his face and other parts of the body. It is further stated that the offending vehicle i.e. motorcycle bearing no. DL 9SV 1330 was being driven by its driver/ respondent no. 1 at a fast speed and in rash and negligent manner and the accident was caused due to sole negligence on the part of respondent no. 1 and a case in this regard was registered vide FIR No. 435/13 at PS Dwarka South. It is stated that after the accident, petitioner was taken to Chand hospital. Raj Nagar, Palam, New Delhi and from there, he was shifted to DDU hospital, where his MLC was prepared. It is further stated that from DDU hospital, petitioner was shifted to Apollo hospital, where he remained admitted from 09.11.2013 to 11.11.2013. It is stated that respondent no. 2 was the owner of the offending vehicle. It is also stated that the petitioner has suffered extreme pain and agony due to the multiple injuries sustained by him in the accident and it has been prayed that award for a sum of Rs.25 lacs alongwith interest @ 12 % per annum from the date of filing of the petition till realization may be passed in favour of the petitioner and against the respondent.

....

10. ISSUE No. 1

Whether Sh. Shyam Saini sustained injuries in a motor vehicle accident dated 28.11.2013 due to rash and negligent driving of vehicle no. DL 9SV 1330 by R-1 ? ...OPP

The onus to prove this issue was upon the petitioner/injured and in order to discharge the said

onus, the petitioner/ injured- Shyam Saini Kumar has examined himself as PW-1 and has filed his evidence by way of affidavit (Ex. PW-1/A), wherein it has been stated that 09.11.2013 at about 7:30 PM, he was going on his scooty towards Palam and when he reached near Malaria hospital, the offending vehicle i.e. motorcycle bearing no. DL 9SV 1330, being driven by its driver, came from opposite direction and hit his scooty and as a result, of which, he sustained extensive injuries. PW-1 further deposed that the offending vehicle motorcycle bearing no. DL 9SV 1330 was being driven by its driver/ respondent no. 1 at a fast speed and in rash and negligent manner and the accident was caused due to sole negligence on the part of respondent no. 1 and a case in this regard was registered vide FIR No. 435/13 at PS Dwarka South.

The important fact is that this witness i.e. PW-1 (petitioner/ injured) was cross examined on behalf of the respondents, but nothing material has come on record which could assail the credibility on trustworthiness of this witness.

In his cross examination by the Ld. counsel for R-2, PW-1 stated that at the time of accident, he was wearing the helmet, PW-1 denied the suggestion that as per site plan, he was driving his vehicle on wrong side. PW-1 further denied the suggestion that he had intentionally lodged the FIR in this case or that he was deposing falsely. In these circumstances, nothing material has come on record which could shake the credibility of this witness qua his deposition regarding the manner in which the accident was caused in this case.

In regard to issue no. 1, R-2 has also examined R2W2 Sh. Sudesh Kumar, who deposed that on 09.11.2013, he was going on his motorcycle and at about 7:30 PM, petitioner crossed him on his scooty and there was a head on collision of the said scooty with the motorcycle coming from opposite side, however the testimony of this witness is not of much use to the respondent as in his cross examination by Ld counsel for the petitioner, R2W2 stated that he cannot tell the registration number of the scooty, which had crossed his motorcycle on that day. R2W2 further stated that he had not given any statement to the police and had left the spot of accident before arrival of the police and he knew respondent no. 2 since the year 2004. In these circumstances, the testimony of R2W2 does not inspire confidence as he has not explained as to why he had not given any statement to the police, if he was an eye witness to the accident and no explanation whatsoever have come on record as to why he left the spot before arrival of the police. In addition to this, it is also pertinent to note that in his testimony R2W2 has nowhere stated that R-1 was not at fault in causing the accident in this case. Further, as far as the testimony of R2W1 Satish Chand Gupta (Owner of offending vehicle) is concerned, his deposition is not of any use to the respondents as admittedly he was not present at the spot at the time of accident and had not seen the accident in this case.

Hence, in view of the above discussion & observations and having regard to the fact and circumstances of the present case, it is evident that petitioner/injured-Shyam Saini sustained injuries in motor vehicle accident dated 09.11.2013 due to rash

and negligent driving of offending vehicle no. DL 9SV 1330 which was being driven by respondent no. 1 Vikas and owned by respondent no. 2 Satish Chand Gupta at the time of accident.

Accordingly, issue no.1 is decided in favour of the petitioner and against the respondents.

.....

20. LIABILITY

The offending vehicle bearing no. DL-9SV-1330 was being driven by respondent no.1 Vikas and owned by respondent no.2- Satish Chand Gupta at the time of accident and as such, respondent no.1-Vikas and respondent no.2-Satish Chand Gupta shall be jointly and severally liable to pay the awarded amount to the petitioner/injured.

Hence, issue no.2 is decided accordingly.”

2. The award of compensation amounting to Rs. 3,86,500/- is primarily on account of ‘medicines and treatment’ i.e. for Rs. 1,90,000/-. The remaining amounts are sundry amounts such as Rs. 15,000/- each for ‘conveyance’ and ‘special diet’. The reimbursement of the medical bills was on the basis of admitted documents. Secondly, the compensation awarded towards ‘pain and sufferings’ and ‘loss of enjoyment of life and amenities’ is because of the 23 year old young man having suffered multiple facial laceration over the lips and chin, with fracture of upper and lower alveolus and having been hospitalized for two days for the injuries sustained in the accident.

3. The learned Tribunal had awarded a sum of Rs. 50,000/- as compensation towards ‘loss of enjoyment of life and amenities’ in view of

the dicta in *Rekha Jain Vs. National Insurance Co. Ltd.*, (arising out of SLP (C) Nos. 5649-51 of 2012).

4. No ground is made out for interfering with the award. The appeal is without merit and is accordingly dismissed alongwith pending applications.

5. The statutory amount, alongwith interest accrued thereon, be deposited into the 'ASRAA' Fund created by this Court.

NAJMI WAZIRI, J

JANUARY 07, 2020

AB

