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

% *Decided on: 15.01.2020.*

+ MAC.APP. 801/2017, CM APPL. 32444/2017, CM APPL. 32446/2017 & CM APPL. 52128/2019

**SHRIRAM GENERAL INSURANCE CO LTD** ..... Appellant

Through: Mr. Abhay Singh Bhadoria, Advocate  
for Mr. Sameer Nandwani, Advocate.

versus

**SANDEEP KUMAR & ORS** ..... Respondents

Through: Mr. Rahul Singh Chauhan and Mr.  
Sudhir Yadav, Advocates for R-1.

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**NAJMI WAZIRI, J. (Oral)**

1. This appeal impugns the award of compensation dated 19.05.2017 passed by the learned MACT in Suit No. 176/15 (new MACT case No. 476236/16), on the ground that the identity of the offending vehicle was never established, therefore, there would be no liability on the appellant-insurer to pay any monies in terms of the Award. This issue has been dealt with in the impugned order *inter alia* as under:-

*“7. Written statement has been filed by the respondent No. 2 stating therein that the present petition has been filed suppressing the material facts. It has been further stated that the FIR was registered after the delay of two months. It has been further stated that the accident did not took place on account of the tempo bearing no. DL1LR7832. It has been further stated that some other vehicle hit the truck driver when he was passing to pass the urine and the helper of the truck*

*called out for help and stopped the vehicle of respondent no.1. It has been further stated that with the help of the respondent no. 1, the injured was taken to the hospital but later on, the above said tempo has been falsely implicated by the police. It has been prayed that the present DAR and the claim petition be dismissed.*

8. *Written statement has also been filed on record by the Insurance Company i.e. by the respondent no.3 to the effect that neither of the two vehicles involved in the accident were recovered from the spot of the accident nor the matter was reported to the police. It has been further stated that the petitioner was taken to the hospital by a CAT Ambulance. It has been further stated that the involvement of the vehicle no. DL-01LR-7832 is afterthought. It has been further stated that as per the MLC, the injured was under the influence of liquor and as such, he is not entitled for any compensation. It has been further stated that the driver of the offending vehicle was not having a valid and effective driving license to drive the offending vehicle at the time of the accident and as such, he has been challaned under Section 3/181 of the M. V. Act. It has been further stated, that the offending vehicle was insured in the name of the respondent no.2 under the policy no. 10003/31/14/290417 for a period from 31.07.2013 to 30.07.2014. It has been further stated that the terms and conditions of the insurance policy have been violated. It has been prayed that the present claim petition be dismissed.*

12. *In the cross examination, PW1 has stated that he does not know as to whether the driver of the offending vehicle called the ambulance. PW-1 has admitted to be it correct that he was accompanied by the second driver namely Tahir. PW-1 has admitted to be it correct that he does not know the registration number of the offending vehicle. PW-1 has denied the suggestion that no such accident took place with the alleged offending vehicle i.e. with Tempo bearing registration No. DL ILR 7832 make TATA ACE. PW-1 has denied the suggestion that his co-driver namely Tahir stopped the offending vehicle for help. PW-l has further*

*denied the suggestion that some other vehicle had hit him and ran away or that his co-driver could not note down the number of the actual offending vehicle. PW-1 has further denied the suggestion that no accident took place due to the rash and negligent driving of respondent no.1. PW-1 has further denied the suggestion that he has involved the above said vehicle to obtain the false claim.*

*PW-1 further states that he cannot tell as to what was his age at the time of the accident. PW-1 has further stated that he was driving heavy commercial vehicle i.e. LPT (12 wheels). PW-1 has further stated that the license was issued to him on 12.01.2009 and renewed on 29.12.2014 and the same is valid upto 11.01.2018. PW-1 has further stated that his license was renewed by Gurgaon Authority without his driving test. PW-1 further states that after the accident, he cannot drive.*

*13. The petitioner has further examined Dr. Naresh Chandra from Guru Govind Singh Government Hospital as PW2 and this witness has proved on record the disability certificate of the petitioner as Ex. PW2/1. PW2 has further stated that the petitioner was having 50% permanent disability in relation to whole body and it was a case of cervical spine injury with hemiparesis right side.*

*14. In the cross examination, PW2 has stated that he cannot comment upon the exact working capacity of the injured. The petitioner has further examined Sh. Harikesh Meena, Medical Record Technician, Safadarjung Hospital, Delhi as PW-3 and this witness has filed on record his authority letter as Ex. PW3/1. PW-3 has further stated that as per the record brought by him, the injured Sh. Sandeep S/o Sh. Ram Gopal aged about 35 years was admitted in the hospital on 07.07.2014 at 3.08 pm and discharged on 24.07.2014, he has filed on record the medical treatment record of the injured running into 53 pages collectively as Ex. PW3/2. PW-3 has further stated that the injured was readmitted in the hospital on 24.07.2014 at 10.26 am and discharged on 04.08.2014. He has filed on record the*

*medical treatment record running into 53 pages collectively as Ex. PW3/3 (OSR).*

*In the cross examination, PW-3 has stated that he has no personal knowledge about the case or the injuries sustained by the patient.*

15. *The Respondent No.2 has examined Sh. Sandeep Jain, the owner of the offending vehicle as R2W1 and in his evidence by way of affidavit, Ex. R2W1/Aon record, he reiterated and reaffirmed the stand as taken, by the respondent no.2 in the written statement/reply. He has relied upon the MLC of the injured which is a part of DAR already Ex. PW1/5.*

16. *In the cross examination, R2W1 has stated that he is the sole owner of the offending vehicle bearing no. DL1LR7832 and the respondent no.1 namely Sh. Satyaveer was employed as a driver by him one month prior to the date of the accident. R2W1 has further stated that he had not taken the photocopy of the DL of respondent no.1. R2W1 has further stated that he does not remember the license number of respondent no. 1. R2W1 further states that he had not taken any identity proof of the respondent no.1 R2W1 further states that he is not an eye witness to the present accident. R2W1 further states that he does not remember the name of the authority from which DL of respondent no. 1 was issued. By way of volunteer, R2W1 states that his license was issued by UP State. R2W1 has denied the suggestion that the respondent no.1 was not having a valid driving license at the time of the accident. R2W1 has admitted it to be correct that two years have lapsed from the date of accident but the DL of respondent no.1 has not been placed on record by him."*

2. What emanates from the preceding discussion is that the identity of the offending vehicle was testified by the co-driver-Tahir. A suggestion put to PW-1 to the contrary was denied. Furthermore, criminal proceedings have been initiated against the offending vehicle in FIR No. 750/2014 filed under section 279/337 & 338 IPC and section 3/181 and 5/181 of the Motor

Vehicles Act, 1988. The identity of the offending vehicle had been duly established. Furthermore, perusal of the records would show that on the date of the motor accident i.e. on 07.07.2014, the injured was admitted in Acharyashree Bhikshu Government Hospital, Moti Nagar, New Delhi. It records that he was brought by the Investigating Officer, SI-Manoj, Police Station-Punjabi Bagh. The alleged medical history of the injury is Road Traffic Accident (RTA). From the cross-examination of the co-driver nothing adverse has come about against the assertion of the claimants that the injured vehicle was the offending one.

3. In view of the above, no case is made out to interfere with the impugned order. The appeal is without merit and is accordingly dismissed. The pending applications too are dismissed.

4. Let the awarded amount, alongwith interest @9% p.a. from the date of filing of the claim petition till its realization, be deposit before the learned Tribunal, to be released to the beneficiary(ies) of the Award, in terms of the scheme of disbursement specified therein.

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

**NAJMI WAZIRI, J**

**JANUARY 15, 2020**

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