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

Date of decision: 14.09.2023

+ MAC.APP. 121/2016
SHRI NIWAS

..... Appellant

Through: Mr.A.K.Mishra, Adv.

versus

SUNIL & ORS (ICICI LOMBARD INSURANCE CO LTD)

..... Respondents

Through: Mr.Pankaj Gupta, Ms.Suman
Bagga, Advs. for R-4.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the appellant challenging the Award dated 14.10.2015 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal-01, South-West District, Dwarka Courts, New Delhi (hereinafter referred to as the 'Tribunal') in MACP No.85 of 2010 titled ***Sh.Niwas v. Sh.Sunil Kumar & Ors.*** (hereinafter referred to as the 'Claim Petition').
2. It was the case of the claimant/appellant herein before the learned Tribunal that on 01.11.2004 at about 7.30 p.m., the Claimant along with Mr.Surender, Mr.Rohtash, and Mr.Sunil Kumar/respondent no.1 herein, were coming from Najafgarh in his Maruti Car bearing



no. DL-6CH-8452 (hereinafter referred to as the 'Offending Vehicle'). The Claimant was sitting in the front left seat of the said Offending Vehicle. The appellant claimed that in spite of warnings by him and the other occupants of the car, respondent no.1 drove the Offending Vehicle in a rash and negligent manner. When the Offending Vehicle reached near Shani Mandir, one tractor with a trolley bearing no.HR-14A-1982 was going ahead of the Offending Vehicle. The Offending Vehicle hit the tractor-trolley from behind with great force and as a result, the appellant sustained grievous injuries. The appellant was admitted to Deen Dayal Hospital on 02.11.2004 and was discharged finally on 04.12.2004. He was again admitted to the said hospital on 24.01.2005 and was discharged on 26.01.2005. He was lastly admitted to the hospital on 09.06.2005 and was discharged therefrom on 11.06.2005.

3. The appellant filed the above Claim Petition seeking compensation from the owner/driver and the insurance Company of the Offending Vehicle for the injuries suffered by him as a result of the accident in question.
4. The learned Tribunal has, by way of this Impugned Award, dismissed the Claim Petition filed by the appellant herein, observing as under:

"11. In view of the facts and circumstances of the case, there is no documentary proof of negligence of Maruti car bearing no. DL-6CH-8452. The criminal record i.e. charge sheet, FIR, site plan, arrest memo, conviction slip etc. also are not supporting the present case. It is submitted that



the petitioner has filed the present petition under section 166 M. V. Act but nothing has come on record which could prove that the accident had taken place due to the negligent driving of tractor traulla. It is also submitted on behalf of the respondents that the petitioner has settled the criminal trial before the Ld. MM with the driver of the tractor traulla Sh. Sombir who was driving his vehicle at rash and negligent manner. The charges were framed against Sh. Sombir, arrest memo was prepared against Sombir. All the criminal record supports the fact that the driver of tractor traulla Sh. Sombir was negligent at the time of accident. Sh. Sunil Kumar could not proved to be negligent in the present case. Hence, the present case is not maintainable as the present petition was filed under Section 166 M. V. Act and petitioner needs to prove the negligency of driver of the offending vehicle but petitioner has failed to prove the same. The judgments relied by petitioner do not apply to the facts of the case and do not help. Accordingly issues are held as not proved.”

5. The present appeal has been filed by the appellant challenging the above findings of the learned Tribunal. The learned counsel for the appellant submits that it is the case of the appellant, who was travelling in the Offending Vehicle, that the same was being driven by the respondent no.1 in a rash and negligent manner. Merely because the FIR was registered at the say-so of the respondent no.1, only against the driver of the tractor/trolley with whom the accident had taken place, it cannot disentitle the appellant from seeking compensation against the Owner/Driver/Insurance Company of the Offending Vehicle.
6. The learned counsel for the appellant submits that this would be a case



of composite negligence and the liability to pay the compensation would be joint and several of the Owner/Driver/Insurance company of both the vehicles involved in the accident in question; and the appellant herein has a right to claim compensation against either of the joint tort-feasors. In support of his submission, he places reliance on the judgment of the Supreme Court in *Khenyei v. New India Assurance Company Ltd. & Ors.*, (2015) 9 SCC 273; and of the Rajasthan High Court in *National Insurance Co. Ltd. v. P.A.Vergis & Ors.*, I (1991) ACC 226.

7. He further submits that merely because the appellant was offered compensation by the driver of the tractor-trolley, it cannot absolve the Owner/Driver/Insurance company of the Offending Vehicle of their liability to pay compensation for the injuries suffered by the appellant in the accident. He submits that, therefore, the learned Tribunal has erred in dismissing the Claim Petition filed by the appellant. He submits that the amount received by the appellant from the driver of the tractor-trolley can always be adjusted against the compensation granted in the Award on the Claim Petition filed by the appellant.
8. On the other hand, the learned counsel for the respondent no.4 submits that the Claim Petition has been rightly dismissed by the learned Tribunal. He submits that a false claim was filed by the appellant claiming that the Offending Vehicle was being driven in a rash and negligent manner. This was clearly an afterthought, as the FIR and even the charge sheet were registered only against the driver of the tractor-trolley and not against the driver of the Offending



Vehicle, that is, the respondent no.1 herein. He further submits that the appellant accepted compensation from the driver of the tractor-trolley as well.

9. The learned counsel for the respondent no.4 further submits that the respondent no.1 has also appeared before the learned Tribunal as R1W1. In his evidence by way of affidavit, he has clearly stated that the accident had occurred due to the tractor-trolley being driven in a rash and negligent manner. He was not cross-examined by the appellant, thereby admitting to the above assertion in his evidence by way of affidavit.
10. I have considered the submissions made by the learned counsels for the parties.
11. Few facts emerged from the record of the present case:
 - a) The accident in question had taken place on 01.11.2004;
 - b) The FIR and the charge sheet were registered only against the driver of the tractor-trolley and not against the respondent no.1;
 - c) The Claim Petition was filed by the appellant only on 10.03.2010, that is, after a period of almost 6 years from the date of the accident;
 - d) The appellant has received compensation of Rs.50,000/- from the driver of the tractor-trolley for compounding the offence committed by the said driver;
 - e) The respondent no.1 appeared before the learned Tribunal as R1W1 and in his evidence by way of affidavit, he has clearly stated that the accident had occurred due to the tractor-trolley being driven in a rash and negligent manner. He was not cross-examined by the appellant



herein, thereby admitting to his version of the accident. He was also not confronted with the submission of the appellant that it was he who was driving the offending vehicle in a rash and negligent manner.

12. The reliance of the appellant on the judgment of the Supreme Court in *Khenyei (supra)* and of the Rajasthan High Court in *P.A.Vergis (supra)* also cannot assist the appellant in the facts of the present case. For the said judgments to apply, it is first to be established that the accident had occurred due to the composite negligence of both the vehicles involved in the accident. This fact, for the reasons stated hereinabove, could not be established by the appellant.
13. In view of the above, I find no infirmity in the finding of the learned Tribunal. Clearly, the Claim Petition had been filed by the appellant as an afterthought, having realized that he did not receive adequate compensation from the driver of the tractor-trolley and there was no scope of getting the same, as the same was not insured.
14. Accordingly, I find no merit in the present appeal. The same is dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

SEPTEMBER 14, 2023
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