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

Date of decision: 04.08.2023

+ **MAC.APP. 596/2019 & CM APPL. 25196/2019**

MUKESH & ANR

..... Appellants

Through: Mr.Moni Cinmoy, Mr.Nirbhay
Shekher, Mr.Tiwari, Mr.Abhinav,
Advs.

versus

PREETAM KAUR & ANR (M/S HDFC ERGO GENERAL
INSURANCE CO LTD)

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. The present appeal has been filed challenging the Award dated 22.01.2019 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, West District, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT Case no.762/2017 titled *Smt. Preetam Kaur v. Sh. Mukesh & Ors..*
2. The Claim Petition was filed by the respondent no. 1/claimant, seeking compensation for the injury suffered because of the motor accident that occurred on 04.08.2017 at about 11.40 a.m. It was the case of the respondent no.1/claimant that at the time of the accident,



after de-boarding the bus at Village Madipur Bus Stand, Delhi, she was crossing the road when a motorcycle bearing No.DL-4S-BW-2269 driven by the appellant no.1 herein at a very high speed and in a rash and negligent manner, came from the side of Peeragarhi, Delhi and hit her, because of which, she fell down on the road and sustained fracture tibia right with wound over right elbow and also sustained abrasions, wounds and other injuries all over her body. Thereafter, she was taken to Sri Balaji Action Medical Institute, Paschim Vihar, Delhi where she was admitted. She was finally discharged from the hospital on 07.08.2017, and thereafter remained under regular treatment in the Ortho OPD in the said hospital.

3. Based on the evidence led by the parties, the learned Tribunal by way of the Impugned Award, passed in favour of the respondent no.1 herein, directed payment of compensation of Rs.5,16,726/- along with interest @ 9% per annum from the date of filing of the Detailed Accident Report/claim petition, that is with effect from 06.11.2017.
4. On the question of liability, the learned Tribunal found that as the appellant no.1 herein has admitted that he was not having a valid driving licence to drive the motorcycle, the respondent no.2 herein, that is, the Insurance company shall have a right to recover the amount of compensation paid by it to the respondent no.1.
5. The appellants have challenged the Impugned Award in the present appeal contending that it was established on record before the learned Tribunal that the appellants, immediately after the accident,



had paid a sum of Rs.35,000/- to the son of the respondent no.1/claimant as compensation. The learned counsel for the appellants submits that the said amount should have been deducted from the total compensation amount determined by the learned Tribunal to be paid to the respondent no.1.

6. The learned counsel for the appellants, placing reliance on the handwritten certificate issued by the son of the respondent no.1 admitting that the claim had been settled for an amount of Rs.35,000/- based whereon he was withdrawing the FIR in relation to the accident in view of the compromise, submits that the said amount should have been deducted from the total awarded compensation to the respondent no. 1.
7. The learned counsel for the appellants draws my attention also to the cross-examination of the respondent no.1, wherein she admitted that the above certificate bears the signatures of her son and that she had received an amount of Rs.35,000/- from the appellants. However, the respondent no. 1 further states in her cross-examination that she had demanded more amount, which the appellants failed to pay, because of which a final compromise could not be arrived at between the parties.
8. I find no merit in the submissions made by the learned counsel for the appellants.
9. The certificate itself records that the said amount has been received as a compromise for withdrawing the FIR that was registered against the appellant no.1 by the police. The same does not state that it is



also in full and final settlement or even part settlement of the claim of compensation towards the injuries suffered by the respondent no.1.

10. The next challenge of the learned counsel for the appellants to the Impugned Award is on the submission that the learned Trial Court has failed to attribute any contributory negligence on the respondent no.1/Claimant for the subject accident.
11. Drawing reference to the Detailed Accident Report, he submits that the respondent no.1 had admitted that the accident occurred while she was crossing the road and was about to get onto the divider in the middle of the road. He submits that the Site Plan attached to the Detailed Accident Report also showed that there was no zebra crossing at that place. In fact, in the Detailed Accident Report, it is mentioned that Zebra Crossing was not present at the place of the accident. He submits that as the respondent no.1 was crossing the road at a place where there was no Zebra Crossing, she should have been held to have contributed to the accident and the total compensation amount should have been reduced accordingly. In support, he places reliance on the judgment of the Supreme Court in ***Raj Rani & Ors. v. Oriental Insurance Company Ltd. & Ors.*** (2009) 13 SCC 654.
12. To a query of this Court, whether the witness of the respondent no.1 was confronted in her cross-examination on the issue of the absence of a Zebra Crossing at the place of the accident, the learned counsel for the appellants fairly submits that the witnesses were not so



confronted. This plea was also not taken by the appellants before the learned Tribunal.

13. Having not raised this plea before the learned Tribunal, in my view, the same cannot be allowed to be raised for the first time in the appeal.
14. I, therefore, find no merit in the present appeal. The same, along with the pending application, is dismissed.
15. The statutory amount deposited by the appellants be returned back to the appellants along with interest accrued thereon.

NAVIN CHAWLA, J

AUGUST 4, 2023
RN/AS