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

Date of decision: 27th July, 2023

+ **MAC.APP. 115/2018**

SHIV CHARAN Appellant
Through: Mr.Kamaldeep, Adv.

versus

GULFAM KHAN & ORS (NATIONAL INSURANCE
COMPANY LIMITED) Respondents
Through: Mr.Arihant Jain, Adv. for
Ms.Shantha Devi Raman, Adv.
for R-3.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 03.11.2017 passed by the learned Motor Accidents Claims Tribunal (Pilot Court), Karkardooma Courts, Delhi (hereinafter referred to as the learned 'Tribunal') in MACT Case no.120/17, titled *Shiv Charan v. Gulfam Khan & Ors.*, by which the claim petition filed by the appellant herein has been dismissed by the learned Tribunal, holding as under:

"11. Before adjudicating the facts, it is vehemently argued by the Ld Counsel for the insurance company that the claim petition filed by the petitioner is not maintainable and this petition should be dismissed as petitioner has not proved the criminal records, any injury by way of medical records / medical bills as well as involvement of vehicle driven by respondent



No. 1. It is vehemently argued by the counsel for the respondents that the petition is liable to be dismissed as the petitioner failed to prove any negligence of the respondent No.1. The arguments of the ld. Counsel for respondents appears to have substance.”

2. The learned counsel for the appellant submits that the accident in question had occurred when the claimant along with his friend-Dharminder @ Dharam Singh was going towards Bhagpat, UP for some work on the motorcycle bearing registration number DL5R 5623, and had met with an accident with a truck bearing no. HR55W 0193. He submits that Mr. Dharminder filed his own claim petition before the learned Motor Accidents Claims Tribunal, East, Karkardooma Courts, being MACT case No.51/17. In the said claim petition, by the Award dated 27.04.2019, the learned Tribunal held as under:

“11. It is further observed that technical inspection report Ex.PW4/D also-makes it clear that left side of the bumper of the offending vehicle got scratch in the accident. It is also not disputed that offending truck had hit the motorcycle from back side. Though, it has been alleged by respondent no. 1&2 that the accident had-happened due to rash and negligent driving of the motorcycle but it has not been explained as to how the motorcycle was responsible for accident. In view of above, it becomes clear that offending truck was being driven in rash and negligent manner and was responsible for the accident.”

3. The learned counsel for the appellant submits that the Award dated 27.04.2019 passed in MACT Case No. 51/17 was challenged by the respondent no.3 herein, by way of an appeal, being MAC.APP. 666/2019, *inter-alia* challenging not only the involvement of the

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offending vehicle, but also the finding of the same being driven in a rash and negligent manner, resulting in the accident. This Court however, vide its judgment and order dated 01.08.2019, dismissed the appeal, observing as under:

“3. Referring to the affidavit of the injured Dharmender and his cross examination, wherein he admits that the place where the accident happened was littered with gravel, Ms. Raman, the learned counsel for the appellant, submits that it is, therefore, possible that the injured had fallen/skidded on the gravel as a result of his driving at a high speed and thus injured himself grievously. Alternatively, he should have stopped and/or slowed the vehicle down, which could have prevented the alleged accident by skidding. In either case, there would be contributory negligence by him and some of the awarded amount should be deducted. The said argument is untenable because gravel could be of any size, it does not necessarily mean that the person should stop his vehicle or that motorcycle cannot be driven on gravel. What was the size of the gravel, how far or how loosely it was littered? Was it so dangerous that the rider should have slowed down entirely? All these aspects are not in the realm of the present examination because it was for the Insurance Company to have brought evidence to show that the rider of the motorcycle was driving in a rash and negligent manner and thus contributed to the unfortunate debilitating accident. What is plausible is that because of the loose gravel, as a prudent driver, the injured may have slowed his vehicle down, which was then hit by the rashly driven offending insured vehicle. Corroboration of such a hit, as found in the technical examination of the left side front bumper of the offending vehicle, is there. If the offending vehicle had a scratch on the left side of its front bumper, then it means that the



injured rider of the motorcycle was on the left side of the offending vehicle i.e. the lane in which slow moving vehicles are meant to ply. That itself would lead to the logical conclusion that the offending vehicle was being driven in a rash and negligent manner.

4. Having gone through his affidavit and the cross-examination, this Court is of the opinion that, the claimant has withstood the cross examination, and his testimony that he was hit by the offending vehicle remains unshaken. Furthermore, the contention that simply because he was hit from behind, he may not have been able to note down the number of the offending vehicle and that other people at the site, may also not have noted it down and that the injured being illiterate could not have taken down the number, are the arguments without basis, because a mere glance at the number of the offending vehicle is not ruled out and such number is likely to haunt the injured for a long time. Absolute illiteracy to recognize vehicle number plates is not proven.

5. The lacuna in the inquiry or investigation by a police officer, cannot in any way undermine the claim of an injured or aggrieved party because the claim petition has to stand on its own legs. The police report could be of corroborative assistance but wherever it may be lacking in the investigation, would not necessarily mean that the claim petition asserting a fact is not believable simply because the police investigation is silent and has missed out on that detail. If the assertion is proven or plausible and not ruled out in the police investigation, there would be no reason to exclude the assertion so as to defeat the claim petition itself. In the present case, there is nothing shown from the statement of the police officer, which could have defeated the case set up by the claimant.”

4. He submits that the appellant herein is a labourer and has to

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depend on his counsel for the legal advice as to how to proceed with the case and the evidence that he has to produce to prove his claim. He submits that in the present case, the learned Tribunal has found that the appellant has failed to prove his case, though the factum of the accident, involvement of the offending vehicle in the same, and the fact that the offending vehicle was being driven in a rash and negligent manner, stood confirmed by the judgment and order dated 01.08.2019.

5. I have considered the submissions made.

6. The Motor Vehicles Act, 1988 is a beneficial piece of legislation and seeks to provide justice to the victim of a road accident. The same, therefore, is not to be restricted to the confines of procedural nitty-gritties, and justice must be delivered without insisting on scrupulous adherence to the procedure of law and the rules of evidence. The learned Tribunal is, in fact, not to hold the trial, but an inquiry into the accident. The onus of proof on the Claimant is not as onerous as that in a civil or a criminal trial. The Supreme Court affirmed this view in ***Vimla Devi v. National Insurance Co. Ltd.***, (2019) 2 SCC 186, reemphasizing the object of the Act, as under:

“15. At the outset, we may reiterate as has been consistently said by this Court in a series of cases that the Act is a beneficial piece of legislation enacted to give solace to the victims of the motor accident who suffer bodily injury or die untimely. The Act is designed in a manner, which relieves the victims from ensuring strict compliance provided in law, which are otherwise applicable to the suits and other proceedings while prosecuting the claim petition filed under the Act for claiming compensation for the loss sustained by them in the accident.”



7. In the present case, keeping in view the judgment dated 01.08.2019 passed by this Court in MACT Case No. 51/17, in my opinion, the Impugned Award cannot be sustained. Accordingly, the same is set aside. The claim petition before the learned Tribunal (its successor Tribunal) shall stand restored back to its original number and shall be adjudicated afresh. The parties shall be free to lead further evidence on such remand.

8. The appeal is allowed in the above terms.

9. The record of the learned Trial Court be sent back immediately.

10. The parties shall appear before the learned Tribunal (its successor Tribunal) on 31st August, 2023.

NAVIN CHAWLA, J

JULY 27, 2023/Arya/am

Click here to check corrigendum, if any