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

Date of decision: 25th July, 2023

+ MAC.APP. 359/2023

NATIONAL INSURANCE CO. LTD.

..... Appellant

Through: Mr.Pradeep Gaur, Ms.Sweta
Sinha, Advs.

versus

RAVI KUMAR ARORA AND ORS

..... Respondents

Through: Mr.Sanjeev Kumar, Adv. for R-
1.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 37251/2023 (Exemption)

1. Allowed, subject to all just exceptions.

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2. This appeal has been filed challenging the Award dated 20.05.2023 passed by the learned Motor Accidents Claims Tribunal, South, Saket Courts, New Delhi (hereinafter referred to as the 'Tribunal') in MACP No.413/2017, titled ***Ravi Kumar Arora v. Sudhir & Ors.***, allowing the claim petition of the respondent no.1 and awarding the compensation of Rs.19,84,923/- alongwith interest at the rate of 6% per annum to the respondent no.1/claimant.

3. It was the case of the respondent no.1 before the learned Tribunal, which has been accepted by the learned Tribunal in its



Impugned Award, that on 13.12.2016 at around 3.00 p.m., the respondent no.1 alongwith his wife Priyanka were going from his village Garhi Pukhta towards his residence at Delhi riding on his motorcycle. When they reached P.N. Sharma Park, Baraut, UP, a truck bearing registration no. HR-38Q-1947 (hereinafter referred to as the 'Offending Vehicle'), being driven in a rash and negligent manner, hit the bike from behind due to which they suffered injuries. The injury suffered by the respondent no.1 was reported as 48% permanent physical impairment in relation to his right lower limb.

4. The learned counsel for the appellant submits that though the alleged accident took place on 13.12.2016, the complaint in this regard, based whereon an FIR No.0186, dated 21.12.2016 at P.S. Baraut, District Bhagpat was registered, was belatedly filed with a delay of 39 days. He submits that in the complaint, the number of the truck was given as HR 38Q 194. He submits that though the respondent nos.2 and 3 in the present appeal filed a joint written statement before the learned Tribunal alleging that the accident occurred due to the rash and negligent driving of the respondent no.1, they failed to appear before the learned Tribunal thereafter. He submits that the above facts would point towards connivance between the respondent no.1 and the respondent nos.2 and 3. He submits that therefore, the learned Tribunal has erred in accepting the version of the Claimant that the offending vehicle was involved in the accident and was being driven in a rash and negligent manner. He submits that, in fact, the above sequence would show that the respondent no.1 was

guilty of contributory negligence in the accident.



5. On the other hand, the learned counsel for the respondent no.1 submits that in the present case, the respondent no.1, due to the injury suffered, had to be hospitalized and, therefore, there was a delay in filing of the complaint/lodging of the FIR. He submits that merely because an incomplete registration number was given at the time of filing of the complaint, the version of the accident of the respondent no.1 cannot be disputed. He submits that, in fact, the respondent no.1 had admitted in their written statement that the offending vehicle was involved in the accident, though attributing negligence on the respondent no. 1, however, they did not substantiate this plea before the Tribunal.

6. I have considered the submissions made by the learned counsels for the parties on this issue.

7. It is not denied that the respondent no.1, due to the accident, suffered 48% permanent physical impairment in relation to his right lower limb. It has also come on record that the respondent no.1 and his wife were first taken to Astha Multi-Specialty Hospital, Baraut, but due to non-availability of the doctors, they were transferred to Murti Nursing Home in Baraut. The respondent no.1 was discharged from the hospital on 12.01.2017. The respondent no.1 had stated that he had given a written complaint of the accident to the police within three days of the accident, however, the police delayed the registration of the FIR. In the complaint filed, though an incomplete registration number was given, in my view, it is not sufficient to cast a doubt on the version of the respondent no.1 about the accident. The learned



and on the evidence brought on record regarding the manner in which the accident had occurred, has observed as under:

“16. In the present case, the petitioner has filed certified copies of criminal record which includes charge sheet, site plan etc. Charge sheet has been filed against the respondent no.1. PW1 Ravi Kumar who is the injured had categorically deposed about the occurrence of the accident due to rash and negligent driving of the Respondent No.1. No other version of accident has come on record except the one as narrated by the injured. The respondents have not examined any witness in support of their contentions. They have rather failed to appear during the proceedings and were proceeded ex-parte vide order dated 22.01.2020 by Ld. Predecessor of this Court.

17. Certified copies of criminal proceedings filed alongwith it are admissible in evidence and deemed to be correct under Rule 7 of the Motor Accident Claims Tribunal Rules, 2008 until proved to be contrary. Copies of criminal proceedings filed alongwith it have not been challenged and controverted by any of the respondents.

18. It is a settled legal position that while deciding a petition u/s 166 of the M V Act, the Claims Tribunal has to decide negligence on the touchstone of preponderance of probabilities. Reference in this regard is made to the observations of the Hon'ble Supreme Court of India in Kaushnumma Begum and Others v/s New India Assurance Company Limited, 2001 ACJ 421 SC, wherein it was held that the issue of wrongful act or omission on the part of the driver of motor vehicle involved in the accident is of secondary importance and mere use or involvement of motor vehicle in causing bodily injuries or death to a human being or damage to property would make the petition maintainable u/s 166 & 140 of the M V Act. Nevertheless, it is also a



settled legal position that in a claim petition u/s 166 of the M V Act, burden is on the claimants/petitioners to prove negligence. The law to this effect declared in Minu B Mehta Vs. Balkrishna Ramchandra Nayan (1977) 2 SC 441 was reiterated by the Supreme Court in Oriental Insurance Company Limited vs. Meena Variyal 2007 (5) SCC 428, which has been followed by Hon'ble High Court of Delhi in a recent case, New India Assurance Co. Ltd. Vs. Devki &Ors., MAC APP 165/2013 decided on 29.02.2016.

19. Hitting from behind per-se amounts to negligence unless explained otherwise. Even the charge sheet has been filed against the respondent no.1. No other version of accident is explained or proved on record except the one narrated by the injured. None of the respondents have led any evidence to prove otherwise than the version of the petitioner.

20. The next leg of argument of the respondent is that the FIR has been delayed but seeing the condition of the injured who has suffered 48% disability, the delay in registration of FIR is obvious. The injured was admitted in the hospital, thus this argument is not tenable.

21. On the basis of evidence on record, above observation and discussion it is proved that the abovesaid accident took place due to rash and negligent driving of R1 Sudhir due to which petitioner received grievous injuries. Accordingly, issue no. 1 is decided in favour of the petitioners."

8. I find no reason to disagree with the findings of the learned Tribunal.

9. In the present case, merely because of the delay in filing of the FIR, the version of the respondent no.1 of the accident cannot be



appellant that respondent no.1 was guilty of contributory negligence, also cannot be believed in absence of any evidence brought on record in this regard.

10. The first challenge of the appellant to the Impugned Award is therefore rejected.

11. The learned counsel for the appellant challenges the Impugned Award also on account of the 'loss of income/loss of future income' determined by the learned Tribunal. He submits that the respondent no.1 had not produced on record any proof of his income in the form of his Income Tax Returns or otherwise. He submits that though the respondent no.1 claims to be an advocate by profession and had filed his ID Card to prove the same, however, even in his affidavit of evidence, nothing has been stated regarding his income. He submits that in the absence thereof, the learned Tribunal has erred in taking the income of the respondent no.1 as Rs.25,000/- per month.

12. I am unable to agree with the submission of the learned counsel for the appellant.

13. It had come on record that the respondent no.1 was an advocate by profession, practicing in Tis Hazari Courts, Delhi. The respondent no. 1 was aged about 37 years. Keeping in view the above, in my view, the income of the respondent no. 1 was rightly assessed by the learned Tribunal to be around Rs.25,000/- per month for awarding of loss of income/loss of future income to the respondent no. 1.

14. I, therefore, find no merit in the second challenge to the Impugned Award as well.



present appeal. The same is dismissed along with all the pending applications.

16. The appellant shall deposit the awarded amount with the learned Tribunal within a period of four weeks from today and the same shall be released to the respondent no. 1 in terms of the Schedule of disbursement stipulated in the Impugned Award.

NAVIN CHAWLA, J

JULY 25, 2023/Arya/am

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 31.07.2023

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