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

Date of Decision: 25.07.2023

+ **MAC.APP. 258/2021**

SURESH MEHTO Appellant
Through: Mr.Jatinder Kawra, Adv.

versus

LAKHVINDER SINGH & ORS. Respondents
Through: Mr.Sameer Nandwani, Ms.Nikita
Sharma, Mr.Rohin Singh Pande,
Advs. for R-3.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the appellant challenging the Award dated 30.09.2020 passed by the learned Motor Accident Claim Tribunal, (West-01), Tis Hazari Courts, Delhi (hereinafter referred to as the 'Tribunal') in MAC Case no.301/2017 titled *Sh.Suresh Mehto v. Sh.Lakhvinder Singh and Ors.*
2. It was the case of the claimant/appellant herein that on 21.03.2017, at about 0500 hours, the claimant/appellant was going from Delhi to Bhatinda by driving a Truck bearing registration no.DL-1GC-1081. When he reached P.S. Sadar Fatehabad, a Truck bearing No.PB-10AZ-2611 (hereinafter referred to as the 'offending vehicle'),



which was being driven at a very high speed and in a rash and negligent manner, hit the vehicle of the claimant/appellant on the front side. Due to the forceful impact, both the trucks turned and the claimant suffered grievous injuries. The police registered FIR no.0141/2017 dated 21.03.2017, at Police Station Sadar Fatehabad under Section 279/337 of the Indian Penal Code, 1860 (in short 'IPC') against the respondent no.1, that is the driver of the offending vehicle. Later a charge sheet has also been filed against the respondent no.1.

3. The learned Tribunal by way of its Impugned Award has attributed the contributory negligence of 25% on the claimant/appellant and based thereon, has directed deduction in the awarded amount. The first challenge to the Impugned Award is on this account.
4. The learned counsel for the appellant, drawing reference to the FIR registered by the police and to the evidence on record, submits that the claimant/appellant had proved on record that the accident had occurred only for the reason that the offending vehicle was being driven in a rash and negligent manner, and the claimant/appellant had done his best to avoid the accident by taking his vehicle to the left side of the road and also showing his hand as a sign to the approaching offending vehicle to slow down. He submits that the learned Tribunal has, without any evidence on record and only on the basis of conjectures, held that as the accident was a head on collision, 25% of the contributory negligence be attributed on the claimant/appellant.



5. On the other hand, the learned counsel for the respondent no.3 submits that the accident occurred on a village road. The FIR indicates that both the trucks overturned because of collision. He submits that therefore, clearly the claimant/appellant was also driving at a high speed. He submits that the learned Tribunal has rightly attributed 25% contributory negligence on the claimant/appellant.
6. I have considered the submissions made by the learned counsels for the parties.
7. At the outset, it is noticed that the respondent nos.1 and 2, that is, the driver and the owner of the offending vehicle, did not appear before the learned Tribunal for the enquiry. The FIR of the accident recorded the statement of the claimant/appellant to the effect that on seeing the offending vehicle approaching him at a high speed, the claimant/appellant moved his truck to the left side of the road in order to avoid the collision. In the evidence before the learned Tribunal, the Claimant stated that he even waived to the approaching offending vehicle with a hope that the offending vehicle will slow down, however, that did not happen.
8. The learned Tribunal, in the Impugned Award has on the issue of attribution of contributory negligence on the Claimant, observed as under:-

“29 It has been seen that though, PW-1 has categorically admitted that there was head on collision in between the two vehicles but PW-1 has stated that the negligence in causing the



accident was entirely on the part of the respondent no.1 who was driving the offending vehicle.

30. *Ld. Counsel for the insurance company, in this respect, has placed the reliance on the judgment pronounced by the Hon'ble High Court of Guahati in the matter cited as II (2019) ACC 342 (Gau.) titled as Oriental Insurance Co. Ltd. vs. Sanjoy Jain & Ors. on 13.02.2019, wherein in para nos. 12, 13 and 15 of the judgment, it has been held as under:-*

"12. It is an admitted case that no eye witnesses were produced in the proceeding before the Tribunal and the claimant who was the sole witness had exhibited amongst others, the MVI report which leads to only one conclusion that the accident in question was a result of a headon collusion. This Court is also in an agreement with the submission of the learned counsel Shri Goswami that that the pleadings in this claim petition were structured, to suit the claimants as 2 (two) vehicles were involved. However, pleadings have to be supported by evidence and in this case the unrebutted evidence is the MVI report, which proves that the collusion was on the front rear side of the Scooter.

13. *In that view of the matter, this Court cannot accede to the said ground of challenge made in this appeal and hold that both the vehicles were at fault leading to necessary indemnification by the respective Insurance Companies.*

15. *In the instant case, the learned Tribunal took note of the facts and circumstances including the involvement of both the vehicles leading to the accident and has rightly apportioned the award to the ratio of 50% by both the companies involved."*

31. *Ld. Counsel for the Insurance company has*

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further relied upon the judgment dated 30.08.2018 in the case titled as Reshma Banu @ Reshma & ors. vs. Dinesh & Anr., cited as (2018) ACC 660 (DB) (Kar.) decided by the Hon'ble High Court of Karnataka wherein, it was held that there was a head on collision in between the bus and TATA Ace which was a smaller vehicle and the negligence was found to be on the part of both the drivers. Negligence was portioned in the ratio of 75:25 between the driver of the Corporation Bus and the deceased.

32. Now, in the case in hand, PW-1 has categorically stated in the cross-examination that he tried to stop the vehicle by showing his hand also but he offending vehicle did not stop at all. The aforesaid submission of the petitioner has not been rebutted by the respondents nos.1 & 2 as they have not led any evidence.

33. As such, keeping in view the factual matrix involved in the present matter and the ratio of the abovesaid judgments, I am of the opinion that since there was a head on collision between the two vehicles, the petitioner has to be held liable for the contributory negligence also."

9. In my view, the learned Tribunal has acted only on presumption in the present case. Merely, because there was a head on collision between the two trucks, it cannot be said that in every such case contributory negligence has to be attributed to both the vehicles involved in the accident. Each case has to be determined of its own facts. As noted hereinabove in the present case, the facts proved on record show negligence only on the part of the driver of the offending vehicle. The FIR and the charge sheet have also been filed against the driver of the offending vehicle alone, that is, the respondent no.1 herein. There was therefore, no material on record



before the learned Tribunal to attribute any contributory negligence to the claimant. The Award to this extent is, therefore, set aside.

10. The next challenge of the learned counsel for the appellant to the Impugned Award is that while awarding the compensation determining the loss of income on account of disability, the learned Tribunal has not granted any compensation towards future prospects. In this regard, he places reliance on the judgment of ***Pappu Deo Yadav v. Naresh Kumar & Ors.*** 2020 SCC OnLine SC 752, and submits that 40% should have been added to the assessed amount towards loss of future earnings/future prospects.
11. I find merit in the submissions made by the learned counsel for the appellant.
12. The impugned Award finds that the claimant has suffered 34% permanent physical disability in relation to his right lower limb. The disability certificate also states that the condition of the petitioner is non-progressive and not likely to improve. The learned Tribunal has treated the functional disability of the Claimant as 34%. In ***Pappu Deo Yadav*** (supra), placing reliance on its earlier judgment in ***National Insurance Company Ltd. v. Pranay Sethi & Ors.*** (2017) 16 SCC 680, the Supreme Court has awarded 40% of the loss of income towards future prospects. The same was fully applicable to the facts of the present case as well. The Award in so far as “Compensation on account of disability” is modified to this extent.
13. In view of the above, the appeal is allowed.
14. The parties, that is, the claimant/appellant and the respondent no.1



shall appear before the learned Tribunal on 11th September, 2023. The learned Tribunal will re-determine the compensation payable to the claimant/appellant in terms of its Award as modified by the present order. The additional amount, along with interest at the rate as ordered in the impugned award, shall be deposited by the respondent no.3 with the learned Tribunal within a period of four weeks of such determination. The awarded amount, along with the enhanced amount shall be released in favour of the claimant/appellant in accordance with Schedule stipulated in the Impugned Award.

15. The parties shall bear their respective costs of the appeal.

NAVIN CHAWLA, J

JULY 25, 2023
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