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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 29.11.2023***

+ MAC.APP. 231/2020 & CM APPL. 28892/2020
THE ORIENTAL INSURANCE CO LTD Appellant
Through: Mr.A.K. Soni, Adv.

versus

MUNNA LAL GUPTA & ORS. Respondents
Through: Mr.Shrey Chathly, Adv. for R-
1.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by appellant/Insurance Company challenging the Award dated 16.09.2020 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, Shahdara District, Karkardooma Court, Delhi (hereinafter referred to as the 'Tribunal') in MACT No. 730/2017 titled ***Munna Lal Gupta v. Phool Chand & Ors..***

2. It was the case of respondent no.1 herein/Claimant before the learned Tribunal, that on 29.10.2016 at about 10:45 PM, the respondent no. 1 was returning from his plot situated at Sangam Vihar, Loni on his Moped bearing Registration no.UP-18BU-1218. When he reached Banthala Gas Plant, all of a sudden a



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Truck bearing Registration no.UP-12AT-1253 (hereinafter referred to as the 'Offending Vehicle'), being driven by the respondent no.2 herein in a rash and negligent manner and high speed, turned and hit the Moped of the respondent no.1. The respondent no.1 fell down and the rear tyre of the Offending Vehicle passed over his right leg. Respondent no.1 received treatment at the Guru Teg Bahadur Hospital (hereinafter referred to as the 'GTB Hospital'), where he remained hospitalized from 30.10.2013 to 17.11.2016. During the course of his treatment, the right leg of respondent no.1 was amputated.

3. After considering the evidence led by the parties, the learned Tribunal has held that the accident had taken place due to the rash and negligent driving of the Offending Vehicle by the respondent no.2 herein. The learned Tribunal has awarded compensation of Rs.28,68,000/- in favour of the respondent no.1.

4. The learned counsel for the appellant submits that the Offending Vehicle has been falsely implicated in the present accident. He submits that though the respondent no.1 was discharged from the hospital on 17.11.2016, the FIR regarding the accident was lodged on his complaint only on 06.12.2016. He submits that it is not the case of the respondent no.1 that between 29.10.2016 till 17.11.2016 the respondent no.1 was not in a position to give a statement to the Police. He submits that, therefore, there was a delay of 37 days from the date of the



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accident, and a delay of 19 days from the date of the discharge of the respondent no.1 from the hospital, in lodging the FIR.

5. The learned counsel for the appellant further submits that even taking the version of the respondent no.1 of the manner in which the accident had taken place to be true, it is impossible to believe that the respondent no.1 would have noted down the registration number of the Offending Vehicle. He submits that as per the version of the respondent no.1, the Offending Vehicle had hit the Moped which was being driven by respondent no.1 on the back side thereof, and because of the impact, the respondent no.1 fell down and became unconscious. He submits that, therefore, it is not possible for the respondent no.1 to have noted down the number of the Offending Vehicle with such precision.

6. He submits that the connivance of respondent nos.2 and 3 with the respondent no.1 is also evident from the fact that the respondent nos.2 and 3 did not lead their evidence though they filed written statement as well as their evidence by way of affidavit challenging the version of the respondent no.1.

7. The learned counsel for the appellant submits that, therefore, the learned Tribunal, based only on the testimony of respondent no.1 which remained uncorroborated by any other independent evidence, has erred in holding that the accident had taken place with the Offending Vehicle hitting the Moped of the respondent no.1.

8. On the other hand, the learned counsel for the respondent



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no.1 submits that mere delay in lodging of the FIR cannot be fatal to the claim of the respondent no.1. He submits that admittedly, the respondent no.1 remained hospitalized till 17.11.2016. He had suffered an amputation of his right leg and, therefore, would not have rushed to the Police Station to lodge the FIR. In support he also places reliance on the judgment of the Supreme Court in *Ravi v. Badrinarayan and Others*, (2011) 4 SCC 693.

9. He submits that, in fact, in the Admission Summary of the respondent no.1 itself at the GTB Hospital, it was recorded that the respondent no.1 has suffered injury in a road accident.

10. He further submits that though the respondent no.1 was cross-examined not only by the respondent nos.2 and 3 but also by the appellant herein, no question on the delay in lodging of the FIR was put to the respondent no.1. The respondent no.1 could have very well explained the reasons for the delay in lodging of the FIR and, therefore, now the appellant cannot be allowed to raise this issue.

11. On the question of the identity of the Offending Vehicle, the learned counsel for respondent no.1 reiterates that respondent no.1, during the process of cross-examination, was not put any question by respondent nos.2 and 3 or by the appellant seeking an explanation as to how he knew of the Offending Vehicle being the one which had hit his Moped. He submits that, therefore, the appellant cannot be allowed to now raise this issue in appeal.



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12. I have considered the submissions made by the learned counsels for the parties.

13. It is not denied that the respondent no.1 had suffered below knee amputation of his right leg as a result of the accident. The same is also evident from the Discharge Summary of the respondent no. 1 from the GTB Hospital, which records that the respondent no.1 was admitted as a victim of a road traffic accident. The respondent no.1 remained hospitalized between 29.10.2016 to 17.11.2016. Ideally, when a road accident victim is hospitalized, it is the duty of the Police itself to register the FIR or at least make an entry of the accident. The respondent no.1 cannot be denied the compensation only because the Police failed to discharge its duty.

14. Be that as it may, even on the date of the discharge, as per the Discharge Summary itself, the respondent no.1 was to report to the hospital every day for follow-up treatment. In such circumstances, an adverse inference cannot be drawn against the respondent no.1 for not rushing to the Police to get the FIR registered rather than caring for his own body and health.

15. In **Ravi** (Supra), the Supreme Court has reiterated that the delay in lodging the FIR cannot be a ground to doubt the claimant's case. It has been held as under:-

"17. It is well settled that delay in lodging the FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the police station



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immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the police station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim.

18. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so the contents of the FIR should also be scrutinised more carefully. If the court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences.

19. Lodging of FIR certainly proves the factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be a variety of reasons in genuine cases for delayed lodgement of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquillity of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.



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20. In the case in hand, the Claims Tribunal as well as the High Court, committed grave error in not appreciating the mental agony through which Suresh was passing, whose son was severely injured. In the light of the aforesaid discussion, we are of the considered opinion that MACT as well as the High Court committed error in coming to the conclusion that lodging the FIR belatedly would result in dismissal of the claim petition.”

16. Added to the above is the fact that the respondent no.1 was given no opportunity to explain the reason for the delay in filing of the FIR. Though he was cross-examined by the counsels for the appellant and the respondent nos.2 and 3, there was no question put to him nor any suggestion made to him that there is a delay in lodging of the FIR which has remained unexplained. In the absence of the same, in my view, the appellant cannot be allowed to agitate this issue in appeal. The learned Tribunal has also taken note of the above factor, observing as under:-

“14. A careful reading of the aforesaid cross examination makes it apparent that though the respondents specifically pointed out in their written statements that there was delay of 37 days in lodging of the FIR, but no question or suggestion regarding the said delay was put to PW-1 during his cross examination. Not a single question was put to PW-1 as to why the FIR was not lodged immediately after the accident and why the FIR was lodged as late as on 06.12.2016. Further, no question regarding the manner in which the accident took place was put by Id. counsel for respondent no. 1 and 2 during the cross



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examination of PW-1. The respondents could not extract anything substantial so as to doubt the testimony of PW-1.

15. So far as the delay in lodging of FIR is concerned, though no question in this regard was put to PW-1, the delay is explained by the contents of the FIR itself wherein it is stated that PW-1/petitioner remained admitted in GTB Hospital for treatment where his right leg was amputated, consequently, he came to the police station to register the FIR only after he was discharged from the hospital.

16. The testimony of PW-1 is duly corroborated by the Patient Discharge Summary prepared at GTB Hospital wherein the alleged history is mentioned as 'Road Traffic Accident' It may be noted that the accident took place at about 11 pm on 29.10.2016 and the petitioner was admitted with the aforesaid history at GTB Hospital on 30.10.2016. Accordingly, the history recorded at the first instance at GTB Hospital also supports the story of the petitioner that he suffered injuries in Road Traffic Accident."

17. I have no reason to disagree with the above finding of the learned Tribunal.

18. As far as the plea of the appellant that given the nature of the accident, the respondent no.1 could not have noted the Registration number of the Offending Vehicle and be able to identify it, also cannot be accepted. As noted herein above, the respondent no.1 was cross-examined by the appellant as also by the respondent nos.2 and 3. In the course of the cross-examination, respondent no.1 was not asked to explain how he could identify the Offending Vehicle. If this question would have been asked to him, he could have come out with an



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adequate explanation for the same. In the absence of any cross-examination on this issue, the appellant cannot be allowed to now agitate this issue and cast a doubt on the version of the accident as explained by the respondent no.1.

19. In ***Laxmibai (dead) Through LRs. & Anr. v. Bhagwantbuva (dead) Through LRs. & Ors.***, (2013) 4 SCC 97, the Supreme Court has held that:-

“40. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination-in-chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full



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and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.”

20. It is also relevant to note that the respondent nos.2 and 3, though filed a Written Statement as also their affidavit of evidence denying the involvement of the Offending Vehicle in the accident, they did not enter the witness box. Though an adverse inference of the same can be drawn only against the respondent nos.2 and 3, at the same time, the appellant also took no steps to carry out its own investigation in order to cast a doubt on the statement of the respondent no.1 on the involvement of the Offending Vehicle in the accident.

21. Accordingly, I find no merit in the above contention as well. The same is rejected.

22. In view of the above, I find no merit in the present appeal. The same, along with the pending application, is dismissed.

23. By the order dated 23.02.2021 of this Court, the appellant was directed to deposit the awarded amount with the learned Tribunal. It was, however, further directed that such amount shall not be disbursed to the respondent no.1. Now that the appeal has been dismissed, it is directed that the awarded amount along with interest shall be released in favour of the respondent no.1 in accordance with the schedule of disbursement as prescribed in the Impugned Award.

24. The statutory amount deposited by the appellant be



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released in favour of the appellant along with interest accrued thereon.

25. There shall be no order as to costs.

NAVIN CHAWLA, J

NOVEMBER 29, 2023/rv/RP

Click here to check corrigendum, if any