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

Date of decision: 27th July, 2023

+ **MAC.APP. 991/2018 & CM APPL. 47012/2018**

+ **MAC.APP. 992/2018 & CM APPL. 47014/2018**

ICICI LOMBARD GENERAL INSURANCE CO LTD

..... Appellant

Through: Ms.Neerja Sachdeva, Adv.

versus

DHARMENDER BHATI & ORS

..... Respondents

PRAKASHI DEVI & ORS

..... Respondents

Through: Mr.S.N.Parashar, Adv. for claimants.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. These appeals have been filed challenging the Award dated 12.09.2018 passed by the learned Motor Accidents Claims Tribunal (SE-01), Saket Courts, New Delhi (hereinafter referred to as the 'Tribunal') in MACT Case No.4463/2016, ***Dharmender Bhati v. Amit & Ors***, and in MACT Case No.3949/2016, titled ***Smt. Prakash Devi & Anr. v. Sh. Amit & Ors.***, where claims were raised arising out of the same accident.

2. The limited challenge of the appellant to the Impugned Award is that the respondents/claimants had failed to prove before the learned

Signature Not Verified that the offending vehicle was being driven in a rash and

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negligent manner.

3. The learned counsel for the appellant submits that while the accident was alleged to have taken place on 03.12.2014, the FIR was lodged with a considerable delay on 19.12.2014. She submits that the claimant and the respondent no.1 are relatives and therefore, connivance cannot be ruled out.

4. On the other hand, the learned counsel for the respondent no.1/claimants submits that a Charge-Sheet has been filed against the driver of the offending vehicle. The manner of the accident was also proved before the learned Tribunal, clearly showing that the same occurred due to the rash and negligent driving of the driver of the offending vehicle. He submits that the delay in filing of the FIR was due to the reason that the claimant had to be hospitalized due to the injuries suffered, and was discharged from the hospital only on 09.12.2014. In any case, upon investigation, the police has already filed a Charge-Sheet against the driver.

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

6. The learned Tribunal in the Impugned Award, on the question of the offending vehicle being driven in rash and negligent manner, has observed as under:

“20. In the MACT cases, petitioners are required to, prove the rash and negligent driving by the driver of the offending vehicle. In this case, PW2 Sh. Dharmender Bhati, who is also eye witness of the case while appearing into witness box, made statement and narrated the mode and manner of the accident. Driver examined himself and admitted the accident



however, stated that while he was taking a U turn, all of sudden a glare of light came due to which the accident was caused. Certified copy of the charge-sheet along with other relevant documents including mechanical inspection report, PM Report, FIR and site plan have been filed.

21. In the enquiry proceedings before this Tribunal, the charge of rash and negligent driving is to be proved at the touch stone of preponderance of probabilities and not beyond reasonable doubt. The preponderance of probability is in favour of the petitioners.

22. Counsel for Insurance Company has raised an objection that there is a delay of 16 days in registration of FIR. This objection is of no consequence in view of the circumstance that charge sheet has already been filed by police against the driver after making investigation in the case. Even otherwise, in 'Ravi V/s. Badri Naravan 2011 ACJ 911 the Hon'ble Supreme Court' held that "Delay of a couple of days in lodging police complaint would not be fatal as first priority is to be given to the victim". It is stated in the FIR that due to death and funeral rituals of deceased Sandeep, the report could not be made earlier. Medical documents of victims are already on record, according to which, Victim Sandeep had taken treatment at Yatharth Wellness Hospital on 03.12.2014 and expired on 04.12.2014 at about 07.59 am and injured Dharmender had taken treatment at Yatharth Wellness Hospital on 03.12.2014 and remained admitted there till 09.12.2014, whereas, the accident took place on 03.12.2014 at about 09.00 pm.

23. After investigation, police had filed charge-sheet against the respondent no.1 under Section 279/338 and 304 AIPC and this in itself is a proof of negligence of the driver, (see National Insurance Co, Vs. Pushpa Rana



2009 ACJ 287 Delhi). Applying this principle, the negligence of respondent no.1 is made out.

24. In view of the charge-sheet filed against R1 and evidence adduced, issue No. 1 is answered in affirmative, holding that the accident occurred solely due to negligence of respondent No. 1.”

7. On the question of liability of the Insurance Company, the learned Tribunal has held as under:

“Liability:-

32. Insurance company has argued that it has no liability to pay as the accident was caused by same unknown vehicle.

33. The argument is bereft of merit. In his evidence, driver has stated that the accident took place due to a glare of another vehicle at a turn. It is well settled that petitioner can claim compensation of any of the tortfeasor in case these are more than one. There is no dispute that accident had taken place and that the offending vehicle was also involved in the accident in which the deceased and the injured were travelling. The car in question was having a comprehensive/package insurance policy which covers the risk of occupants of car as well.

34. Since there is no statutory defence available, therefore, the compensation shall be paid by respondent no. 2/insurance company within 30 days with interest @ 9% per annum from the date of filing of claim petition.”

8. I am in agreement with the findings of the learned Tribunal. It has been proved on record that the late Sh. Sandeep Kumar Sagar, who was travelling in the offending vehicle, suffered grievous injuries and subsequently lost his life. Shri Dharmender Bhati was also

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travelling in the offending vehicle and suffered *multiple bleeding wound over face with multiple abrasions, pain and suffering over left thigh and left knee, pain and suffering in neck and fracture NOF with fracture left patella*. He remained in the hospital till 09.12.2014. The police has already registered the Charge-Sheet against the respondent no.2. The involvement of the offending vehicle in the accident, therefore, stands proved. As rightly observed by the learned Tribunal, in an inquiry proceeding under the Motor Vehicles Act, 1988, the charge of rash and negligent driving is to be proved on the touchstone of preponderance of probabilities and not beyond reasonable doubt, as is in the case of a criminal trial. The insurance for the offending vehicle was comprehensive/package insurance policy. In my view, therefore, the Claimants had met the onus of such proof required of them in a Claim Petition under the Motor Vehicles Act, 1988, which is a beneficial legislation, legislated with an object of providing relief to the accident victims. I therefore, find no merits in the present appeals.

9. The appeals are accordingly dismissed.

10. The statutory amount deposited by the appellants alongwith interest accrued thereon be released to the appellants.

11. The learned Registrar General of this Court is directed to release the deposited amount alongwith the interest accrued thereon in favour of the claimants, in terms of the Impugned Award. The amount along with interest that would otherwise have been released to the claimants in terms of the Impugned Award till today, shall be immediately released to the claimants, while the remaining amount



release as prescribed in the Impugned Award.

NAVIN CHAWLA, J

JULY 27, 2023/Arya/am

Click here to check corrigendum, if any

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