



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

% **Judgment reserved on : 29 April 2024**
Judgment pronounced on : 02 July 2024

+ **MAC.APP. 186/2021**

JAYESH KUMAR JAIN Appellant
Through: **Ms. Saroka Goel, Advocate.**

versus

DUGRA DUTT RAI AND ORS Respondents
Through: **Ms. E. Enatoli Sema, Mr. Amit Kumar Singh, Ms. Chubalemla Chang, Mr. Prang Newmai, Mr. Oren Ezung, Advocates for R-3.**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The appellant has preferred this statutory appeal under Section 173 of the Motor Vehicles Act, 1988,¹ assailing the impugned judgment-cum-award dated 20.10.2020 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, East District, Karkardooma Courts, Delhi², whereby his claim petition under Section 166 read with Section 140 of the M.V. Act was dismissed.

2. Shorn off unnecessary details, evidently, the appellant sustained grievous injuries in a motor accident that occurred on 10.03.2014 at 08:50 AM at Block A, Sector-4, NOIDA, Gautam Budh Nagar, State

¹ MV Act

² Tribunal



of Uttar Pradesh, with regard to which FIR No. 313/2014 under Sections 279/337/338 of the IPC³ was also registered at Police Station - Section 20, NOIDA, Gautam Budh Nagar, State of Uttar Pradesh. The appellant was apparently going on foot for joining his duty when he was allegedly hit by the offending motorcycle bearing registration No. DL 7S AP 3033, which was allegedly being driven by respondent No.1 and owned by respondent No.2. A claim petition under Section 166 r/w Section 140 of the M.V. Act was filed seeking compensation to the tune of Rs. 25 lakhs with interest.

3. On service of notice of the claim petition, the appearance was put by all the respondents including respondent No.3/Insurance Company as the offending motorcycle was evidently insured. The learned Trial Court after considering the pleadings of the parties, framed the following issues: -

‘(i) Whether the petitioner Jayesh Kumar Jain sustained grievous injury in a motor vehicular accident on 10.03.2014 at about 8.50 a.m. in front of A-50, Sector-4, Noida, within jurisdiction of PS Sector-20, Noida due to rash and negligent driving of motorcycle No. DL-7SAP-3033 (Hero Honda Super Splendor) by respondent No.1? OPP

(ii) Whether the petitioner is entitled to the compensation as prayed for, if so, to what amount and from whom? OPP

(iii) Whether petitioner is entitled to interest on the award amount, if so, at what rate of interest and for which period?

(iv) Relief.’

4. It is pertinent to point out that the claimant examined only himself with regard to the manner in which the accident occurred and the evidence was also led to the effect that the appellant/claimant has suffered permanent disability to the extent of 64% with regard to his

³ Indian Penal Code, 1860



left upper limb. On the other hand, the respondents No.1 and 2 did not lead any evidence.

5. Suffice to state that the learned Trial Court after considering the testimony of the sole eye witness i.e., the appellant/claimant himself, found that his version was not inspiring confidence and the material placed on the record was not enough to establish involvement of the offending vehicle and thus, the driver being not responsible for causing injuries to the appellant/claimant. Hence, the claim petition was dismissed.

ANAYALSIS AND DECISION:

6. Having given my thoughtful consideration to the submissions advanced by the learned counsels for the parties at Bar and on perusal of the relevant record including the digitized Trial Court Record, I find that the present appeal is devoid of any merits.

7. At the outset, it would be relevant to refer to the observations made by the learned Tribunal while appreciating the evidence brought on the record, which read as under: -

‘10. In order to prove his case, the petitioner (PW1) has stepped into the witness box, being the sole eye witness of the accident examined in this case. He has testified that on 10.03.2014, he was going on his duty on foot and at about 8.50 a.m. when he reached at A Block, Sector-4, Noida, a motorcycle bearing registration no. DL-7SAP-3033 (make-Hero Honda Super Splendor), being driven by respondent No.1 in rash and negligent manner and at a high speed, hit him from front side, due to which he fell down on the road and became unconscious. Learned counsel for respondents have challenged the case of petitioner primarily on the ground that FIR was registered against an unknown vehicle after a delay of 5 days and moreover, since petitioner has admitted that he became unconscious after the accident, he had no opportunity to see the offending vehicle and its driver.



11. As far as the delay in lodging of FIR is concerned, petitioner has explained that since he was hospitalized immediately after the accident, he was not in a position to lodge the FIR soon after the accident. The hand written complaint dated 15.03.2014, on the basis of which FIR was registered, and the case diaries make it clear that the colleagues of petitioner got him admitted in the hospital after the accident and thus explanation offered by the petitioner regarding delay in lodging of FIR, appears to be convincing.

12. The real issue is about the identity of the offending vehicle and its driver. On this aspect, petitioner has mentioned in his affidavit of evidence that subsequently he came to know that the offending vehicle bearing registration number DL-7SAP-3033 was being driven by respondent no.1 at the time of accident. First of all, it is evident that FIR was got registered by the petitioner against an unknown vehicle. It is noteworthy that not even description of the offending vehicle was mentioned in the FIR and the petitioner has not been able to furnish explanation as to why he did not mention to the police that the accident was caused by a motorcycle, specially when it has been alleged that the offending vehicle had come from the front side. In view of this Court, since the offending vehicle had hit the petitioner from the front side, petitioner was expected to reveal to the police that it was a motorcycle and further, something about its make or colour. The omission regarding these facts causes serious doubt on the story narrated by the petitioner.

13. Further, it is not disputed that the petitioner disclosed about the registration number of the offending vehicle and its driver to the police for the first time on 17.11.2014. The case diaries, which is part of the criminal case record Ex.PW1/B filed by the petitioner, indicate that on 17.11.2014, petitioner mentioned that the respondent no.1 had caused the accident while driving the offending vehicle and farther 10 had put few relevant questions regarding delay in disclosing the required details. In response to the question as to why the FIR was got registered against an unknown vehicle, petitioner has explained that earlier he could not identify the driver of the offending vehicle but since the driver was working in his company, he came to know about his complete details after registration of the FIR. This explanation is not convincing at all as the petitioner has not furnished the source of information about the driver of the offending vehicle, which he allegedly got later on. It is pertinent to mention here that petitioner has replied in his cross-examination that he had seen the driver of the offending vehicle before becoming unconscious. Thus, there is apparent contradiction as to whether petitioner had seen the driver at the spot.



14. Regarding another question put by the 10 as to why he did not furnish the details of the driver of the offending vehicle earlier, petitioner had furnished the explanation that on account of injuries suffered in the accident, he remained busy in his treatment and though he had received calls from 10 time to time but he could not furnish information as he was not in a position to move and speak. On perusing the treatment record of the petitioner, it is found that he was discharged from ESI Hospital, Delhi, on 07.04.2014 after the surgery and thus, there appears to be no reason why he could not inform the police, even on telephone, about the details of the offending vehicle and its driver in the month of April or May, 2014. Admittedly, petitioner had not received any injury on his face and thus, his explanation that he was unable to speak during his treatment, is not acceptable. In view of this, it only emerges that information about the vehicle and its driver was not supplied by petitioner to IO prior to 17.11.2014 as he had no idea who had caused the accident.

15. Further, it is noteworthy that in the FIR itself, petitioner has mentioned that his colleagues Krishna Ram and Harish Tyagi were near the place of accident and they had shifted him to ESI Hospital for treatment but in his cross-examination, petitioner has mentioned that he does not know as to who had shifted him to the hospital. Otherwise also, these above named colleagues of the petitioner were the best persons to disclose as to who had caused the accident but the petitioner has opted not to examine them for the reason best known to him. Had the accident caused by a colleague (respondent no.1) of the petitioner, above named colleagues of the petitioner must have disclosed it to the petitioner when he became conscious or to the police but since no such information was passed on by the said colleagues, it appears that even they had no information about the offending vehicle and its driver.'

8. A careful perusal of the aforesaid reasoning vis-à-vis the digitized Trial Court Record would bring out that the FIR No. 313/2014 with regard to the motor accident in question recorded the involvement of an unknown vehicle, which was admittedly registered after a delay of five days at the instance of the claimant. In other words, it did not contain any details about its make and/or registration number of the offending vehicle. Evidently, the vehicle came from



the opposite side and hit the appellant head on. While assuming that although it might have been impossible for the claimant to observe the vehicle's registration number, but they could have certainly grasped whether it was a motor car, a motorcycle, a light vehicle, or a heavy vehicle. Surprisingly, it is also borne out from the digitized TCR that the details of the offending vehicle were revealed to the police for the first time on 17.11.2014.

9. Learned Tribunal has very rightly found that the explanation afforded by the appellant/claimant about inordinate delay in divulging the details of the offending vehicle were not convincing and fathomable. What is clearly baffling is that when the FIR itself indicated that the two colleagues of the appellant, namely, Krishna Ram and Harish Tyagi were apparently present near the place of accident and who shifted him to the hospital, it's unclear why the claimant could not provide details of the offending vehicle soon after being discharged from the ESI Hospital on 07.04.2014, or why this information wasn't given to the police immediately.

10. I am afraid in view of the aforesaid glaring cracks and unexplained circumstances in the foundation and narrative of the case of the appellant, the observation by the learned Trial Court that the involvement of the offending vehicle was belatedly shown by the appellant on having come to know that the vehicle had been stolen sometime after the accident, cannot be faltered. It is a matter of record that the vehicle in question belonged to respondent No.1, who incidentally was working in the same company as that of the appellant. Unhesitatingly, this Court finds that the testimony of PW-



1/appellant is not inspiring confidence, lacks credence, and thus, the learned Tribunal has committed no illegality or perversity in dismissing the claim petition.

11. In view of the foregoing discussion, the present appeal is hereby dismissed. All pending applications are also disposed of accordingly.

DHARMESH SHARMA, J.

JULY 02, 2024

sp