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

% *Date of decision: 13th November, 2024*

+ **MAC.APP. 605/2019, CM APPL. 25707/2019 (stay)**

National Insurance Co. Ltd.

.....Appellant

Through: Counsel for Appellant (appearance
not given).

versus

Satish Kumar Chawla & Ors

.....Respondents

Through: None

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT (oral)

1. An Appeal under Section 173 of the *Motor Vehicles Act, 1988* ('M.V.Act, *hereinafter*) has been filed on behalf of the Appellant/Insurance Company, to challenge the Award dated 12.03.2019, *vide* which the compensation in the sum of Rs. 2,56,627/- along with the interest @9% p.a., has been granted to the Claimant/Respondent No. 1, on account of Injuries of Mr. Satish Kumar Chawla, in the road accident on 03.05.2017.

2. The *main grounds of challenge* of the Impugned Award dated 12.03.2019, are as follows:-

- (i) that the accident took place in a workshop, which is not a public place and no compensation could have been granted;
- ii) that the driver was having a license for LMV (NT) and not competent to drive the car and therefore, there was a breach of terms



of Insurance Policy entitling the Insurance for recovery rights against the driver/owner;

iii) that the interest @9% p.a. has been granted, which is of the higher side; and

iv) while computing the compensation, single ITR of 2017 has been taken into consideration rather than averaging the income of the deceased, on the basis of the ITRs filed for the previous years.

3. *Learned counsel on behalf of the Insurance Company* has vehemently contended that the learned Tribunal aside from giving a finding whether the incident happened inside or outside the workshop, has not even considered the manner in which the accident took place or return any finding of there being any negligence on the part of the offending car.

4. **Submissions heard and the record perused.**

5. The case of the Claimants in their Claim Petition was that on 03.05.2017 at about 10:00 a.m, the Petitioner, Mr. Satish Kumar Chawla gave his car bearing registration No. DL8CAN 7230 for service to DD Motor 9/55, Kirti Nagar Industrial Area, to be returned to the Petitioner after service. In the evening at around 5:00 p.m., the Petitioner along with his son, Dakash had gone to DD Motors and standing outside the gate of DD Motors, to take the delivery of his car. In the meantime, suddenly a white colour Maruti ECO Car bearing Registration No. DL1CV2023 (offending Car), which was being driven by Sh. Daya Nand, employee of DD Motors in a rash and negligent manner and at a very high speed, hit the Petitioners from back side, consequent to which, they fell and suffered grievous injury. The PCR was called, which taken to injured to Acharyashree Bhikshu Govt. Hospital where the MLC of the injured was prepared by the doctors.



Subsequently, *FIR No. 135/2017 dated 03.05.2017 under Section 279/338 IPC* was registered at Police Station, Kirti Nagar, against the Respondent No. 1, Mr. Daya Nand.

6. The Claim Petition under Section 166 of the M.V. Act was filed by the injured for the Compensation. The compensation in the sum of Rs. 2,56,627/- along with the interest @9% p.a., has been granted to the Claimant/Respondent No. 1, on account of Injury of Mr. Satish Kumar Chawla, in the road accident on 03.05.2017.

7. The *first aspect* of challenge of the Award by the Insurance Company is that there was no finding about the negligence of the vehicle given by the learned Tribunal and it had merely confined itself to the aspect of the accident having taken place outside the workshop, which is factually incorrect.

8. The first material witness was the injured, Mr. Satish Kumar Sharma, who appeared as PW-1 and has explained that the accident occurred due to the rash and negligent driving of the offending vehicle, who was driving at a high speed and had hit from the backside. He was duly cross-examined by the Respondent wherein PW-1, injured clarified that he was standing outside the workshop as the delivery of the car, was done to be outside. Aside from giving a suggestion that there was no fault of the driver of the offending vehicle, nothing further had been suggested. The testimony of the injured duly supported by the documents annexed along with the Charge-Sheet.

Pertinently, RW-1, the driver had admitted in his cross-examination that the car is taken outside after service, for the road test purposes. He further admitted that the accident took place while he was reversing the offending vehicle. He has also admitted that the entire bay area behind the car is



cleared before taking out the car for the Road Test. The cars behind the offending vehicle were accordingly cleared.

9. The learned Tribunal was, therefore, right in concluding not only that the accident had taken place outside the workshop and not inside, but it has also been established from the evidence on record that the accident occurred due to rash and negligent driving of the offending vehicle by its driver. There is no infirmity in the findings of the learned Tribunal, on this aspect.

10. The *second Objection* taken on behalf of the *Insurance Company* is that the Respondent No. 1/Driver was *not holding a valid and proper license at the time of accident*. His license Ex.RW1/R3/X was valid for LMV-NT category. Since the driver was not holding a proper license, there was a violation of the terms of the Insurance Policy and the Insurance Company is entitled to recovery rights.

11. Learned Tribunal has referred to *Mukund Devangan vs. Oriental Insurance Company Ltd.*, 2017(7) Scale 731 wherein the Apex Court had observed that the driving license for transport vehicle of class of '*light motor vehicle*' continues to be the same and there is no requirement to obtain separate endorsement to drive transport vehicle, and if the driver is holding a licence to drive *light motor vehicle*, he can also drive the transport vehicle of such class, without any endorsement to that effect. The learned Tribunal, therefore, concluded that since the driver was holding a valid license for driving light motor vehicle (NT), he was capable and competent to drive the offending vehicle irrespective of the fact that it was endorsed only for *Non-Transport Vehicle*. There is no infirmity in the finding of the learned Tribunal in this regard and the Objection taken on behalf of the Insurance Company, is not tenable.



12. The *third Objection* taken by the Insurance Company is that the compensation has been calculated by taking the Income Tax Returns of the year 2017. In fact, it should have been calculated by taking an average of three previous Income Tax Returns. The Claimant had produced the Income-tax Returns for the year 2014-2015, 2015-2016 and 2017-2018, Ex.PW-1/4 to Ex.PW-1/7. It is fallacious to contend that the average of the Income-tax Returns, has to be taken because the Income-tax Returns per annum reflect the income earned in the particular year. In ordinary course, the income generally increases over a period of time and there is no basis for taking an average as is contended on behalf of the Insurance Company. The learned Tribunal has rightly taken the Income-tax Return of the last year i.e. 2017-2018 for ascertaining the income of the Claimants.

13. The *last contention* is that the Interest granted @9% p.a. was on a higher side. However, there is no basis for claiming that the interest is on higher side considering the date of accident and the prevailing market rate. The discretion so exercised by the learned Tribunal, in granting the interest, cannot be held to be unfair or unjust.

14. In view of the aforesaid discussion, there is no merit in the Appeal, which is hereby dismissed. The pending Application also stands disposed of.

NEENA BANSAL KRISHNA, J

NOVEMBER 13, 2024/RS