



2024:DHC:10091



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

Date of decision: 13th December, 2024

+ **MAC.APP. 911/2019**

HARKESH SHARMA

S/o Sh. Shiv Charan Sharma

R/o 67, Siddipur, Jhajjar,

Haryana

.....Appellant

Through: Mr. Santosh Chauriha and Ms.
Pratiksha, Advocates.

versus

NATIONAL INSURANCE CO. LTD. (Insurer)

At. Div.No.8, C-3, Pooja House,

Karampura Complex,

Delhi

.....Respondent No. 1

NARENDER DALAL (Owner)

S/o Sh. Raj singh

R/o 1304/sector-6,

Bahadur Garh City

Bahadur Garh, Distt. Jhajjar

Haryana

.....Respondent No. 2

SH.VIPIN KUMAR AWASTHI (Driver)

S/o Shri Jagat Pal Awasthi

R/o H.no. 10, Chotu Ram Nagar

Bahadur garh, Distt. - Jhajjar

Haryana

.....Respondent No. 3

Through: Mr. Pankaj Seth, Advocate for
R-1.

CORAM:



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**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The present Appeal under *Section 173* of the *Motor Vehicles Act, 1988* ('the Act') has been filed against the judgment dated 27.08.2019 vide which the Claim Petition under S.166 of Motor Vehicle Act filed by the Appellant/Claimant, has been dismissed.
2. The Petitioner/Appellant Harkesh Sharma filed a Claim Petition under Section 166 read with *Section 140 of the Act* for seeking compensation on account of the injuries suffered by hi in the road accident. However, the learned the learned Tribunal concluded that the involvement of the vehicle was not proved on the ground that there was delay of 3 days in registration of FIR and as per mechanical inspection report there was no damage to the offending vehicle. The Claim Petition was, therefore, dismissed.
3. Aggrieved by the said dismissal of the Claim Petition, the present Appeal has been preferred.
4. It is submitted that the accident occurred on 28.11.2016 and because of the injuries suffered in the accident; the injured was admitted to the hospital. Because of the injuries, he was restless and was found unfit to give a statement to the IO. Consequently, the FIR got registered on 03.12.2016. It is submitted that the delay in the registration of the FIR has been sufficiently explained.
5. It is further argued that merely because no damage was noticed on the offending vehicle, cannot lead to an inevitable conclusion of its not being involved in the accident. The Chargesheet after due investigations, has been filed against the offending vehicle. Therefore, the findings of the learned



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Tribunal that the accident has not been proved are liable to be set aside.

6. Learned counsel *on behalf of the Insurance Company*, however, has submitted that the learned Tribunal has rightly relied on the two circumstances i.e. delay of 3 days in registration of FIR and no damage noticed on the offending vehicle in the Mechanical Inspection Report, to dismiss the Claim Petition.

7. **Submissions Heard and record perused.**

8. *Briefly stated*, on the morning of 28.11.2016 Appellant/Injured, Harkesh Sharma, was going on a motorcycle bearing No.HR-13H-4453 from Subzi Mandi, Bahadurgarh to Shidipur Lova. When he reached near Mela Ground, Bahadurgarh City, the offending Tractor bearing registration No.HR-13G-5157, came at a high speed in a rash and negligent manner and hit the motorcycle of the Petitioner. He fell and sustained multiple injuries and was taken to J.J. Institute of Medical Sciences, Bahadurgarh for treatment.

9. FIR No.690/16 under Section 279/337 IPC P.S. City Bahadurgarh was registered on 06.12.2016 and after investigation the Chargesheet was filed against the driver Vipin Kumar Awasthi, Respondent No.3.

10. The Petitioner/Injured, Harkesh Sharma, in his evidence as Ex. PW-1/A had deposed about the manner in which the accident occurred. He has explained that he remained admitted in the hospital from 28.11.2016 till 01.12.2016 and thereafter, remained under follow up treatment.

11. Pertinently, the Chargesheet had been filed against the driver of the offending vehicle, after due investigation. It has been recorded in the chargesheet that information about the accident was received at 10.10 AM



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on 28.11.2016. The Rukka was accordingly, prepared and it was found that the injured who was admitted in the hospital had suffered injuries. He was declared *unfit for statement* by the doctor on 29.11.2016 and, therefore, his statement could not be recorded on the said date. It has been explained that the Injured's statement could be recorded only on 03.12.2016 wherein he disclosed the manner of accident.

12. *The factum of accident is sufficiently proved* not only by the DD entry recorded on the said date, but also from the MLC which reflects that the injured got admitted in the hospital, having suffered injuries in the accident. ***The factum of accident is, therefore, not in dispute.***

13. The injured may have given a statement after three days, but it is sufficiently explained that he was found unfit for statement because of the restlessness caused due to the injuries. It cannot be said that merely because FIR got registered after 3 days, the factum of accident itself came under cloud. The DD was recorded on the same day. The hospital record also proves the accident and also that the injured was not fit to give the statement on 29.11.2016 i.e. a day after the accident. ***The learned Tribunal has, therefore, erroneously concluded that delay of 3 days was fatal to the Claim Petition.***

14. The *second ground* which has been taken is that there was no damage to the offending vehicle. It cannot be overlooked that the accident took place between the motorcycle TVS and the tractor Tanker bearing No.HR-13G-5157. The motorcycle TVS was badly damaged. Its rear wheel, rear number plate, left side of guard and the left side of engine, etc. was severally damaged. The tractor tanker is a much bigger vehicle and may not have



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suffered damage on account of the impact with the motorcycle TVS. However, solely from the Mechanical Inspection Report, there can be no conclusion of that there was no accident caused or that there was no negligence established.

15. In this regard the site plan in conjunction with the testimony of the injured clearly proves that the accident occurred due to the rashness and negligence of the driver in driving the Tanker.

Conclusion:

16. *The impugned order is, therefore, set aside and the matter is remanded back to the Tribunal to adjudicate on the compensation in accordance with law.*

17. Parties are directed to appear before the Tribunal on 16.01.2025.

NEENA BANSAL KRISHNA, J

DECEMBER 13, 2024

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