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

% ***Date of decision: 29th November,2024***

\+ **MAC.APP. 609/2024, CM APPL. 69687/2024,**

CM APPL. 69688/2024

UNITED INDIA INSURANCE CO LTD

.....Appellant

Through: Mr. Brijesh Kumar Sharma and Ms. Sheetal Ojha, Advocates.

versus

ASHOK KUMAR JOSHI & ORS.

.....Respondent

Through: Respondent No.1 in person along with Mr. Vikas Parashar and Mr. Gaurav Joshi, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T ***(oral)***

CM APPL. 69689/2024 (*Seeking Exemption*)

1. Allowed, subject to just exceptions.

2. The application stands disposed of.

MAC.APP. 609/2024

3. *An Appeal under Section 173 of the Motor Vehicle Act, 1988* has been filed on behalf of the *Insurance Company* against the Award dated 05.08.2024 *vide* which the compensation in the sum of Rs.18,49,631/- along with interest @ 8% per annum, has been granted to Respondent No.1-Ashok

Kumar Joshi, the injured.

4. The grounds of challenge are that :

(i) the *FIR has been registered* after one and half year;

(ii) the *Income of the injured has been taken as Rs.50,000/-* per month on the basis of ITRs which has been filed subsequent to the filing of the DAR;

(iii) the *Permanent Disability suffered was 32%,* but the Functional Disability has been incorrectly assessed as 32%, ignoring the nature of disability a well as the profession of Respondent No.1; and

(iv) that the *interest* has been granted on the future income, which has been assessed as Rs.13,47,113/-.

5. *The Respondent No.1 injured, in person has contended* that he has been an Advocate of 33 years of standing and in fact his income was much more than that has been actually reflected in ITRs which has been considered by the learned Tribunal.

6. It is further explained that the DD entry in regard to the accident was recorded on the same day of accident, though the FIR was eventually registered after one and a half years. It is submitted that though Permanent Disability was 32% in relation to the right lower limb, but being a professional he is facing immense difficulty and his Functional Disability is much more than 32%, which in fact should have been enhanced.

7. It is further submitted that even though the interest has been granted on the future income, it is fully justified keeping in view the escalation cost.

8. **Submissions heard and record perused**.

Involvement Of the Offending Vehicle : -

9. ***Briefly stated***, the Respondent No.1, an Advocate by profession, along with his son Gaurav Joshi, was entering into the Tis Hazari Courts from Gate No.2 when a motorcycle bearing registration number DL-7SBP-7994 *(hereinafter referred to as "offending vehicle"),* which was being driven by shri Monu Kumar in a rash and negligent manner, hit him from the back side because of which *he suffered fracture of right ankle bone*.

10. He was taken to the Hospital and DD entry in regard to the accident was recorded on the same day. PW5 - HC Somveer Singh has proved the General Diary and DD No.6A dated 09.12.2019 *Ex.PW5/A*.

11. ***PW-4/ASI Rajender Singh*** had deposed that DD No.6A dated 09.12.2019 was recorded in respect of the injury and the *MLC No.15055/2019 is Ex.PW4/A*. To corroborate the accident the Claimant had also examined ***PW-2/Anil Kumar***, Record Clerk, Sushrut Trauma Centre, Delhi, who proved the medical record of the Petitioner *Ex.PW2/A,* which shows that he got admitted on the day of accident in the hospital.

12. ***PW-3/ASI Sukesh Kumar***, the Chowki Incharge had conducted the investigations and had deposed that he had made the inquiry from Driver/Monu who had admitted that he was driving the offending vehicle at the time of accident. The father of Monu also admitted the factum of accident.

13. Admittedly, *Chargesheet-Ex.PW3 (collectively)* was proved on record. The *DAR-Ex.PW3/A* was filed on behalf of the Insurance Company after due verification of all the facts.

14. Thus, the evidence as led by the injured, not only proved the factum of accident but also the rash and negligent driving on the part of the driver and that he had suffered grievous injuries in the accident. The delay has also

been sufficiently explained.

15. In the case of *National Insurance Co.,vs Pushpa Rana* 2009 ACJ 287 Delhi, it has been held that filing of Chargesheet is sufficient proof of the negligence and involvement of the Offending Vehicle. Similar observations have been made in the case of *United India Insurance Co. Ltd. v. Deepak Goel and Ors.,* 2014 (2) TAC 846 Del, that if the claimant was able to prove the criminal case on record pertaining to involvement of the offending vehicle, whereby the criminal records showing completion of investigation by the police and filing of chargesheet under Sections 279/304-A IPC against the driver have been proved, then the documents mentioned above are sufficient to establish the fact that the driver was negligent in causing the accident. Where FIR is lodged, chargesheet is filed and specially in a case where driver after causing the accident had fled away from the spot, then the documents mentioned above are sufficient to establish the fact that the driver of the offending vehicle was negligent in causing the accident particularly when there was no defense available from his side before the learned Tribunal.

16. The Apex Court has opined in the judgment of *Mangla Ram vs. The Oriental Insurance Company Ltd.*, AIR 2018 SC 1900 that the key-point of negligence of the driver as set up by the Claimants is required to be decided on the touchstone of preponderance of probabilities and not by the standard of proof beyond reasonable doubt. Thus, filing of chargesheet against the driver of the offending vehicle *prima facie* points towards the complicity in driving the vehicle negligently and rashly. The subsequent acquittal of the accused may be of no effect on the assessment of the liability required in motor vehicle accident cases.

17. In the present case, the learned Tribunal has thus, rightly held that accident had occurred on 09.12.2019 on account of rash and negligent driving of the motorcycle by its driver Monu. ***No interference in this regard is warranted.***

Loss of Future Income : -

Income of the deceased : -

18. The *second ground of challenge* is that the income of the injured has been assessed on the basis of Income Tax Returns which had been filed subsequent to the filing of the DAR. However, it is not denied that the injured is an Advocate of long standing. His Income Tax Returns were only reflective of the income that he has been earning.

19. The Ld. MACT has not erred in relying on the Income Tax Returns even though filed subsequently, to make a fair assessment of the income of the injured. ***No interference is warranted on this account.***

Functional Disability : -

20. The *third ground of challenge* is that though Permanent Disability suffered was 32% in relation to right lower limb, the Functional Disability had also been taken as 32%. It has been explained in the Award that the injured is an practising Advocate and due to his disability, his work efficiency has been severally effected in moving from one court to another and because of continuous pain he has discomfort all the time. Such injuries suffered by him would impede his smooth functioning thereby harming his professional income.

21. ***The learned Tribunal has thus, fairly taken the Functional Disability as 32%. There is no ground of any interference on this aspect as well.***

Rate of Interest : -

22. The *last ground of challenge* is that no interest should have been granted on the future income. However, it cannot be overlooked that the future income though assessed now also would have to meet the escalation index over the period of time. ***Thus, the interest rate is rightly granted and there is no infirmity in the impugned Award.***

23. The Appeal is hereby dismissed along with the pending application(s) if any.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 29, 2024
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