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

% Date of decision: 8th May, 2024

\+ MAC.APP. 55/2021

KHEM CHAND @ BITTU ..... Appellant

Through: Mr. Yogesh Swaroop, Sanjeev Singh and Ms. Prabha Goswami, Advs.

versus

YOGENDRA SINGH & ORS. ..... Respondents

Through: Mr. J.P.N. Shahi and Ms. Nisha, Advs. for R-3

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. The appellant/claimant-injured has preferred this appeal in terms of Section 173 of the Motor Vehicles Act, 1988[1] assailing the impugned judgment dated 05.10.2020 passed by the learned Presiding Officer, Motor Accident Claims Tribunal-02, Central District, Tis Hazari Courts, Delhi[2], whereby the claim petition filed by the appellant/claimant-injured under Section 166 read with section 140 of the MV Act bearing MACT No. 1040/2018 titled as 'Khem Chand @ Bittu v. Yogendra Singh & Ors.' for grant of compensation, has been dismissed. The learned Tribunal has held that the appellant/claimant failed to prove on the record any evidence of rash and negligent

[1] MV Act
[2] Tribunal

driving or culpability on the part of respondent No.1/Yogendra Singh, who was the driver[3] of the offending vehicle, in causing the motor accident.

2. It is pertinent to mention here that notice of the present appeal was issued to the respondents No.1 and 2 viz., the driver and the registered owner[4] of the offending vehicle, but they did not care to appear and contest the appeal before the learned Tribunal.

3. Shorn of unnecessary details, on 08.10.2018, the appellant/ claimant-injured, who was a pillion rider on a motor cycle[5] bearing registration No. DL-6SAK-9429 being driven by his friend namely Prince Kumar, was allegedly hit by the respondent No.1/driver, who was driving a truck bearing registration No. HR-69A-5373[6], resulting in grievous injuries to the appellant/claimant-injured so much so that his right arm was crushed under the front wheel of the offending vehicle, resulting in the amputation of his forearm.

4. While the factum of the accident has not been disputed by respondent No.1/driver, the learned Tribunal, while deciding issue No.1 with regard to the culpability or finding fault as to who caused the accident, made the following observations:

> "14. Now we turn to the evidence available on record. In support of his claim against the respondents, the petitioner examined only himself in order to prove the negligence of R-1 at the relevant time.

[3] Section 2(9) "driver" includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle

[4] Section 2(30) "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.

[5] Section 2(27) "motor cycle" means a two-wheeled motor vehicle, inclusive of any detachable side-car having an extra wheel, attached to the motor vehicle.

[6] offending vehicle

Petitioner filed his evidence by way of affidavit and stated that on the day of accident (i.e. 08.10.2018) at about 10:45 pm he was riding pillion on a motorcycle bearing registration no. DL-6SAK-9429, at the controls of which motorcycle was his friend namely Prince Kumar. Both the riders were coming from Ram Pura and travelling towards their home situated at Karol Bagh when the offending vehicle, being driven in a rash and negligent manner by R-1, struck against their motorcycle from behind. Both the riders fell down on the road. One of the wheels of the offending vehicle ran over the right arm of the petitioner. In fact, initially the right arm of petitioner got stuck under the wheels of the offending vehicle. The petitioner could be rescued after the offending vehicle was moved a little. The petitioner was then removed to Deep Chand Bandhu Hospital, Ashok Vihar where the doctors concerned recommended amputation of right wrist joint of the petitioner. On the next day i.e. on 09.10.2018, the doctors of Safdarjung Hospital recommended amputation of forearm of the petitioner. Subsequently. amputation was carried out and a certificate was issued in favour of the petitioner which reflects permanent physical impairment @ 80% in relation to his Right Upper Limb. It has been stated that the above accident took place due to rash and negligent, driving of offending vehicle by R-1.

15. Before delving into the contest raised by respondents to the petitioner's claim, it would be appropriate to refer to certain documents relied by the petitioner. The petitioner has inter alia relied upon the DAR Ex. PW1/6 filed by the police in the present matter. The said DAR is accompanied by duly attested photocopies (attested by 10) of the mechanical inspection reports prepared by an expert after the examination of (i) offending vehicle bearing registration no. HR- 69A-5373 and; (ii) motorcycle bearing registration no. DL-6SAK-9429, which the victim was riding with his friend. It has to be observed here that the said reports reflect fresh damages sustained by both the said vehicles after the alleged accident, relevant extracts of which reports are as under:-

Motorcycle bearing registration no. **DL-6SAK-9429**	Offending vehicle(Dumper Truck) bearing registration no. HR-69A-5373
Fresh damages:	**No fresh damages**

(1) **Front** R/side indicator light broken;
(2) **Front** R/side visor leg guard & silencer scratched;
(3) H Brake Lever scratched.

(emphasis supplied)

16. Since both these documents form a part of the DAR Ex. PW1/6, which is relied by petitioner in order to fortify his claim for compensation, as such he could not escape the effect of these documents on the merits of his claim. A bare perusal of the above extracts of the mechanical reports reveal that the expert opinion rendered therein is leading in a direction contrary to the claim of the petitioner

17 It may be observed here that petitioner, while deposing as PW-1, has clearly and categorically stated that the offending vehicle struck the motorcycle he (petitioner) was riding at the relevant time with his friend **from behind** at a very high speed, without blowing any horn. If the above statement of petitioner is true, then both the vehicles should bear corroborative "marks/ signs" of a violent collision. The motorcycle of the victim should bear damage marks in the rear and the offending vehicle (truck) should bear damage marks to its front. However, the opinion of the Expert who prepared the above Mechanical Inspection Reports demonstrates otherwise. Apparently. the motorcycle of the victim does not bear any damage at its rear end, rather fresh damages have been observed in the front side of motorcycle. Similarly, the offending vehicle does not bear any damage to its front. Simply stated, the petitioner claims a violent collision between two vehicles at the relevant time, but the. Mechanical Inspection Reports of the said vehicles do not reflect any damages which are in consonance with the claim of the petitioner. Petitioner has not explained this contradiction during the proceedings before this tribunal. This grave inconsistency between the oral testimony of petitioner on the one hand and the objective evidence (i.e. Mechanical Inspection Reports) collected by the IO during investigation on the other hand could not be ignored at all as both these evidences are mutually destructive in nature. In other words, either of these two materials is true. Both of them (ie. oral statement of petitioner as well as the Mechanical Inspection reports) could not be true at the same time. Since the Mechanical Inspection reports have been attested by 10. this Tribunal finds it inappropriate to jettison the same without any substantial contradictory material. Petitioner hasn't placed any material on record to contest the said Mechanical Inspection reports. As such the oral testimony of petitioner as to the actual sequence of events & the circumstances surrounding the occurrence of the alleged accident at the relevant time is rendered doubtful. Accordingly, this Tribunal is not inclined to act upon the sole oral testimony of. petitioner/ PW-1. Admittedly, the petitioner has neither examined any other eye-witness nor placed on record any other material which could demonstrate even *prima facie* that

> any collision actually took place between the said two vehicles, as stated by him.
> 18. This Tribunal could not pass a judgment in favour of the petitioner on the basis of the doubtful evidence led on record by him. Petitioner fails to demonstrate even prima-facie that there occurred any collision of vehicles allegedly involved in the accident, and therefore this Tribunal could not give any judicial finding as to the alleged "negligence of R-2". There is no need to delve any further into the other evidence lead on record by the petitioner as the same does not pertain to or further his claim regarding the "negligence" of R-1 at the relevant time, in the absence of which essential pre-requisite the claim of the petitioner has to necessarily fail. This issue is accordingly."

5. Learned counsel for the respondent No.3/insurance company vehemently supported the findings recorded by the learned Tribunal and it was urged that the appellant/claimant-injured had miserably failed to prove that it was the respondent No.1/driver of the insured/offending vehicle, who was responsible for causing the accident in any manner.

6. Having heard the learned counsel for the parties and on perusal of the record, I find that the impugned judgment-cum-award dated 05.10.2020, passed by the learned Tribunal is palpably perverse and cannot be sustained in law.

7. First things first, in view of the acknowledgment made by the respondent No.1/driver that the motor accident involving the two vehicles had indeed occurred as well as the fact that he did not even appear during the course of the proceedings/trial, the learned Tribunal committed grave irregularity in relying on the aspect of damage on the two colliding vehicles and instead, giving precedence to the motor vehicle inspection report over the ocular evidence of the appellant/claimant-injured, who was examined as PW-1 before the

learned Tribunal. Such an approach in appreciation of the evidence in motor accident cases is palpably unconscionable considering that PW-1 had no role to play in the preparation of the motor vehicle inspection report, which was apparently done by some experienced or in-experienced Motor Vehicle Inspector, who was not summoned and examined so as to prove the same during the proceedings/trial before the learned Tribunal.

8. Be that as it may, what sort of damages might have been found during the inspection of the two vehicles would obviously depend upon a variety of factors, such as the point of impact of the vehicles, the location or the nature of the public road, the type and speed of the vehicles or even the laden weight of the vehicle. There is no rule of thumb that there will be damage or a mark on the vehicle if it is hit from behind. The observations made by the learned Tribunal that the motor cycle did not bear any damage marks on the rear end but on its front side and that the offending vehicle/truck did not bear any damage to its front side, belies commonsense and logic. When the motor vehicles are driven on a public road, even a small hit or touch from behind might cause a ripple effect, thereby making it difficult to manoeuvre a vehicle, especially a two-wheeler scooter or a motor cycle. Therefore, it cannot be said with absolute certainty that, in such cases, an expert report showing mechanical damage to a vehicle would be conclusive in nature.

9. Lastly, considering that the factum of the accident is not in dispute as also the testimony of PW-1/claimant-injured is uncontroverted and unrebutted as to the manner in which the accident

had occurred resulting in the appellant/claimant-injured sustaining permanent disability and further, for the fact that neither the respondent No.1/driver was elected to come into the witness box nor was he summoned for any examination by the insurer of the offending vehicle, the evidence, besides the aforementioned circumstances brought on the record, unhesitatingly demonstrate that it was the respondent No.1/driver, who was guilty of rash and negligent driving of the offending vehicle, resulting in lifelong injuries and permanent disability to the appellant/claimant-injured.

10. Therefore, in view of the foregoing discussion, issue No.1 is decided in favour of the appellant/claimant-injured and the matter is remanded back to the learned Tribunal with directions to assess the quantum of compensation after affording a fair hearing to the parties and decide the claim petition within six months from today as per law.

11. The parties shall appear before the learned Tribunal on 01.06.2024 for further proceedings.

12. The present appeal stands disposed of accordingly.

DHARMESH SHARMA, J.

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