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

Date of decision: 27.09.2023

\+ **MAC.APP. 263/2021 & CM APPL. 33698/2021**

NATIONAL INSURANCE COMPANY LIMITED

..... Appellant

Through: Mr.Manoj Ranjan Sinha & Mr.Deepak Sain, Advs.

versus

UDIT CHAUDHARY AND ORS

..... Respondents

Through: Mr.S.N. Parashar, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 26.11.2020, passed by the learned Motor Accidents Claims Tribunal, South District, Saket Courts, New Delhi (hereinafter referred to as the 'Tribunal') in Petition no. 175/18, titled ***Udit Chaudhary v. Bhudev Singh & Ors.***.

2. It was the case of the injured, that is the respondent no.1 herein, before the learned Tribunal that on 12.01.2018 at about 11:15 AM, the respondent no.1 along with his friend Akhil was going towards Kasba Modi Nagar from Modi Nagar on his scooty, which was driven by the respondent no.1 at a normal speed and on the correct side of the road. When he reached in

front of Modi Sugar Mill, the offending vehicle, that is, a Truck bearing registration No. UP-12AT-1652, which was being driven by the respondent no.2 herein at a very high speed and in a rash and negligent manner, came from the back side and hit the scooty with a great force. As a result of the accident, the respondent no.1 sustained injuries, which were later certified as 78% permanent physical impairment in respect of his both lower limbs.

Challenge of the appellant to the Impugned Award:

The appellant challenges the Impugned Award on the following grounds:-

a. That the offending vehicle has been falsely implicated in the accident at a later stage;
b. That the determination of income of the injured made by the learned Tribunal is incorrect.

On the question of the involvement of the vehicle:

3. The learned counsel for the appellant submits that the offending vehicle has been wrongly implicated in the accident. He submits that though the accident had taken place on 03.01.2018, the FIR was registered on a complaint made by the father of the respondent no.1 mentioning the number of the offending vehicle, only on 17.01.2018. He submits that clearly it was a case of hit and run and later the offending vehicle was involved in the accident to claim compensation from the appellant.

4. On the other hand, the learned counsel for the respondent no.1 submits that the respondent no.1 had sustained grievous injuries in the accident and was admitted in the Intensive Care Unit (in short ICU). It was for this reason that the father of the respondent no.1 was more concerned about the recovery and health of the respondent no.1 rather than rushing to the Police for recording of the complaint. It is only when the respondent no.1 became a little stable that on 17.01.2018, that the father of the respondent no.1 made a complaint to the Police, clearly disclosing the number of the offending vehicle. He submits that the respondent nos.2 and 3, that is, the driver and the owner of the offending vehicle, did not enter the witness box to dispute their involvement in the said accident. A charge-sheet has also been filed against the respondent no.2, the driver of the offending vehicle.

5. I have considered the submissions made by the learned counsels for the parties.

6. The father of the injured, in his complaint dated 17.01.2018, had also stated that he could not make the complaint earlier thereto as the respondent no.1 was admitted in the ICU and was struggling for his life. There is no reason to doubt the same. Respondent no.1 also entered the witness box as PW-1, and stated that the accident had taken place with the offending vehicle hitting his scooty from behind. A suggestion was put to him that he had not disclosed the number of the offending vehicle to the Police, he truthfully answered that he

had not done so. This would be so as the information in regard to the accident and the Offending Vehicle had been, in fact, given by the father of the respondent no.1. The respondent nos.2 and 3 did not contest the involvement of the offending vehicle in the accident. Due to mere delay in filing of the complaint, therefore, the version of the respondent no.1 of the involvement of the offending vehicle in the accident, cannot be doubted.

7. In ***Janabai WD/O Dinkarrao Ghorpade & Ors. v. M/s ICICI Lamboard Insurance Company Ltd***, (2022) 10 SCC 512, the Supreme Court, in similar circumstances where there was a delay of a month in lodging the report, observed as under:-

> *"9. We have heard learned counsel for the parties and find that the order of the High Court is unsustainable. Appellant No. 1 and her husband had received injuries in an accident which took place on 1.6.2007. She lost her husband on 25.6.2007.The primary concern of appellant No. 1 or other relatives at the time of incident was to take care of the deceased in his critical condition. The health and well-being of her husband was her priority rather than to lodge an FIR. The High Court has proceeded primarily on the basis of information to the Police regarding non-disclosure of the name of the driver of the car in the FIR. Appellant No.1 has filed her examination-in-chief on 1.8.2011 disclosing the car number of the offending vehicle. The owner and the Insurance Company had the opportunity to cross-examine the witness in support of their stand that the vehicle number given by her was not involved in the accident. In cross examination, she deposed that she was brought to the hospital in the vehicle*

which dashed into their vehicle. She deposed that she was mentally disturbed and hospitalized, therefore, she filed the complaint late.

10. On the other hand, the owner has appeared as a witness. He admitted that he had taken the vehicle on superdari and that he has not filed any proceedings to quash FIR against Sanjay, driver of the Car. He admitted that bail application form and surety bond (Ex.68, 69 and 70) show that he has stood surety for the driver wherein he has mentioned the accused as driver of his vehicle. It has also come on record that the owner has not made any complaint in respect of false implication of his vehicle or the driver.

11. We find that the rule of evidence to prove charges in a criminal trial cannot be used while deciding an application under Section 166 of the Motor Vehicles Act, 1988 which is summary in nature. There is no reason to doubt the veracity of the statement of appellant No. 1 who suffered injuries in the accident. The application under the Act has to be decided on the basis of evidence led before it and not on the basis of evidence which should have been or could have been led in a criminal trial. We find that the entire approach of the High Court is clearly not sustainable."

8. In view of the above, I find no merit in the challenge of the appellant regarding the involvement of the offending vehicle in the accident.

<u>On the question of determination of income of the injured by the learned Tribunal</u>

9. The next challenge of the appellant to the Impugned Award is on the determination of the income of the respondent

no.1 by the learned Tribunal. The learned counsel for the appellant submits that in the Claim Petition, the respondent no.1 had asserted that he was working as a 'System Engineer' with 'Online Recharge Service Private Limited' (hereinafter referred to as the 'Online Recharge') and was drawing a salary of Rs.4,00,000/- per annum. He submits that in the documents filed, however, there was an Offer Letter dated 27.09.2016 from Online Recharge, which stated that the total cost to the Company for the respondent no.2 would be Rs.2,00,000/- per annum. He submits that the same also included travel allowance of Rs.2000/- per month, which would also need to be deducted from the income of the respondent no. 1. He submits that, therefore, the income of respondent no.1 should have been determined only at Rs.1,76,000 per annum.

10. He submits that the respondent no.1, in his evidence by way of affidavit, falsely stated that he was working as a Marketing Executive with Aditya Enterprises, and getting a salary of Rs.20,000/- per month. The respondent no. 1 sought to prove the same by examining Shri. Shakti Singh, Marketing Manager of Aditya Enterprises as PW-3. PW-3 in his statement, however, admitted that though the purported Offer Letter is dated 20.09.2017, it had been signed by him only in November-December 2018, that is, much after the date of the accident. He submits that, therefore, the claim of the respondent no.1 of him working with Aditya Enterprises could not be accepted by the learned Tribunal.

11. On the other hand, the learned counsel for the respondent no.1 submits that the Offer Letter dated 20.09.2017 issued by Aditya Enterprises having been proved through the testimony of PW-3, no fault can be found in the learned Tribunal relying upon the same. He submits that, even otherwise, the respondent no.1 was a graduate in B.Tech and looking into the prevalent income structure, no fault can be found in the learned Tribunal assessing his income as Rs.2,40,000/- per annum.

12. I have considered the submissions made by the learned counsels for the parties.

13. The respondent no.1 had filed his Claim Petition, supported by an affidavit dated 16.05.2018, stating that he was working with Online Recharge at a salary of Rs.4,00,000/- per annum. However, the document filed by him clearly shows that his cost to the Company was Rs.2,00,000/- per annum. This included the transport allowance of Rs.2000/- per month. Though, the learned counsel for the appellant has stated that the transport allowance has to be deducted from the gross salary/cost to the company for determining the income of the respondent no.1, in view of judgment of the Supreme Court in ***Sunil Sharma and Another v. Bachitar Singh and Others***, (2011) 11 SCC 425, this submission has no merit.

14. Coming to the determination of the income of the respondent no.1 on basis of the statement of PW-3, in my opinion, the same cannot be accepted. Not only the respondent no.1 had in his Claim Petition claimed that he was working with

Online Recharge and produced document in support of the same, but also the testimony of PW-3 does not inspire confidence. The Offer Letter of Aditya Enterprises, produced by the respondent no. 1, is dated 20.09.2017, but is admitted to have been signed by PW3 only in November-December 2018, that is, after the accident had taken place and much after the filing of the Claim Petition. Therefore, the same could not have been taken into cognizance for determining the income of the respondent no.1.

15. Equally, the submission of the learned counsel for the respondent no.1 that the income of the respondent no.1 should been notionally determined on the basis of his educational qualification, cannot be accepted in view of the evidence on record of the income being drawn by the respondent no.1 from Online Recharge as on the date of the accident.

16. In view of the above, the income of the respondent no.1 as on the date of the accident, is determined as Rs.2,00,000/- per annum.

17. In view of the above, the compensation payable to the respondent no.1 towards 'Loss of Income' and 'Loss of Future Income' is re-assessed as under:-

Loss of Income: Rs. 1,00,000/-

LOSS OF FUTURE INCOME:

{Rs.2,00,000/- + (40% of Rs.2,00,000/-)}x18x78%=Rs.39,31,200/-

18. By an order dated 30.09.2021, the appellant had been directed to deposit the entire awarded amount with the learned Tribunal. As the compensation amount is now being reduced, the excess amount deposited by the appellant along with interest accrued thereon, shall be released to the appellant. The balance shall continue to be released in favour of the respondent no.1 in terms of the scheme of disbursal stipulated by the learned Tribunal.

19. The appeal is allowed in the above terms. Pending application shall also stand disposed of.

20. There shall be no order as to costs.

21. The statutory amount deposited by the appellant be released to the appellant along with interest accrued thereon.

NAVIN CHAWLA, J

SEPTEMBER 27, 2023/*rv/rp*