IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

ON THE 18th OF JUNE, 2025

MISC. APPEAL No. 1040 of 2010

AVDESH MISHRA
Versus
DILIP SHARMA AND OTHERS

Appearance:

Shri S.S.Rajput – learned counsel for the appellant.

Shri Nirendra Singh Tomar - learned counsel for the respondent No.3/Insurance Company.

WITH

MISC. APPEAL No. 1461 of 2010

BAJAJ ALLIANZ GEN.INSURANCE CO.LTD.
Versus
AWDESH MISHRA AND OTHERS

Appearance:

Shri Nirendra Singh Tomar - learned counsel for the appellant/Insurance Company.

Shri S.S.Rajput – learned counsel for the respondent.

J U D G M E N T

Since both the aforesaid Misc. Appeals are arising out of common Award dated 31.03.2010 passed by Member, Motor Accident Claims Tribunal, Vidisha [hereinafter it shall be referred to as " the Claims Tribunal"] in Claim Cases No.193 of 2008, therefore, they are heard together and are being disposed of by this common order.

2. MA No. 1040 of 2010 under Section 173(1) of Motor Vehicles Act, 1988 has been filed by claimant (herinafter referred to as "appellant/claimant") on the ground of inadequacy of compensation and seeking enhancement of compensation. MA No. 1461 of 2010 under Section 173(1) of Motor Vehicles Act, 1988 has been filed by appellant/Insurance Company(herein after referred to as "Insurance Company") for dismissing the claim petition and to refund the deposited amount to the appellant from the claimant.

3. The facts necessary for the disposal of the present appeals, in brief, are that on 17.04.2008, when the claimant/appellant was going towards his house, suddenly respondent- Dinesh, riding motorcycle bearing registration No. MP-40-BD-0261 in a rash and negligent manner, came and hit the claimant/appellant from the backside, as a result of which he sustained grievous injuries.

4. It is submitted by the learned counsel for the appellant/claimant that the learned Tribunal has assessed the income of the appellant on lower side. The appellant/claimant had established that he was a practising advocate and was earning Rs. 5,000/- to 6,000/- per month.

However, the learned Tribunal assessed his income as Rs. 15,000/- per annum only, which is on lower side. It is further submitted that as per the permanent disability certificate (Ex. P/21) and the statement of Dr. B.L.Arya (PW-3), the appellant/claimant has sustained 40% permanent disability, and the Tribunal has also found it to be proved. However, the Tribunal considered the disability in reference to the whole body as only 10%, which is also on the lower side. The future prospects have not been considered in light of the law laid down in the case of ***National Insurance Company Ltd. vs. Pranay Sethi & Ors.*, 2017 ACJ 2700.** The delay of 5 months and 9 days in lodging the FIR has been satisfactorily explained by the appellant in this case which has rightly been found believable by the learned Tribunal. Hence, he prays for enhancement of the compensation to the tune of Rs. 1.5 lakh.

5. Per contra, in support of M.A. No.1461/2010, learned counsel for the appellant/respondent No.3 – the Insurance Company – submitted that in the present case, the involvement of the insured motorcycle bearing registration no. M.P.40-BD-0216 in the alleged incident has not been proved by the claimant. It is argued that the FIR was lodged after an inordinate delay of 5 months and 9 days, and no proper explanation has been provided for such delay. The learned Tribunal erred in overlooking the MLC and other medical documents related to the alleged incident. The MLC and the doctor's prescription do not disclose that the claimant/appellant sustained injuries in road accident. Therefore, the claimant has failed to discharge the burden of proving that the incident was caused by the insured vehicle. The learned Tribunal erred in drawing

an adverse inference against respondent No.2 – Dilip Sharma (owner of the offending vehicle), and respondent No.3 – Dinesh (driver of the said vehicle), as they did not appear before the Tribunal to tender their evidence. Hence, the learned counsel prays for setting aside the impugned award and for exonerating the Insurance Company from any liability to pay the compensation amount. It is further argued that the alleged 10% permanent disability has also not been proved, although this objection was not taken in the appeal memo. Accordingly, he prays that the impugned award may be set aside.

6. Heard the learned counsel for the parties and perused the record.

7. The perusal of the statement of the appellant (PW/1) reveals that the incident took place on 17.04.2008, when he was crossing a bridge at around 9:00 PM. Suddenly, respondent No.3- Dinesh came on a motorcycle in a rash and negligent manner and hit the appellant from behind, as a result of which he sustained injuries. The appellant stated that the bone in his right leg was fractured at three places. He further stated that on 20.09.2008, he filed an application before the Superintendent of Police, Vidisha. After conducting an inquiry, the FIR was lodged on 26.09.2008. Regarding the delay in lodging the FIR, he explained that on 17.04.2008 (the date of the incident), he did not go to the police station because the driver -Dinesh, did not take him there, and he himself was not in a physical condition to go. The driver of the offending vehicle - Dinesh, had assured him that he would reimburse the expenses incurred for his treatment. However, when Dinesh failed to fulfill this promise, the appellant approached the Superintendent of

Police, Vidisha. The averment of appellant is also supported by Anil (PW/2). Although Anil has acquaintance with the appellant/claimant but it did not reveal from his statement that he has given false statement due to such acquaintance.

8. As stated by the appellant in his statement that upon submission of the appellant's application, the Superintendent of Police (SP) conducted an inquiry and after completing the inquiry, lodged an FIR on 20.06.2008. After the investigation was concluded, the police found that the accident had occurred as mentioned in the FIR, subsequently filed a charge sheet (Ex.P/1) under Sections 279, 337, and 338 of the IPC against respondent -Dinesh. It is also stated in the FIR (Ex.P/2), in paragraph 8, that the delay in lodging the FIR was due to the injured party being under medical treatment. There is no rebuttal evidence on record.

9 It is also pertinent to mention that the owner and rider of the offending vehicle did not appear before the learned Tribunal to render their testimony regarding the accident. In the case of ***Ravi vs. Badrinarayan and Others*, 2011 ACJ 911**, the Hon'ble Supreme Court held in paragraphs 20 and 21 as under:

> *20- It is well settled that delay in lodging the FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the police station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the police station. Under such circumstances, they are not expected to act*

> *mechanically with promptitude in lodging the FIR with the police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so the contents of the FIR should also be scrutinised more carefully. If the court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.*
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> *21.- The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves the factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be a variety of reasons in genuine cases for delayed lodgement of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquillity of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.*

It is held by Hon'ble Apex Court that the relatives of the victim give more importance to get the victim treated rather than to rush to the police station. They are not expected to act mechanically with promptitude in

lodging the FIR with the police; therefore, the delay in lodging FIR is not fatal in claim cases. Similar law has been laid down in the case of ***Karan Singh vs. Anshuman and others 2010 ACJ 736, Bhwarlal Verma vs. Sharad Tholiya and other 2007 ACJ 52.***

10. In the case of ***Bimla Devi vs. Himachal Road Transport Corporation AIR 2009 SC 2819*** it is ruled by the Hon'ble Apex Court that in claim cases the claimant is not under the obligation to adduce cogent evidence. The claim cases are to be decided on the principle of preponderance of probability. Principle of beyond reasonable doubt is not applicable in such cases.

11. In the case of ***Rajendra Singh vs. Sheetal Das*****, 1992 (1) MPWN 104**, it was held that if the driver of the offending vehicle does not let examine himself, an adverse inference will be drawn regarding his rash and negligent driving. Keeping in view the law laid down in the aforesaid cases, as well as the documents exhibited in the present case such as the charge sheet, FIR, seizure memo, spot map, arrest memo, MLC, etc the learned Tribunal has rightly found the factum of the accident to be proved. Therefore, the appeal filed on behalf of the appellant/respondent No.3- Insurance Company is found to be meritless.

12. As far as the appeal filed by the present appellant/claimant for enhancement of the compensation amount is concerned, it is prayed on the following three grounds:

(i) Future prospect has not been extended by the learned Tribunal;

(ii) Income of the appellant is assessed on lower side; and

(iii) Permanent disability is also taken @ 10% which ought to be 40%.

13. FIR Ex.P/1 reveals that the appellant Avdhesh was doing business (Dukandari) but he stated in his statement that he was a practicing advocate and he was earning Rs.5000/- to 6000/- per month. Although the appellant has not submitted any documents regarding his income, however, considering his profession, it can be reasonably presumed that his income was more than Rs. 15,000/- per month. Taking into account his social status, the facts, and the evidence on record, it can safely be presumed that the appellant's annual income was Rs. 50,000/- per annum. Therefore, the assessment of the appellant's income as Rs. 15,000 per annum by the learned Tribunal appears to be on lower side.

14. As far as percentage of permanent disability suffered by the appellant-Avdhesh, is concerned, Dr. B.L. Arya (PW/3) proved the medical report (Ex. P/7), x-ray report (Ex. P/8), and the permanent disability certificate (Ex. P/21). However, in his cross-examination, he categorically admitted that the percentage of disability pertained specifically to the limb, i.e., the right leg, and not in reference to the entire body. He remained firm in his cross-examination regarding this assessment. Having regard to the statement of this witness, the assessment of 10% disability in reference to the entire body of the appellant-Avdhesh, does not appear to be unreasonable or inappropriate.

15. Having regard to the income of appellant as 50,000/- per annum

and applying permanent disability as 10%, multiplier of 16 having regard to the age of present appellant and future prospect @ 40% in view of the decision of the Supreme Court in the case of *Pranay Sethi* and looking to the age of the appellant, the loss of income comes to Rs.1,12,000/-. The amount awarded by the learned tribunal for medical expenses (Rs.20,000/-), for pain and suffering (Rs.5,000/-), for loss of comfort of natural life on account of permanent disability (Rs.10,000/-) and for special diet and transportation expenses (Rs.5,000/-) appears to be just and proper. Thus, the total amount of compensation comes to Rs.1,52,000/-. The Claims Tribunal has awarded compensation of Rs.64,000/-. As such, the appellant is further entitled for a sum of Rs.88,000/-. Rest of the terms and conditions of the impugned award shall remain intact.

16. Consequently, M.A.No.1040/2010 filed on behalf of appellant/claimant Avdesh Mishra is allowed in above terms & M.A.No.1461/2010 filed on behalf of appellant/ Insurance Company is hereby dismissed.

(RAJENDRA KUMAR VANI)
JUDGE

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