



S.S.Kilaje

208-FA-1016_CA-37-2013-14.doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1016 OF 2014

The New India Assurance Co. Ltd.
 New India Assurance Building, 87, M.G.Road,
 Office at : Divisional Office, Fort, Mumbai – 400 001 ... Appellant

Versus

1. Lalbahadur Z. Gupta
 Age about 34 years, residing at R/63, Shirodkar
 Chawl, Garani Pada, Nahur Road, Mulund (W),
 Mumbai.

2. T. Sunder Kumar
 303, Victoria Classic, 35/38, Dalmiya Estate,
 P.K.Road, Mulund (West), Mumbai ... Respondents

.....
 Mr. S.M. Dange, Advocate for the Appellant.
 Ms. Sushma S. Poyekar, Advocate for Respondent No.1.

.....
 CORAM : SHIVKUMAR DIGE, J.
 DATE : 18th DECEMBER, 2023

JUDGMENT :

1. The issue involved in this appeal is no FIR was registered in respect of the accident in spite of that liability is fixed on the appellant.
2. It is the contention of learned counsel for the appellant that respondent No.1/claimant has stated that when he was proceeding on road he was dashed by car due to the said dash there was injury to his jaw. He was treated in hospital, thereafter, he lodged complaint in police

station but police did not file FIR and only Station Diary Entry was taken in respect of the accident. In the said entry the police have mentioned that the accident was of minor nature hence FIR was not registered. When FIR was not registered the Tribunal should have not considered the negligence of the driver of Maruti car but it is considered which is not proper, hence requested to allow the appeal.

3. It is the contention of learned counsel for the respondent No.1/claimant that claimant was dashed by the driver of offending car when he was walking on road. Due to the said dash claimant thrown on road, there was fracture to his jaw and his five teethes were broken. The Tribunal has considered all the aspects, on that basis the Tribunal has passed the Judgment and Order which is legal and valid and no interference is required in it.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Mumbai (for short "**the Tribunal**"). It is the contention of learned counsel for the appellant that without FIR, the Tribunal has held that accident caused due to the negligence of driver of Maruti car. It is claimant's case that on 02.05.2005 at around 8 p.m. he was proceeding on road at that time Motor Car No. MH-03-Z-1309 dashed to him due to the said dash he fell on ground and there was injury to his chin. Thereafter, the driver of the said car took him

to the hospital, he treated in the hospital. On 04.02.2005 he lodged complaint in the police station. After lodging the complaint police took Station Diary Entry of his complaint and the said complaint closed on the ground that the accident was of minor nature. In my view, as per Section 154 of Code of Criminal Procedure, on complaint police register FIR in respect of cognizable offence. In the present case, the claimant had lodged the complaint with police station about the happened incident. Taking cognizance of the complaint was the duty of the police. If the police did not register offence, the blame cannot be put on the claimant, as claimant had informed the police about the happened accident. Moreover, driver of offending car has not denied about the happened incident. Police has not closed enquiry of the complaint stating that it was false complaint, it has been closed on the ground that, the accident was minor in nature. Hence, I do not find merit in the submissions of learned counsel for appellant that without registering FIR negligence is fixed on the driver of Maruti car. Moreover, it has come in the evidence of DW-2 Dr. Vinod Kumar Nair that due to the said accident five teethes of the claimants have been broken which support claimant's case.

5. In view of above, I pass following Order:

ORDER

(i) The Appeal is dismissed.

- (ii) Respondent No. 1 / claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
 - (iii) The statutory amount along with accrued interest be transmitted to Motor Accident Claim Tribunal, Mumbai.
 - (iv) The parties are at liberty to withdraw it as per rule.
6. Pending Civil Application, if any also disposed off.

(SHIVKUMAR DIGE, J.)