
(1997) 06 MP CK 0005
In the Madhya Pradesh High Court
Case No : M.A. No. 55 of 1995

Babulal

APPELLANT

Vs

New India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 24-06-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 142, 166

Citation : (1999) ACJ 1181

Hon'ble Judges : Jayant Govind Chitre, J

Bench : Single Bench

Advocate : Manoj Dwivedi, for the Appellant; S.V. Dandvate, for the Respondent

Final Decision : Dismissed

Judgement

J.G. Chitre, J.—This appeal has been finally heard as very short points are involved for adjudication.

2. On 1.12.1991 at about noon, as averred by the appellant, he was riding his bicycle on Khandwa Road for going towards Barwah. When he came near the Octroi Naka, truck bearing No. UP-78-9622 came from opposite side and dashed the appellant. The appellant fell down along with his bicycle and sustained some injuries. It has been averred by him that those injuries were serious injuries and he suffered permanent disability on account of that. A report was made in the police station and thereafter claim was preferred in Motor Accidents Claims Tribunal, Barwah.

3. After recording the evidence learned Tribunal dismissed the claim of the appellant and he has assailed that judgment and award by this appeal.

4. Mr. Manoj Dwivedi appearing for the appellant pointed out that evidence of appellant Babulal and witness Kailash is proving that the driver of the said truck was driving it rashly and negligently. He submitted further that the evidence of Dr. Chouhan is proving the appellant had sustained permanent disability as a result of the injuries caused by rash and negligent driving of the said truck when

the accident took place. He submitted that the Tribunal should have allowed the claim by passing appropriate award.

5. The other respondents are absent as their names have been deleted from the array of parties by the order of this Court dated 13.12.1996. Mr. S.V. Dandvate has been heard for respondent insurance company. He submitted that the claim has been rightly dismissed by the Tribunal. He pointed out that even for the purpose of getting compensation in view of provisions of Section 140 of Motor Vehicles Act, 1988 (for short "the Act") the claimant has to prove that he had sustained permanent disability as indicated by provisions of Section 142 of the Act. He pointed out further that in the present case it is not so and, therefore, the appellant is not entitled to get compensation in view of provisions of Section 166 as well as Section 140 of the Act. Mr. Dandvate further pointed out that unless the Tribunal comes to the conclusion that the driver of the truck was driving the vehicle in rash and negligent way, the insurance company cannot be held liable for paying compensation to the claimant. He submitted that in the present case the driver and owner of the vehicle have not put in appearance as their names have been deleted from the array of respondents and, therefore, the insurance company cannot be directed to pay the compensation to the appellant. He further pointed out that the evidence on record does not prove that the driver of the said vehicle was driving it rashly and negligently.

6. The appellant did not pursue his attempt to get respondent Nos. 1 and 2 served by taking appropriate steps provided by Code of Civil Procedure. The court allowed sufficient time to the appellant in that context and lastly an order dated 13.12.1996 came to be passed by which the names of respondent Nos. 1 and 2 were deleted from the appeal memo. The appellant deserves to be blamed for that because it is his duty to get necessary parties served by due process of law. It was his duty to make a prayer to the court for substituted service on them in case it was difficult to get them served.

7. The evidence of the appellant and Kailash, CW 3, does not prove that on the date of said accident the driver of the said truck was driving it rashly and negligently. It is to be noted that even witness Kailash has not said that the said truck was being driven in excessive speed which appellant had stated in his evidence. In the cross-examination appellant has admitted that at the time of said accident the bullocks tied to the bullock-cart, which was in picture at the time of said accident near the said truck and bicycle of the appellant, got frightened and became uncontrollable. It is his evidence that on account of that, driver of the said truck turned his truck to his side which resulted in dash to him. This proves the doctrine of "inevitable accident".

It is for the appellant to prove it to the satisfaction of the Tribunal that the injuries sustained by him were caused by the driver of the vehicle who was driving it rashly and negligently. In the present case the appellant has failed to do so and, therefore, there would be irresistible conclusion that it has not been proved that the driver of the said vehicle was driving the vehicle rashly and

negligently at the relevant time. When the driver of the said truck was not driving it rashly and negligently, the insurance company cannot be held vicariously liable to pay compensation to the appellant on that count also.

8. The evidence of Dr. Chouhan clearly shows that there was no fracture sustained by the appellant and the injuries sustained by the appellant which were medically examined by Dr. Chouhan were simple in nature. This evidence further shows that the said injuries were capable of healing within seven days. Thus, the appellant has failed to prove that he sustained permanent disablement on account of injuries which were sustained by him in the said accident which were medically examined by Dr. Chouhan.

9. Section 142 of the Act reads:

Permanent disablement.-- For the purpose of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in Sub-section (1) of Section 140 if such person has suffered by reason of the accident any injury or injuries involving:

- (a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or
- (b) destruction or permanent impairing of the powers of any member or joint; or
- (c) permanent disfiguration of the head or face.

It means that when injury or injuries sustained cause permanent privation of the sight of either eye or hearing of either ear or privation of any member or joint or destruction or permanent disfiguration of the head or face, the injuries can be said to be causing permanent disablement. Section 140 of the Act provides that where death or permanent disablement of any person has resulted from an accident arising out of use of motor vehicle or vehicles, the owner of the vehicle shall, or as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with provisions of this section. It means that unless the claimant sustains permanent disablement (*prima facie* in view of Section 142), he is not entitled to get compensation even in view of provisions of Section 140 of the Act. Needless to say that claimant has to prove the nexus between permanent disablement sustained by him and the vehicle in question which is owned by a particular respondent, driven by a particular respondent and insured with insurance company.

10. Section 166 of the Act indicates that the claimant is entitled to get compensation from the owner of the vehicle, driver of the said vehicle or the insurance company with whom that vehicle has been insured, if that vehicle causes bodily injury or injuries to the victim in accident which is the result of rash and negligent driving by the driver of the said vehicle.

11. The words "death" and "has sustained injury" have been used in Section

166. Therefore, in view of Section 166 of the Act if the claimant is in a position to prove the permanent disablement, if the Tribunal finds it necessary, compensation can be awarded to such claimant. But that would be dependent on following factors: (i) that the claimant has proved that he sustained injury in accident which was a result of rash and negligent driving on the part of the driver of the vehicle; and (ii) on account of that injury or injuries he sustained a loss which can be calculated in terms of money. It may include pain, suffering, agony and loss of income, etc. In view of provisions of Section 166 of the Motor Vehicles Act, the claimant or claimants would get the compensation on account of the death of a person who has been killed in an accident in which vehicle or vehicles have been involved if they represent the deceased as his LRs. In case of the damage to the property the owner of the property would get compensation in view of provisions of Section 166. In case of the injury sustained by the claimant, the claimant would get compensation if he proves permanent disablement caused to him on account of the injury sustained by him in the said accident but he will have to prove that he sustained the permanent disablement as it has been indicated by the provisions of 142 of the Motor Vehicles Act, so also he will have to prove that there was nexus between the said accident and the injury sustained by him. Needless to say that such claimant would be entitled to get compensation on account of pain, suffering, agony and loss of income, etc., as Tribunal finds it proper to award.

12. The learned Tribunal has assessed the evidence on record in proper way and the findings recorded by it are not contrary to the evidence on record. On the contrary they are borne out from the evidence on record. The way in which the learned Tribunal appreciated the evidence is also proper. Thus, I come to the conclusion that the Tribunal has rightly dismissed the claim of the appellant.

13. In the result, in view of the discussion above this appeal deserves to be dismissed and is accordingly dismissed. Keeping in view the age of the appellant no cost is saddled on him. He should bear his costs of this litigation.