

(2008) 02 RAJ CK 0091
In the Rajasthan High Court

Bhagwan Dass

APPELLANT

Vs

Satish Singh

RESPONDENT

Date of Decision : 29-02-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2008) ACJ 2025

Hon'ble Judges : Guman Singh, J

Bench : Single Bench

Judgement

Guman Singh, J.—This appeal has been filed against the award dated 23.7.1996 passed by the learned Judge, Motor Accidents Claims Tribunal, Jaipur City, Jaipur (for short "the Tribunal") challenging the award on the ground of enhancement of the compensation and apportionment of liability.

2. The claimant Bhagwan Dass met with an accident on 22.12.1991 while he was travelling as a pillion rider on the motor cycle which met with an accident with offending car No. DL 1 C 6560 being represented by the respondent insurance company and sustained disability on account of the injury caused in the incident. The learned Claims Tribunal awarded Rs. 2,000 by way of compensation to the complainant and deducted 50 per cent of the compensation on account of contributory negligence.

3. Learned Counsel for the claimant submits that there was no contributory negligence on the part of the appellant-claimant as he was not driving the motor cycle but he was sitting as a pillion rider. Learned Counsel further submits that the matter at the most can be of composite negligence and as such the amount awarded need not be deducted. The learned Counsel cited National Insurance Co. Ltd. v. Kastoori Devi 1988 ACJ 8 (Rajasthan), in support of his contention. Learned Counsel further submitted that as per Section 140 of Motor Vehicles Act a person sustained permanent disability is required to be paid Rs. 25,000 by way of statutory liability and, therefore, the award passed for the amount less than Rs. 25,000 is not of the amount denominated by the legislature by way of

minimum liability in such a case. Learned Counsel for insurance company supported the judgment of the learned Tribunal on the ground that the learned Tribunal has passed the award on the basis of evidence adduced before it.

4. In view of the above submissions advanced and the material on record it is revealed from the fact that the claimant was not the driver of the motor cycle but was a pillion rider at the time of accident and as such no contributory negligence can be found on his part. However, the composite negligence indicated by learned Tribunal also does not disentitle the compensation to the claimant after deduction as allowed by the learned Tribunal as in the case of composite negligence the claimant is free to claim compensation against either or both tortfeasors as the liability is joint and several as held by the coordinate Bench of this Court in Sampat Kunwar Bai and Another Vs. Gurmeet Singh and Another, Accordingly, the quantum of compensation awarded to the claimant deserves to be enhanced to Rs. 25,000 and the finding of learned Tribunal is required to be modified accordingly.

5. Accordingly, while maintaining the terms of award up to the date of filing the appeal, i.e., 23.10.1996, the amount of the award is enhanced to Rs. 25,000 with interest at the rate of 6 per cent per annum from the date of appeal payable within a period of 3 months from the date of this order and failure to do so, the amount shall entail interest at the rate of 9 per cent per annum.

6. The appeal stands disposed of.