
(2000) 05 MP CK 0057

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No's. 410 and 433 of 1999

Bholaram @ Murarilal

APPELLANT

Vs

Dhruvlal and another

RESPONDENT

Date of Decision : 08-05-2000

Acts Referred:

Citation : (2000) 2 MPLJ 625

Hon'ble Judges : Bhawani Singh, C.J.; Faizanuddin, J

Bench : Division Bench

Advocate : T.C. Singhal, for the Appellant; B.D. Verma and R.P. Gupta for respondent No. 1 and None, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, C.J.

The judgment disposes Miscellaneous Appeal No. 410/1999 (Union of India vs. Bholaram alias Murarilal and another) and Miscellaneous Appeal No. 433/1999 (Bholaram alias Murarilal vs. Dhruvlal and another) arising out of the same award of the Ninth Motor Accidents Claims Tribunal, Gwalior (for short, the "Tribunal"), dated 29-1- 1999.

Briefly, it may be stated that the claimant was going on scooter on 27-1-1997 from Naya Bazar to Katora Talab. He was hit by jeep No. MP 07-A/9026 which was being driven rashly and negligently by driver Dhruvlal. The matter was reported to the Police. Since the petitioner/claimant received serious injuries, he was shifted to J.A. Hospital, Gwalior. His left foot was operated and after some days he came home. Thereafter, he went to Dr. Mahana since he was feeling pain in the foot and then to Dr. Dubey. In Dr. Dubey's Nursing Home his foot was again operated. As a result of this accident, it is submitted that the claimant suffered mentally, physically and lost the earning capacity. Consequently, claim for Rs. 6,00,000/- has been raised. The defence taken is that the claimant was drunk while moving on the scooter and it was the scooter which hit the jeep

since the claimant did not know driving.

The Tribunal examined the matter and came to the conclusion that the accident took place as alleged, therefore, the claimant was entitled to compensation. As a result, compensation of Rs. 1,77,350/- has been awarded carrying interest at the rate of 12% per annum from the date of the application till payment to be made within 3 months otherwise it would carry interest at the rate of 18% per annum. This award has been assailed by the claimant asking for enhanced compensation (in M.A. No. 433/1999) and by the respondent, Union of India, stating that the compensation awarded is on higher side (in M.A. No. 410/99), therefore, it should be reduced in case it is found that the claimant was negligent.

We have heard the Learned Counsel for the parties, perused the file and the evidence recorded in the case. Shakir (AW1) has stated that on 27-1 - 1997 between 12 noon and 1 p.m. he was riding scooter and the petitioner/claimant Bholaram was the pillion rider. They were going from Naya Bazar to Katora Talab. Jeep No. MP 07-A/9026 being driven rashly and negligently with a high speed with respondent Dhruvlal at the wheels came from behind and hit the scooter. The claimant was injured and the jeep stopped at a little distance. The petitioner was taken to the hospital. Dhruvlal (NAW 1) has admitted that at the time of negotiating a turning he did not see the scooter and as soon he negotiated the turning, he saw the scooter, he could not stop the jeep, consequently, it hit the scooter. Shakir (AW 1) has been corroborated by petitioner Bholaram (AW 2). The Tribunal has thus arrived at a categorical finding about rash and negligent driving of the jeep by the driver. This finding has not been assailed by the appellant, Union of India.

We find that the claimant was 38 years old at the time of the accident. He was a contractor. This fact has not been denied by the other side. It is stated that in 1996-1997 the claimant earned an income of Rs. 1,77,164/- and paid Rs. 3,551/- towards income tax. In the absence of contracts he would work in the market. The Tribunal came to the conclusion that assessment of exact income of the petitioner was not possible and fixed the sum of Rs. 1,500/- per month as his income. We find that the Tribunal has not assessed the income of the claimant appropriately. In the absence of satisfactory evidence rebutting the statement of the claimant, it can be taken that the claimant was earning Rs. 5,000/- per month. Looking to his age, nature of injury and the fact that after the accident he was moving from hospital to hospital for treatment and by which time two operations had already taken place and the fact that his left leg has been shortened by two inches and the statement of the doctor that the claimant is suffering a lot on account of the injury sustained and that circumstance may develop when he may have to cut the foot to save his life and, as pointed out, that the petitioner is still in bad state and the left foot is still bandaged, we are of the opinion that in the totality of the circumstances the award of Rs. 1,77,350/- is on lower side and it deserves to be increased to Rs. 3,50,000/- carrying interest at the rate of 12% per annum from the date of the application till

payment, and in case the compensation has not been paid as directed by the Tribunal, it shall carry interest at enhanced rate of 18% per annum from 1-8-1999 till payment. Therefore, the contention of the Learned Counsel for the Union of India that compensation to the claimant in this case is on higher side is liable to be rejected. Similar is our view with respect to the allegation that it was the claimant who was negligent since we find on evidence that it was the jeep driver who was driving the same rashly and negligently which resulted in the accident.

Consequently, M.A. No. 410/1999 (Union of India vs. Bholaram alias Murarilal and another) fails and is dismissed, and M.A. No. 433/1999 (Bholaram alias Murarilal vs. Dhruvlal and another) is allowed in terms aforesaid.

Costs on parties.