

(2016) 08 MP CK 0039
In the Madhya Pradesh High Court
Case No : Miscellaneous No. 537 of 2005

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APPELLANT

Vs

Deepak

RESPONDENT

Date of Decision : 31-08-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2017) AAC 388 : (2017) 3 ALLMR 52 : (2017) 1 CivillJ 781 : (2016) 3 JabLJ 304 : (2016) 4 MPLJ 643

Hon'ble Judges : Shri Alok Verma, J.

Bench : Single Bench

Advocate : Shri Mayank Upadhyay, Learned Counsel, for the Respondent No. 2;
Shri Manish Jain, Learned Counsel, for the Appellant

Final Decision : Disposed Off

Judgement

Shri Alok Verma, J. - This Miscellaneous Appeal arises out of the award passed by the learned Second Additional Motor Accident Claims Tribunal, Jhabua in Claim Case No. 234/2003 dated 18.11.2004 whereby the Tribunal dismissed the claim application filed by the appellant.

2. The relevant facts according to the claimant's averments in the application are that the claimant was riding on motorcycle bearing registration No.MP-11-C-2094, which was being driven by respondent No.1, who was also the owner of the vehicle. According to the appellant, she was working with respondent No. 1 as his colleague in Rashtriya Manav Basahat and Patrakarita Kendra, Jhabua. On the date of incident, they went to attend some official duties to village Chhoti Dhekal from where they were returning back to Jhabua. Due to rash and negligent driving by the respondent No.1, the motorcycle skid on Bhurighati when the respondent No.1 negotiated a turn and due to which the claimant fell down and sustained serious injuries on her right foot and back. She was shifted to District Hospital Jhabua where she was given first aid, and thereafter, she was shifted to Sarvodaya Narsing Home, Indore where she remained admitted till

25.10.1997. In December 1997, she was again went to Indore for further treatment and cast was placed on her right leg again.

3. The appellant further averred that she suffered partial permanent disability in her right let and claimed a sum of Rs.1,90,000/- by way of compensation. She also claimed Rs.20,000/- that she spent on her treatment and Rs.30,000/- for future treatment and total amount of compensation including other heads is Rs.3,65,000/-.

4. The respondent No.1 remained ex-parte before the Tribunal. Respondent No.2/ insurance company denied all the averments and facts stated by the appellant, according to the respondent No.2, no copies of first information report, site map, medical report etc. were produced by the appellant, and therefore, it is doubtful that she suffered injuries in an accident which allegedly took place on 21.10.1997. It was also denied that under the insurance policy, the risk of the person travelling on pillion of the motorcycle was covered. The remaining facts were also denied.

5. After recording evidence of both the parties and hearing them, the learned Tribunal gave findings that the appellant failed to prove that she sustained injuries in the accident as stated by her in the application and on this premise, he proceeded to dismiss the application without assessing quantum of compensation to the appellant.

6. Learned counsel for the appellant submits that the Tribunal below appreciated the evidence produced by the appellant against the principles of appreciation of evidence in civil cases. The evidence was appreciated as if it is a criminal case and the appellant was under an obligation to prove his case beyond doubt. According to him, in civil cases the standard of proof should be based on preponderance of probability and the appellant is not under an obligation to prove everything beyond doubt.

7. In this case, the appellant examined herself as A.W.-1. He stated that on the date of incident, she was coming as a pillion rider on the motorcycle belonging to respondent No. 1. Respondent No. 1 was driving the motorcycle on Bhurighati. Due to rash and negligent driving by the respondent No.1, the motorcycle skid and she fell down. She was taken in the district hospital, Jhabua. Thereafter, during the night only she was shifted to Indore, where she received treatment at Sarvodaya Nursing Home, Indore. The operations were performed and she remained admitted for five days. He submitted the papers of her treatment as Ex.P-1 to P-9.

8. Jaya Patel (A.W.-2) was following her on another motorcycle. She witnessed the incident, she stated that the appellant was travelling on motorcycle of the respondent No.1. He negotiated a turn with high speed and due to which the motorcycle skid and the appellant suffered injuries. Dr. A.K. Dubey is A.W.-3, who gave a certificate Ex.P-11, in which he stated that the appellant suffered partial permanent disability in her right leg amounting to 39%. There was a

reduction of muscle power by 20%, movement of knee by 20%. She faced difficulty in walking and running and also in squatting. Satyanarayan Soni an employee of district hospital, Jhabua, who produced original MLC register of the hospital. On 21.10.1997 entry in respect of the appellant is made on the register. Pravesh Saxena is a radiographer, who took x-ray picture of the appellant when she shifted to the hospital.

9. Vinod Kumar is examined on behalf of respondent, who stated that the policy was issued to cover the motorcycle. However, the policy did not cover the pillion rider. He in his statement did not challenge the fact that the accident did not take place with the motorcycle belonging to respondent No. 1.

10. Learned counsel for respondent No. 2 supports the findings given by the Tribunal on the ground that no copies of FIR and other papers of criminal case are filed by the appellant. However, for award of claim under Section 166 Motor Vehicle Act, filing of FIR is not a pre-condition, it may only create some doubts whether the accident as stated by the appellant did take place or whether the offending vehicle was involved in the accident. So far as the present appellant is concerned, apart from the statement of the appellant herself, there is an eye-witness Jaya Patel A.W.-2, the MLC with register show entry in respect of the appellant which were doubted by the Tribunal. However, such doubt is absolutely baseless and against the principles of appreciation of evidence in civil cases. The register was an official document, maintained by a Government hospital. If it was not maintained properly or if the pages were not properly numbered by the hospital, no adverse inference can be drawn against the appellant. It is also a rare situation in this case that the respondent No.2, the insurance company never produced any evidence to create any doubt on the fact that the appellant suffered injuries as stated in the application, no independent enquiry was conducted by the insurance company. Proper party who could challenge the version of the appellant is respondent No.1, who remained ex-party before the Tribunal and under this situation, there appears to be no ground before the Tribunal to doubt the statement of the appellant and employee of the hospital Satyanarayan Soni (A.W.-4). Also the elaborate discussion on upkeep of MLC register was uncalled for. The witness specifically mentioned that it was a MLC register, and therefore, if it was not mentioned against the entry of the appellant that it was a MLC case, it cannot be taken as creating any doubt on the truthfulness of the statement of the appellant. In this view of the matter, I find that the comments of the Tribunal perverse, and therefore, the finding is set aside, it is held that the appellant suffered injuries and partial permanent disability in the accident.

11. So far as liability of the insurance company is concerned, the policy is on record. Section II ? Liability to 3rd parties ? 1. (a) specifically provides coverage to persons travelling on the vehicle, and therefore, the appellant is covered in the policy and the argument raised by the counsel for the respondents is not acceptable.

12. Coming to the quantum in the present case, it is pertinent to note that the tribunal had not assessed the quantum of compensation. It would be a fruitless exercise to remand the case back to the tribunal after eleven years. I, therefore, proceed to assess quantum of compensation here in after on basis of material available on record.

13. According to the appellant she was earning Rs.2,500/- at the time of incident though no document is produced to show that she was earning the amount. The amount appears to be reasonable, and therefore, taking her income at Rs.2,500/- per month, her annual income comes to Rs.30,000/-.

14. She suffered 39% partial permanent disability in her right leg and taking overall disability in her whole body, there may be a notional loss of 10% income and accordingly the annual loss comes to Rs.3,000/-. Applying the multiplier of 18, looking to her age at the time of incident, total amount of compensation comes to Rs. 54,000/-. Apart from this, she appears entitled for Rs.10,000/- against pain and sufferings, Rs.5,000/- for nutritional/special diet, Rs.5,000/- for the attendant, Rs.5,000/- for transportation, and therefore, for her treatment she is awarded Rs.7,500/-. Besides this, she suffered serious injuries in her right leg, and therefore, for 3 months loss of income immediately after the incident, she is awarded Rs.7,500/- and for future treatment, she is awarded Rs.7,500/-.

15. At the time of incident, she was a young woman of aged about 23 years. Due to her disability in her right leg, she must have suffered loss of marriage prospects and against this head, she may be awarded Rs.10,000/-. Thus, the total amount of compensation comes to Rs.1,11,500/-. Hence, this appeal is allowed. The award passed by the Tribunal is set aside. The application filed under section 166 of Motor Vehicles Act by the appellant before the Tribunal is partly allowed. Accordingly, the compensation is awarded as under :-

(i) The appellant is entitled to receive Rs.1,11,500/- from the respondents.

(ii) The respondents are jointly and severally liable to pay amount of compensation.

(iii)The respondents are also liable to pay an interest @ 8% per annum from the date of presentation of application before the Tribunal i.e. 06.01.1998 till payment of the amount.

(iv)The amount of compensation shall be paid to the appellant by cross-cheque.

(v) The cost of appeal shall be borne by the respondents throughout.

(vi) Advocate fee is assessed @ Rs.1,000/- before the Tribunal and Rs. 2,000/- before this Court, if certified.