

(1995) 02 MP CK 0071
In the Madhya Pradesh High Court

Dy. Director Agriculture and Another	Vs	APPELLANT
Mangilal and Another		RESPONDENT

Date of Decision : 13-02-1995

Acts Referred:

Citation : (1995) 1 ACC 526

Hon'ble Judges : R.D. Shukla, J

Bench : Single Bench

Judgement

R.D. Shukla, J.—The appeal is directed against the judgment and Award dated 25.8.1986 of the M.A.C.T., Jhabua passed in Claim Case No. 25/85 whereby the respondent No. 1 Mangilal has been awarded a compensation of Rs. 38,284/- with interest @ 12% per annum w.e.f. filing of the application till realisation of the same.

2. The brief history of the case is that claimant-respondent No. 1 was working as a Police Officer in P.S. Jobat, Distt. Jhabua. He was having a motor-cycle No. MBE 7636.

Motor Jeep No. CPZ 3023 owned by appellant-N.As. Nos. 1 and 3 was driven by respondent NA No. 2.

On the date of accident i.e. 2.3.85 claimant was going on a motor-cycle. One constable was sitting on the pillion. It is alleged that there was a curb on the road. He located a motor-jeep coming from the opposite direction with a high speed. He, therefore, stopped his vehicle and was waiting for the motor-jeep to pass but the motor-jeep dashed against him. He sustained injuries. The motor driver ran away from the place of incident. Some persons present around the place of accident took him to the Police-station and then to the hospital. He lodged FIR in P.S. Jobat. He was treated in various hospitals i.e. the local Hospital at Jobat, then M. Y. Hospital, Ihdore and thereafter at Badoda. He was treated at Dhar also. It was further asserted that he has remained under plaster for 2? months and he had to take rest for about six months. His motor-cycle was also

damaged. He, therefore, claimed Rs. 2000/- for the repairs of the motor-cycle, Rs. 5000/- for expenses at Indore, Rs. 2000/- for the price of medicines, Rs. 3000/- expenses of transportation by taxi, then Rs. 1500/- for the medicines at Dhar Rs. 3500/- for future treatment, Rs. 25000/- for pain and mental agony - and Rs. 50,000/-for permanent disability; thus, in all Rs. 92,000/-.

3. The claim was resisted by the appellant and Non-applicant No. 2 as well.

It was pleaded that the motor-cycle was without light. The driver of the motor vehicle who was carrying a patient stopped the vehicle but the motor-cycle dashed against the motor-jeep and the driver of the motor-cycle fell down. Subsequently, the driver of the motor-jeep came to know that the injured person is a Police Inspector but he had to leave the place for carrying the patient to the hospital and after leaving the patient in the hospital when he came back he did not find the injured Mangilal.

4. Thus, the fact of contributory negligence was pleaded.

5. The State Government (appellant here) further pleaded that the driver was driving the vehicle not in the course of employment and was doing a private work and, therefore, the State Government is not liable for making the payment of compensation.

6. Learned Tribunal has awarded Rs. 30,000/- towards general damages and Rs. 8,284/- towards the special damages i.e. for the treatment special diet transport charges and the repairing of the motor cycle.

7. This appeal has been filed by the State disclaiming the responsibility of payment of the compensation.

8. The first contention of the learned Counsel for the appellants is that respondent himself was responsible for the accident and that the general damages awarded to the claimant is highly inflated. It was also submitted by the learned Counsel for the appellants that the driver was not driving the vehicle during the course of employment and, therefore, the State Government is not liable for paying the compensation.

As against it learned Counsel for the respondent No. 1 has supported the Award granted by learned Tribunal and refuted the contention of contributory negligence.

9. This Court was taken to evidence in the case. Mangilal claimant himself appeared as P.W. 1 and has stated that Motor-jeep came with a high speed. He was standing with motor cycle by the side of road by keeping the toe on the ground. Meanwhile, motor jeep came with a high speed and dashed against him. The leg-guard, gear-box, handle and bumper, of the motor-cycle were also damaged. He has further stated that he himself lodged the FIR in the Police-station and was taken to Jobat Hospital. He was referred to District Hospital, Jhabua and thereafter to M.Y Hospital, Indore. He has undertaken the treatment for about seven months. He had to be operated thrice but there has not been a

complete union of bones. He was under plaster for six months and undertook the treatment for seven months.

P.W. 2 Amritlal has also supported the contention of the claimant. He has also stated that motor cycle with light was coming on a slow speed. It was on its own side but the motor jeep came with a high speed and dashed against the motor-cycle. Thus, this witness speaks against the stand taken by the claimant. As per the claimant he was standing by the side of the road by keeping his toe on the ground, while according to P.W. 2 Amritlal the motorcycle was coming with a slow speed and was on its own side. It appears the pillion rider Narain was not examined in the case and P.W. 3 and P.W. 4 are witnesses on the point of repair of the motor-cycle and on the point of taking injured claimant to hospital.

10. As against it the respondent No. 2 who appeared as N.A. No. 2 has stated that there was no light in the motor-cycle and after locating the motor-cycle he stopped the vehicle by keeping it on one side and thereafter motor-cycle came and dashed against his motor-jeep. The motor-cycle fell down. The motor cyclist who was a Police Inspector also fell down. He admitted before the persons present there that it was his mistake.

11. D.W. 1 Balchand Deoliya whose ailing wife was being taken in the motor-jeep and D.W. 2 Lekhraj Mahajan both have corroborated the story disclosed by Abdul Hamid. Both of them have stated that claimant Police Inspector admitted that "it is his mistake." The statement of these three witnesses on the point of admission about the mistake committed by the Police Inspector has not been challenged during cross examination. This fact of admission of mistake by the claimant has been pleaded by appellant Nos. 1 and 2 who were shown as N.A. Nos. 1 and 3 before the Tribunal. This finds place in last portion of para 2 of the written-statement. Similar plea has been taken by respondent N.A. No. 2 Abdul Hamid. The same also finds place in para 2. This fact has not been refuted by the claimant. Thus, this is proved that after the accident the claimant himself admitted his mistake. Learned Tribunal has lost sight of this fact.

12. Though it is also true that Abdul Hamid was driving the motor-jeep which is a faster and heavy vehicle and, therefore, greater responsibility lies on him to avert the accident and to avail the last opportunity of averting the accident. It appears that both the vehicles were in moving position and there was a curb. Both of them did not take proper care. As such there was a dash and accident. In the opinion of this Court both the drivers of the vehicles i.e. driver of the motor-cycle i.e. the claimant himself and the driver of the motor jeep i.e. respondent No. 2 (N.A. No. 2) would be held liable to the extent of 50% each and in the opinion of this Court, therefore, the claimant also contributed to the extent of 50% for the accident and the finding of the learned Tribunal to that extent does not appear to be correct and requires modification.

13. Learned Counsel for respondents has submitted that the driver admitted the guilt and he was released after admonition and, therefore, that fact ought to be

taken as a proof for negligence.

14. That may be a fact taken into consideration but the same cannot be a conclusive proof. Even otherwise the judgment of the Criminal Court would be irrelevant and therefore both the claimant and the driver would be equally held responsible for the accident.

15. Learned Tribunal while assessing the special damages has taken into consideration the receipts produced by the claimant including transport charges. P.W. 3 Akhtar Hussain, mechanic has proved the payment of Rs. 2000/- by the claimant for repair of the motor-cycle.

16. Though he has not given the details in the statement but the details have been given in the receipts. The same has been believed by the Tribunal and that appears to be probable and, therefore, it would not be proper to disbelieve that witness especially in view of the fact that the Tribunal had an opportunity of looking to the demeanour of the witness and, therefore the Award of Rs. 2000/- for repairs of motor-cycle and Rs. 6,284/- for the special diet expenses for treatment and transport charges appears to be correct and that also calls for no interference.

16. The claimant had, to remain under plaster for about six months. He had to be operated. This must have created some inefficiency at least for a small period of 7 to 12 months.

17. He must have been in great pain and agony after the incident. The efficiency of the claimant is likely to suffer adversely because of the injury and the fracture of right leg, as he will not be able to move that faster and run which is required for a Police-Officer, and there is a shortening of leg up to 0.5 cm and the same can be compensated by using a high heel shoe but that will create a difficulty in running and faster movement and, therefore, the general damages of Rs. 30,000/- also appears to be correct.

18. Learned Tribunal has awarded interest @ 12% p.a. That also appears to be correct.

19. Looking to the finding above, since the claimant-respondent was equally responsible for the accident this Court would like to reduce the compensation by half. Thus, the claimant would be entitled for a compensation of Rs. 19,200/-.

20. The next point that arise for determination in the case is as to whether the appellant-State Government is liable for making the payment of compensation. The contention of the learned Counsel for appellant is that the driver who was driving the vehicle for private party and not during the course of his employment.

21. It has come in evidence of the driver and the two witnesses examined by them i.e. D.W. No. 1 Balchand Deoliya and D.W. 2 Lekhraj that while coming back to park the vehicle, these Balchand and Lekhraj stopped the vehicle as the wife of Balchand was serious and she was taken to the hospital. This lift was

given by the driver. The accident occurred during this period.

22. Though giving the lift in the Government's vehicle to a patient was a discretion of the driver but at the same time he was going to park the vehicle and he was required to take the vehicle back to a place where it was to be kept. Thus, it will be deemed that the vehicle was being driven during the course of employment and the State Government cannot shirk its responsibility merely because a lift was given by the driver to an ailing woman.

23. Even otherwise the learned Counsel for the appellant has admitted that no action has been taken against the driver. That also goes to show that State Government connived at the work of the driver and for that reason also the vicarious liability of making the payment would lie on the State Government and, therefore this contention of learned Counsel for appellant deserves rejection and is hereby rejected.

24. As a result the appeal partly succeeds. The claimant is entitled only to a compensation of Rs. 19,200/- with interest @ 12% p.a. accruing thereon from the date of application till realisation of the same. Any amount in excess if realised by the claimant respondent shall be refunded. In the facts and circumstances of the case, the parties shall bear their own cost.