
(2010) 11 MP CK 0004
In the Madhya Pradesh High Court
Case No : M.A. No. 1072 of 2004

Kanhaialal

APPELLANT

Vs

Omprakash and Others

RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2011) 4 TAC 313

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Shrivastava, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988 has been filed by the claimant against the award dated 23rd February, 2004 passed by the Member, Addl. Motor Accident Claims Tribunal, Mandasaur (M.P.) in M.A.C.C. 01/2003.

2. On 7th November, 2002 the appellant was, travelling as a pillion rider in the Hero Honda motorcycle No. MP14-BA-6777 driven by Omprakash. The motorcycle had slipped and both Omprakash and the appellant had suffered injuries in the accident. Accordingly the appellant had filed the claim petition before the Tribunal. The Tribunal found that the appellant failed to establish that Omprakash was driving the motorcycle and the appellant was sitting as a pillion rider, and that he had received injuries in the accident caused by the motorcycle driven in rash and negligent manner by Omprakash. The Tribunal further found that it was not proved that Omprakash was having a valid driving licence. The Tribunal, therefore, dismissed the claim petition.

3. Learned Counsel appearing for the appellant submits that the Tribunal has committed an error in dismissing the claim petition without properly appreciating the evidence on record. He further submitted that the finding of the Tribunal that the Omprakash was not having a valid driving licence, is unsustainable.

4. Learned Counsel appearing for the respondent/Insurance Company supporting the award submitted that no error has been committed by the Tribunal in dismissing the claim petition since the accident itself is not proved. He further submitted that the Tribunal has rightly found that the driver was not having a valid and effective driving licence on the date of the accident.

5. I have heard the learned Counsel for the parties and perused the record.

6. In a claim petition the claimant is required to prove the claim on the preponderance of probability and the strict rule of evidence and pleadings do not apply. In the present case the A.W. 1 Kanhaiyalal has stated that on 7th November, 2002 between 11-11.30 a.m. He was travelling in the motorcycle No. MP14-BA6777 as a pillion rider, which was driven by Omprakash in speed, in spite of his asking to drive slow. He has clearly stated that due to the negligence of Omprakash the accident had taken place, in which he had received injuries. In the cross-examination also he has stated that the Omprakash was driving the motorcycle in speed and had lost control.

7. A.W. 2 Mohammda Ayub is the eye-witness of the accident. He has also stated that Omprakash was driving the motorcycle with speed in a negligent manner and since he had lost control, therefore, the accident had taken place. Mohammad Ayub had taken the appellant to the hospital. Omprakash (A.W. 4) has stated that on 7th November, 2002 Kanhaiyalal was travelling as a pillion rider in the motor cycle and he had received injuries since the motorcycle had slipped on the turn. The discharge slip of Ram Snehi Hospital, Bhilwada has been placed on record as Ext. P4, in which it has been clearly mentioned that the date of incident was 7th November, 2002 and mode of accident was "fall from motorcycle".

8. In the present case no FIR or the documents relating to criminal case are on record but the appellant (A.W.1) has stated that when the appellant was taken to the hospital, Omprakash had refused to lodge the report, even on asking by the doctor Omprakash had stated that he did not want to report the accident to the police. A.W. 4 Omprakash has also stated that he had not reported the matter to the police since he thought that the appellant Kanhaiyalal had received minor injuries. The Ext. P1 is the report which was later made by Kanhaiyalal on 27th November, 2002 about the accident to the Collector, in that report also it has been mentioned that Omprakash had refused to make any complaint to the police. Ext. P1 was sent by the registered post, which is clear from Ext. P2 and P3.

9. The Division Bench of this Court in the matter of Lalloo Ram Vs. Ram Babu Kamariya and Others, , has taken a view that in claim petition, it is not mandatory to file copy of the documents pertaining to the criminal cases and failure to produce challan papers or copy of FIR will not be sufficient to dismiss the claim petition. These documents may be necessary for decision of the case but non-filing of the documents will not result into automatic dismissal of the

claim petition. The Division Bench took the view that the challan papers and FIR filed before the police are not material documents and they at the most are the corroborative piece of evidence and nothing more. This Court in the matter of Yashwant Singh Baghel and Another v. Shiv Prasad Vishwakarma and Others, reported in III 2006 ACJ 325, has taken a view that a claimant on establishing the accident and the injuries is entitled for compensation irrespective of the fact that the police has registered the offence regarding the incident or not, and each case is to be decided on appreciation of its own pleading, circumstances and evidence on record.

10. In the present case, on the basis of the evidence on record it is clearly established that on 7th November, 2002 the appellant was travelling in the motorcycle No. MP14-BA-6777 driven by Omprakash, and had received injuries due to the accident which was caused on account of rash and negligent driving by Omprakash.

11. The contrary finding of the Tribunal is unsustainable since the Tribunal has adopted a technical approach in the matter and has not properly appreciated the evidence on record. The Tribunal has noted the oral and documentary evidence but has committed an error in appreciating this evidence and has given undue weightage to the fact that the accident was not reported to the police. Thus the said finding of the Tribunal is set aside.

12. So far as the finding of the Tribunal that Omprakash was not having valid and effective driving licence to drive the vehicle is concerned, the said finding has been arrived at without proper discussion and without properly appreciating that the burden was on the Insurance Company to establish the said fact, therefore, the said finding also cannot be sustained.

13. In view of the aforesaid, the award passed by the Tribunal is set aside and the matter is remitted back to the Tribunal to pass a fresh award in accordance with law keeping in view the finding recorded above and observations made above.

14. Let the original record be sent back to the Tribunal. The parties are directed to appear before the Tribunal on 24th January, 2011.

No costs.