
(2005) 11 MP CK 0008
In the Madhya Pradesh High Court

Magan	Vs	APPELLANT
Shakil and Others		RESPONDENT

Date of Decision : 22-11-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2006) 2 ACC 313

Hon'ble Judges : Ashok Kumar Tiwari, J;A.M. Sapre, J

Bench : Division Bench

Judgement

A.M. Sapre, J.—This appeal, u/s 173 of the Motor Vehicles Act, 1988, has been filed against the award dated 24.9.2001, passed by the learned Member, Second Additional Motor Accident Claims Tribunal, Barwani (M.P.) in Claim Case No. 35/95 by which the claim filed by the appellant praying for awarding compensation to him has been rejected.

2. The claimant/appellant filed a claim petition alleging therein that on 23.1.95 at about 4.30 p.m. he met with a motor road accident, while he was waiting for a bus to go from Barwani to Talun at Bus Stop Anjad Naka, Barwani. While he was standing there a truck bearing registration No. MP-10/5544 came at a high speed and dashed against him. The aforesaid truck, owned by respondent No. 3 and insured with respondent No. 4, was driven rashly and negligently by respondent No. 1. The appellant sustained injuries in the said accident. He had to spend money on his treatment and he was put to suffer loss of income due to the injuries sustained by him. The appellant claimed Rs. 5,29,000 towards total compensation, claiming different amounts under various heads. The claim was opposed by the respondents.

The learned Tribunal framed the following issues after trial awarded them as shown against them and rejected the claim of the appellant/claimant. Hence, the appellant has filed this appeal:

(1) Kya

Pratiprarthi Vahan Chalak Dwara Teji "Pramanit Nahi". Va Laparwahi Se Truck Chalaane Ke Karan Awedak Ko Chont Aayi Thee? (2) Kya Awedak Sthayi Rup Se Apang Huwa Tha? "Pramanit". (3) Kya Beema Palisi Ki Sharton Ka Ullanghan Huva Tha? Yadi Han, To Prabhav? "Apramanit". (4) Sahayata Aum Vyaya? "Awedan Patra Nirasta".

3 Appellant Magan has been examined as A.W. 1 before the learned Tribunal. He has stated in his testimony that he was standing at bus stop in Barwani with Santosh s/o Bhagwanji r/o Talun. He has stated that on seeing the truck coming he signalled it to stop, but the truck hit him and passed from there. The driver of the truck did not stop even after hitting him. He has further stated that he became unconscious due to the injuries caused to him and Santosh and Gurmeetsingh, who were standing there, took him to the hospital. Santosh has been examined as A.W. 2. This witness has corroborated the testimony of A.W. 1 Magan. From the statements of appellant and Santosh it is proved that the appellant has met with the accident as stated therein and suffered injuries. A police case does not appear to have been registered against the driver of the truck i.e., respondent No. 1/Shakil, but a private complaint has been filed by the appellant against him. The learned Tribunal has referred to the report filed by Police Station, Barwani in the Complaint Case No. 665/98 and held that according to the report on 23.1.95 appellant Magan was climbing on truck No. MP-10/5544 in the state of intoxication and he fell down and sustained injuries. Thus, the police report indicates that the appellant has sustained injuries by the vehicle in question. Respondent No. 1/Shakil has not stated that the appellant fell down, because he was trying to climb on the truck in drunken state. He had altogether denied the incident. The fact that appellant had fallen from his truck has not been mentioned by him in his written statement. Therefore, the learned Tribunal was not justified in drawing the conclusion that the appellant might have received injuries due to his own rashness and negligence. In the facts and circumstances of the case it could be inferred that the accident had taken place with the vehicle/truck No. MP-10/5544.

4. In an accident involving any motor vehicle, the cause of the accident or the manner in which the accident took place are such type of facts which lie under the special knowledge of the driver of the vehicle and the driver of the vehicle is supposed to explain as to how and under what circumstances the accident took place and burden to prove that the accident was not caused due to his negligence lies on the driver of the vehicle involved. The learned Tribunal has not appreciated the evidence of the case from the above point of view. We are of the considered opinion that from the evidence on record it is established that the accident took place due to the rash and negligent driving of the driver of the truck in question and the appellant sustained injuries in the accident. Therefore, the finding of the learned Tribunal on issue No. 1 is reversed and this

issue is answered in affirmative.

5. Dr. Mukesh Agarwal has been examined as A.W. 3 by the claimant/appellant. The certificate Ex. P/19 has been issued by the aforesaid witness. According to this witness 18% permanent disablement was found in left leg and 12% permanent disablement was found in the left leg of the appellant. The learned Tribunal has also held that the appellant has suffered permanent disability. Since the injury has been sustained by the appellant in the accident involving the truck i.e., a motor vehicle and the driver of the Vehicle in question has been held to be negligent, the appellant is entitled to get the compensation from the owner. Truck being insured with respondent No. 4/Insurance Company is obliged to reimburse the owner for the payment made by him. Thus, the respondents 1,3 and 4 are jointly and severally liable for the payment of compensation. However, there is no evidence regarding involvement of respondent No. 2 in the accident. Hence, he is not liable for making any payment as compensation and the claim of the petitioner against him deserves to be rejected.

6. As far as the quantum of compensation is concerned, no documents regarding the expenditure incurred in treatment have been produced by the appellant. No documentary evidence to show loss of earnings. However, it is evident that the appellant had sustained injuries and had undergone some treatment. So, it could be inferred that he must have spent some money on treatment and some financial loss might have been suffered by him. Due to the injuries he must have suffered physical pain and mental agony also due to disablement caused to his legs he might suffer some loss of earnings and some financial loss might be caused in future also. In our modest computation in the facts and circumstances of the case, a lump sum payment of Rs. 40,000 will take care of the medical expenses incurred and the compensation payable towards pain and suffering and other heads. According to us, this will be the just fair and reasonable compensation payable to the appellants. The issue Nos. 3 and 4 and decided accordingly.

7. Consequently, the appeal is allowed. The award, rejecting the claim of the appellant is set aside. The claim of the appellant is allowed in part by granting an award of Rs. 40,000 in his favour against the respondent Nos. 1,3 and 4. However. the claim against respondent No. 2 is rejected. The amount of award will carry interest @ Rs. 4% p.a. from the date of application till realization of the amount. All the respondents except respondent No. 2 shall bear their own costs along with the costs of the appellant. Counsel fees Rs. 1,000, if certified.