
(1986) 05 MP CK 0005
In the Madhya Pradesh High Court

Mahesh Chandra Bajaj

APPELLANT

Vs

Chhota Bhai Jetha Bhai and Others

RESPONDENT

Date of Decision : 02-05-1986

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 337

Citation : (1987) 1 ACC 130

Hon'ble Judges : Sachchidanand Awasthy, J;C.P. Sen, J

Bench : Division Bench

Judgement

S. Awasthy, J.—This appeal has been preferred by the claimant-appellant for the enhancement of amount of compensation granted to him by the Motor Accident Claims Tribunal, Damoh, in Claim Case No. 3/80, decided on 15th July, 1981.

2. According to the claimant-appellant on 31-8-79 he was going from Hata to Damoh. A jeep bearing No. M.P.K. 8837, belonging to the respondent No. 1, driven by respondent No. 2, and insured with respondent No. 3, was coming from Damoh towards Hata. The claimant was injured in the accident with the Jeep and his motor-cycle which was also broken. It is alleged by the appellant that the respondent No. 2 was driving the vehicle rashly and negligently. Hence the liability of the respondents for payment of compensation to him.

3. It is not disputed before us that because of the accident the claimant suffered several injuries including fracture dislocation of lower dorsil spine with traumatic paraplegia and fracture shaft left numerous resulting in residual permanent spastic paraplegia. The claimant was an indoor patient in the Medical College, Jabalpur, from 1-9-79 to 28-3-80. The police station Daraoh prosecuted the respondent No. 2 for the offences punishable u/s 279/337 IPC and he was convicted on his admission.

4. The Presiding Judge of the Motor Accident Claims Tribunal assessed the amount of compensation at Rs. 52037/- and held the drivers of both the vehicles negligent in the ratio of 2/3 x 1/3. The liability of the claimant being 2/3. Thus an

amount of Rs. 17346/- was made payable to the claimant jointly and severally by the respondents.

5. The learned Counsel for the appellant argued that the driver of the jeep alone was negligent and there was no contribution on the part of the claimant for the accident. The entire amount of compensation was payable to the petitioner, which should not have been apportioned, as aforesaid. It is also argued that the amount of compensation assessed by the tribunal is too meagre looking to the nature of the injuries sustained and the consequent loss suffered by him.

6. The claimant-appellant has examined himself as AW 1. According to him, he located the jeep coming towards him with terrific speed, therefore, he slowed down his vehicle (motor-cycle), but the driver of the jeep dashed his vehicle against the motor-cycle, due to which he sustained the injury and his motor-cycle was also damaged. In cross-examination he has denied the suggestions that the jeep was being driven on the left side of the road or the claimant himself was driving his motor-cycle with a great speed or he lost the control over his vehicle and slipped and fell down in front of the jeep. Apart from the suggestion as stated above, which has been denied by the appellant there is nothing in the statement of the claimant which may render his testimony unreliable or doubtful.

7. Kedarnath (AW 2) is the head constable, who had written the report Ex. A-2-C, lodged by Kanchhedi Singh. He had also recorded the statement of Natthu, which is Ex. A-1. The said two witnesses, Kanchhedi Singh (NA 2) and Natthu (NA 2) gave absolutely different version than what they had stated to the police. Therefore, their statements in the Court become absolutely unreliable.

8. The non-applicants have examined the driver of the jeep, Rama, as NA 3. According to him, it was raining when the accident took place. He states that the claimant was driving his motor-cycle with a great speed, about 70 and 80 kilometres per hour. He stationed his jeep on his left side below the tar road on the foot-path. The motor-cycle dashed against the bumper on his right hand side of the jeep and the claimant fell on the ground. The motor-cycle was being driven on the wrong side of the road. The claimant wanted to apply the brake, but he could not check the speed. This witness has admitted that he had been convicted for rash and negligent driving, but he gives an explanation that it was because he was required to attend the Court on several hearings, which was impediment in his service. He also admitted that he did not state before the Magistrate that the claimant was driving his motor-cycle with a terrific speed, at the time of the accident. One Munnalal Shrivastava, was also seated in the jeep, but the said person has not been examined. He admitted that in his written statement he had not mentioned that he had stationed his jeep on his left hand side in the foot-path and further that the claimant was in vain attempting to apply brake to his vehicle. He further stated that the motor-cycle had slipped several times due to the mud on the road and that it dashed because of the muddy road. There were several marks on the road showing that the motorcycle had slipped, but when the police arrived on the spot there were no spots to

indicate that the motor cycle had slipped on the road. He admitted that he had not instructed his counsel to write in his written statement that, it was raining when the accident took place. The motor-cycle after dashing was lying on the main road and the claimant was lying beyond the motorcycle.

9. There is no other witness who could throw light on the cause of accident. Comparing the statements of the drivers of the two vehicles, we are inclined to believe the statement of the claimant which is more convincing and natural. Apart from the discrepancies pointed out by us it is pertinent to note that even a suggestion was not given to the claimant that his vehicle dashed against the jeep. From the suggestion, it appears that the respondents wanted to suggest that the injuries sustained by the claimant are due to his fall on the road and not because of his vehicle dashing against the jeep. The respondents' witnesses have rendered themselves totally unreliable because they reported to the police of their own accord that the rash and negligent driving of the jeep was responsible for the accident. But later on in their statements to the tribunal they tried to suggest that the accident was due to rash and negligent driving of the motor-cycle.

10. We, therefore, hold that due to the rash and negligent driving of the respondent No. 2, the said accident took place, which caused the injuries to the claimant-appellant. The entire compensation, therefore, is payable by the respondents and the tribunal was in error by ordering to apportion the same, as stated above.

11. The learned Counsel for the appellant argued that the claimant had laid a claim for Rs. 5,38,000/-. But very meagre amount has been awarded as compensation. His submission was that he had been undergoing the agony pain and suffering for sufficiently long time and has been rendered completely disabled, which will affect his future life and also cause him substantial financial loss throughout his life.

12. The appellant has claimed himself to be a working partner of firm Mahesh Chandra Umesh Chandra. His annual income is said to be Rs. 20,000/- to Rs. 25,000/- per annum. Due to the disability, he is unable to manage the affairs of the firm, and therefore he has been removed from the partnership. On this count he claimed Rs. 5,00,000/- as compensation. The income tax return, filed by the appellant for the year 1978-79 and the assessment order dt. 2-8-78 (Annexure A-3) shows the annual income of the appellant is Rs. 18,820/-. The tribunal has awarded Rs. 40,000/- as compensation on this count.

13. The Presiding Judge of the Tribunal in para 20 of his award has held that out of the total income shown by the claimant only Rs. 6,000/- were due to the personal efforts of the claimant and the rest of the income was due to the investment of the capital, So far as the part played by the capital is concerned, it shall continue to give the return till the capital is withdrawn. But the loss due to non-participation of the appellant would be a recurring loss to him, which shall

continue throughout his life. The provision should therefore have been made for atleast an income of Rs. 6,000/- per annum. If an amount of Rs. 50,000/- are put incumulative deposit of a schedule bank it shall give a return of Rs. 6,000/- per annum to the claimant. Since a lump-sum payment is being made of the said amount which shall remain in deposit till it is withdrawn, in our opinion, it is adequate compensation awarded to the claimant. We, therefore, award Rs. 50,000/- in place of Rs. 40,000/- awarded by the tribunal on this count.

14. The Presiding Judge of the Tribunal has awarded Rs. 5,000/- as compensation for the pain and suffering. Rs. 3,000/- for the medical treatment, ambulance and payment of room rent in the Medical College. Rs. 2,100/- for the servants, who attended on him and Rs. 77/- for the rent from 1-9-79 to 7-9-79, it is not clear as to which rent the Presiding Judge has referred to in his judgment. However, he has not awarded any amount for the repairs of the motor-cycle. We, therefore, disallow Rs. 77/- towards rent and allow Rs. 100/- as repair charges for the motor-cycle. Thus the total amount payable to the appellant would be Rs. 62,060/-. The appellant shall also be entitled to 6% interest from 27-2-80 (date of the application) till realisation of the compensation awarded by us. The respondents shall also pay the cost of the petition, as well as of the appeal on the amount of compensation awarded by us.

15. The appeal is, therefore, allowed in p As stated above an award of Rs. 62,060/- with cost on the said amount of both the Courts and interest at 6% per annum from the date of the application till realisation is passed. Counsel's fee as per schedule, if certified.