
(1993) 09 MP CK 0034
In the Madhya Pradesh High Court

Mangilal	Vs	APPELLANT
M.P.S.R.T.C. and Others		RESPONDENT

Date of Decision : 16-09-1993

Acts Referred:

Citation : (1994) 1 ACC 93

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

Bench : Single Bench

Judgement

R.D. Shukla, J.—This order shall also dispose of M.A. No. 245/84 and M.A.No. 275/ 84 M.P.S.R.T.C. and Ors. v. Mangilal.

2. Both the appeals are directed against the judgment and Award dated 5.5.84 of the M.A.C.T., Indore passed in claim case No. 166/81 whereby the claimant Mangilala has been awarded a compensation of Rs. 12,375/- in all for sustaining injury in the motor accident by bus No. CPH 8750 on 24.5.81. Mangilal was also held liable for contributory negligence and, therefore, the amount of compensation calculated was reduced to half i.e. Rs. 12,375/-.

3. Appeal No. 245/84 has been filed by claimant Mangilal challenging the finding of contributory negligence and for enhancement of compensation;

Misc. Appeal No. 275/84 has been filed by M.P.S.R.T.C. challenging the finding of negligence and award of compensation.

4. The undisputed facts of the case are that Mangilal sustained injury in the motor accident on 24.5.81. The accident occurred from Motor-bus No. CPH 8750. It was owned by MPSRTC i.e. respondent No. 1 in Appeal No. 245/84. It was being driven by respondent No. 3 Dinesh Kumar Sharma at we time of accident.

5. He was proceeding on Bombay-Agra Road. Meanwhile the motor-bus No. CPH 8750 came from behind. It was in an excessive speed and pushed him from behind. He was thrown. His left leg was over-run by the wheel of the bus, and therefore, there was a crush injury. He was taken to hospital and treated there.

He remained in M.Y. Hospital from 24.5.81 to 3.6.1981. The fingers of left foot were removed. He has developed weakness. He was not in a position to undertake heavy work. Earlier he was working as a Hammal and, therefore, he has developed permanent partial disability. He, therefore, claimed compensation as follows:

Rs. 1,000/- Expenses for treatment-medicines and special diet. Rs. 1,000/- For future requirement of treatment. Rs. 7,500/- For pain and sufferings. Rs. 15,000/- Compensation for the permanent partial disability as he has developed weakness. Rs. 4,500/- Deformity cause due to removal of the fingers of the left foot. Rs. 1,250/- Loss of earning during the period at ailment. Rs. 20,000/- For future loss. Rs. 250/- For the cost of repairs of bicycle. ----- Rs. 50,000/- Total. -----

6. The non-applicant-respondents denied the claim and pleaded that the claimant himself was responsible for the accident. He was going towards Dewas side. The bus also was proceeding towards that side. The claimant took a sudden turn to his right-side and came in forcible contact of the motor-bus and sustained injuries. It has also been submitted that the loss has been exaggerated by the claimant.

7. Learned Tribunal has held that claimant liable for contributory negligence and has awarded compensation as above. Hence these appeals.

8. The contention of the learned Counsel for the appellant is that the finding of the Tribunal about the contributory negligence is erroneous and that the learned Tribunal has estimated the loss on the lower side.

As against it learned Counsel for the respondent has submitted that learned Tribunal has discussed the evidence in detail and the finding about the contributory negligence is wholly correct. Learned Counsel has further submitted that the claimant was wholly responsible for the accident and he therefore deserves no compensation.

9. Learned Tribunal has discussed the fact of accident in paragraphs 6 to 9 of its judgment while deciding the issue No. 1 Learned Tribunal appears to be correct in its finding that the accident did not occur as described by the driver of the bus or else the claimant must have sustained injury on the right leg, because had he taken a sudden turn from left to right it is the right part of the body which would have come in the forcible contact of motor bus, Thus, the finding of learned Tribunal that the claimant has gone to the right side of the road for making some enquiries from A.W.3 Ambaram and thereafter he tried to go to his left side without caring as to whether any motor bus is coming from behind and it was at this stage that motor bus dashed against the claimant. The claimant may have tried to save himself and in that situation he sustained injury in the left leg including the crush injury on the left foot.

10. Learned Counsel for the claimant has referred to a case reported in Surjit

Pavitar Singh and Another Vs. State of Punjab and Others, submitted that the motor bus driver was driving heavy and speedy vehicle & therefore he was required to remain more cautious as such the contribution of claimant to the extent cannot be taken to be more than 25%. Since the claimant tried to go to his correct side of the road (i.e., from right to the left) without caring for the approaching motor bus and therefore has rightly been held responsible for 50% of the contribution of accident. Even otherwise the claimant was moving on a National Highway it is matter of common experience that the National Highway has got a heavy traffic and therefore while crossing the road the claimant ought to have been more careful. It appears either the driver of the motor bus was not keeping an eye on pedestrians, cyclists walking on the road or could not control his vehicle after noticing the claimant, because of high speed of the vehicle-as such he was equally responsible for the accident.

11. Now, so far as compensation is concerned, no serious challenge has been made to special damages i.e., the expenses of treatment, loss of wages during his confinement to bed physical and mental pain which has been estimated to be Rs. 2000/-, 1250/- and 5000/-.

However, the finding regarding the general damages for the loss of left finger and permanent partial disability has been challenged by the Counsel for the claimant.

12. Learned Tribunal has estimated the loss of future earning Rs. 15,000/- and for the deformity of leg i.e., loss of finger of left foot, removal of shin of lower part of left leg to be Rs. 1,500/-.

13. The permanent partial disability has been assessed to be 15%. His income has rightly been estimated Rs. 500/- p.m. He was aged 34 years, at the time of accident. He would be able to work for further 26 years. The loss was not to leg, but of finger only which may have diminished the strength partially.

In the opinion of this Court, therefore, that should have been estimated to 10% only. Thus, the loss to the claimant would come to Rs. 6,000/- per year only and therefore the estimate of Rs. 15,000/- for the loss of future earning appears to be correct. Even if the partial disability is taken to 15% in that condition the loss would come to Rs. 14,400/-. Thus, either way Rs. 15,000/- appears to be correct estimate of the loss of future earning. However, as prayed, compensation for the deformity to the tune of Rs. 1,500/- appears to be on the lower side, but the compensation for the physical suffering has been estimated to be Rs. 5,000/-. Hence, a total compensation of Rs. 5,000/- + Rs. 1,500/- = Rs. 6,500/- for the pain and suffering and deformity appears to be correct. Thus, there does not appear to be error in the estimate of compensation of the learned Tribunal.

14. Learned Tribunal has awarded interest @ 6% p.a. only which deserves to be enhanced to 12% p.a. From the discussions above the appeal filed by the claimant deserves to be succeed only on the point of interest.

15. As a result, the appeal filed by the M.P.S.R.T.C. appeal No. 275/84 is

dismissed with costs. The appeal filed by the claimant i.e., appeal No. 245/84 is partially succeeds and while maintaining the award as to the payment of compensation i.e., Rs. 12,375/-. It is directed that the respondent M.P.S.R.T.C. (it employees and officers) shall pay interest at the rate of 12% p.a. from the date of application till realisation of amount awarded. Cost of this appeal shall be borne by the parties. Counsel fee Rs. 300/- in each of the appeals.