**(2006) 04 MP CK 0049**

**In the Madhya Pradesh High Court**

National Insurance Co. Ltd. APPELLANT

Vs

Akhilesh Dwivedi and Others RESPONDENT

**Date of Decision :** 10-04-2006

**Acts Referred:**
Motor Vehicles Act, 1988 — Section 163A, 170

**Citation :** (2006) 04 MP CK 0049

**Hon'ble Judges :** S. Samvatsar, J;A.P. Shrivastava, J

**Bench :** Division Bench

## Judgement

S. Samvatsar, J.—Both thcse appeals arise out of the award dated 27.2.1999 passed by 9th Additional Motor Accidents Claims Tribunal, Gwalior in Claim Case No. 96 of 1997. Misc. Appeal No. 319 of 1999 is filed by the insurance company while Misc. Appeal No. 412 of 1999 is filed by the claimant.

2. Brief facts of the case are that one Akhilesh Dwivedi has filed the claim petition alleging that on 12.2.1997 at about 11 in the morning he was going on his motor cycle No. MP 07-KA 3542 from Gwalior to Morena. Ramesh alias Suresh Chandra Jain was sitting as pillion rider on the motor cycle. When they reached near Ban-more on A.B. Road truck No. MPW 4758 which was driven rashly and negligently by Kalyan Singh, respondent No. 1, dashed against him which caused him injuries. His spinal cord was completely damaged in the said accident and he has got injuries on various parts of his body. He filed the application for compensation alleging that the said injury has resulted in 100 per cent permanent disablement. He is completely bedridden and there are no chances of his recovery. He was brought on stretcher for giving statement in the court and Claims Tribunal has recorded this fact at the time of his deposition. He was examined as AW 5 in the court. Insurance company, non-applicant No. 3, has filed its written statement denying the allegations made in the claim petition. Non-applicant Nos. 1 and 2 remained ex parte and non-applicant No. 3 alone filed the written statement. Non-applicant No. 3 has also obtained permission from the Claims Tribunal to contest the claim u/s 170 of the Motor Vehicles Act.

 

The Claims Tribunal atter recording the evidence found that the accident has taken place due to rash and negligent driving of the non-applicant No. 1 and awarded compensation to the tune of Rs. 14,03,880 with interest at the rate of 12 per cent per annum. Claims Tribunal also observed that in case the award is not paid within three months, the interest will be 15 per cent per annum.

3. The claimant preferred Misc. Appeal No. 412 of 1999 alleging that the quantum of compensation awarded by the Claims Tribunal is on the lower side while the insurance company has preferred Misc. Appeal No. 319 of 1999 on the ground that the claimant himself was negligent and the accident has occurred due to his rash and negligent driving. It is also urged that the amount of compensation awarded by the Claims Tribunal is on the higher side.

4. Both the parties were heard at length.

5. Counsel for the insurance company urged that in the present case, both the claimant as well as driver of the truck had contributed in negligence and, therefore, the claimant should also be held responsible for the accident.

6. To appreciate this argument, it is necessary to refer to evidence on record.

7. To prove his case, the claimant has examined Suresh Chandra Jain as AW 2 who was pillion rider. He has stated in his deposition that on 12.2.1997 at about 11 in the morning he was going on the motor cycle No. MP 07-KA 3542 with Akhilesh. They were going to Morena. Akhilesh was driving the motor cycle. The speed of the motor cycle was 20-25 kmph and Akhilesh was driving motor cycle in a slow speed. As soon as they reached near the railway station, Banmore they saw a truck coming from opposite side. He has seen the truck when it was 100-150 yards away from the motor cycle. A bus was also coming from the opposite side. The truck was behind the bus and when the truck tried to overtake the bus, the truck came on the wrong side and dashed the motor cycle. Akhilesh got injuries and became unconscious. Report was lodged by this witness which is Exh. P2. He further admitted that Akhilesh got the spinal cord fractured in the accident. Akhilesh was working in Pulse Green Forest Limited and was earning Rs. 17,000 to Rs. 18,000 per month. In para 9 of his deposition he has stated that when the truck overtook the bus the distance between the truck and the motor cycle was nearly 75 metres. He has denied the suggestion that the truck after overtaking the bus has come to the right side and as Akhilesh was on the wrong side the accident took place. He has denied the suggestion in para 11 that the truck driver was not negligent in the accident. He has further stated that Akhilesh could not take the motor cycle in the side as there were big ditches on the roadside.

8. Next witness on the question of negligence is claimant himself who is examined as AW 5. This witness was brought in the court on a stretcher and he gave his statement by lying on the stretcher in the court. He has stated that the accident took place at 11 a.m. on 12.2.1997. He says that he was going on the motor cycle. He was on the right side and in slow speed. Suresh Chandra Jain

 

was sitting on the back seat. When they reached near Banmore, truck No. MPW 4758 which was coming in a high speed overtook the bus and while overtaking came on the wrong side and dashed the motor cycle, due to which he got injuries. In para 16 of his statement, he has stated that he was driving the motor cycle leaving a gap of 5 ft from the edge of the road. He has seen the truck while overtaking the bus. He further says that he could not take the motor cycle on the roadside as there were big ditches and heap of boulders was lying on the side of the road. He has denied that he was negligent or due to his negligence the accident has occurred. In para 15 he says that road was 20-25 ft wide and the truck was in the middle of the road. He has seen the truck from a distance of 50 ft. Truck did not blow horn while overtaking the bus. He further says that it was appearing that there was competition between the truck and the bus. Both were in very high speed.

9. Insurance company has not examined any witness to rebut the evidence led by the claimant. Division Bench of this Court in the case of New India Assurance Co. Ltd. Vs. Ayesha Begum and Others, and a number of judgments has taken a view that if driver of the offending vehicle is not examined in rebuttal, then the court should draw an inference that the accident has taken place due to rash and negligent driving of the offending vehicle.

10. Counsel for the insurance company tried to urge that as the claimant himself and Suresh Chandra Jain, AW 2, have stated that they have seen the truck coming to their direction, they had an opportunity to avoid the accident. They could have taken the motor cycle on the roadside and the accident could have been avoided. As they have not taken any steps for avoiding the accident, the claimant himself shall be held responsible for the accident.

11. From perusal of the evidence on record, we are not inclined to accept this argument because claimant Akhilesh, AW 5 and Suresh Cliandra Jain, AW 2, themselves have clearly stated that there was no room for thcm to get on the roadside. A heap of ''murum was lying there and there were big ditches on the side of the road. Truck while ovcrtaking the bus had come on the wrong side, therefore, there was no opportunity for thcm to avoid the accident. Their statements are not rebutted by any evidence. In the circumstances, the finding arrived at by the Claims Tribunal that the accident has taken place due to rash and negligent driving of the truck driver cannot be interfered with.

12. Now so far as the question of quantum is concerned, the Claims Tribunal has awarded a total sum of Rs. 14,03,880 as the compensation. Out of this amount, an amount of Rs. 6,48,000 was awarded towards loss of income, Rs. 50,000 towards pain and suffering, Rs. 50,000 towards attendant charges and travelling expenses and remaining amount towards medical expenses.

13. First contention raised by counsel for the insurance company is that as per Schedule u/s 163A of Motor Vehicles Act, Tribunal has no jurisdiction to award compensation above Rs. 15,000 against one head. This argument cannot be

 

accepted. In the present case, claimant has filed medical bilis, Exhs. P201 to P565. At the same time, he has also submitted large number of bilis along with his application under Order 41, Rule 27, CPC towards treatment during the pendency of the appeal. Total amount of these bilis comes to Rs. 9,84,465. It has come on record by the observation of the court as well as statement of the doctor examined as AW 3 and AW 4 Dr. Raju Vaishya and Dr. R.L.S. Sengar respectively that the spinal cord of claimant was completely damaged. He is not in a position to stand up or sit and he is constantly lying on the bed for all these years. Claimant was brought on a stretcher in the court and his statement was recorded by lying on the table of the court. This shows that this accident has resulted in 100 per cent permanent disablement to the claimant.

14. Claimant''s witness Suresh Chandra Jain, AW 2, has stated that the claimant was earning Rs. 17,000 to Rs. 18,000 per month. The court assessed his income at Rs. 3,000 per month on the ground that the documents on record show that even after his illness he was getting some commission. The court found that earlier to the accident, claimant was earning Rs. 8,000 per month and while after accident he was getting commission of around Rs. 5,000 per month and thus assessed his loss of income at Rs. 3,000 per month. From perusal of the record, it appears that the amount received vide vouchers Exh. P566 to Exh. P591 was as commission for the business conducted by him prior to the injuries and, therefore, it does not reflect the correct compensation of his income. This income is going to be diminished by year to year as the claimant is now not in a position to work any more and earn business for the company in which he was working. Considering this fact, we assess his loss of income at Rs. 5,000 per month and yearly loss of income comes to Rs. 60,000. The claimant was 28 years of age at the time of accident. Therefore, considering the fact that he has suffered 100 per cent permanent disablement and applying the multiplier of 18, compensation for loss of income comes to Rs. 10,80,000. Apart from this amount, claimant will be entitled to Rs. 10,00,000 towards medical treatment. He has already submitted bilis worth Rs. 9,84,465. He is also entitled to Rs. 1,00,000 towards pain and suffering and the travelling expenses. Thus, the total compensation is assessed at Rs. 21,80,000 (rupees twentyone lakh eighty thousand). As regards interest is concerned, Claims Tribunal has awarded interest at the rate of 12 per cent per annum with a rider that if the amount is not paid within three months, the claimants shall be entitled to interest at the rate of 15 per cent per annum. This view is not in accordance with law. It is, therefore, directed that the claimants shall be entitled to interest on the enhanced amount of compensation at the rate of 6 per cent per annum from the date of filing of the application till realisation. Amount, if any, paid by the insurance company shall be adjusted in the amount awarded.

15. In the result, Misc. Appeal No. 319 of 1999 filed by the insurance company fails and is dismissed and Misc. Appeal No. 412 of 1999 filed by the claimant is allowed and the compensation is enhanced to the extent indicated hereinabove.

 