

(2002) 02 MP CK 0021
In the Madhya Pradesh High Court
Case No : M.A. No. 345 of 1998

Navinchand

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 15-02-2002

Acts Referred:

Citation : (2002) 2 ACC 432 : (2003) ACJ 1756

Hon'ble Judges : S.L. Kochar, J

Bench : Single Bench

Advocate : Manish Jain, for the Appellant; Seema Sharma, for the Respondent

Judgement

S.L. Kochar, J.—This appeal has been directed for enhancement of the award by the appellant against the award dated 23.12.1997 passed by the Sixth Additional Motor Accidents Claims Tribunal, Ujjain in Claim Case No. 101 of 1996.

2. Briefly stated, the facts of the case are that on 21.6.1996, the appellant was going on the scooter for supplying khaman to some hotel-owners keeping 18 kg. of khaman on the front footboard of the scooter. When he reached near Saluja Nursing Home, the respondent No. 3 Tejram while driving Government jeep bearing registration No. MP 02-1514 of Mahila & Bal Vikas Vibhag, rashly and negligently dashed against the scooter from behind resulting into the fall of appellant on the ground sustaining fracture of his right leg. The appellant remained hospitalised in Civil Hospital, Ujjain for eight days. According to the medical report, he sustained injuries on his leg, waist and hand. There was shortening of his leg by 2 cm.

3. Learned Claims Tribunal, after framing issues, gave finding that the accident did not occur in the manner as described and submitted by the appellant. According to the case of the appellant, his scooter was dashed by jeep from behind, but there was no damage to the scooter at its back side. It got damaged from its front side which probablised the version of the jeep driver according to whom, when he was turning the jeep in the Rest House, which is situated at the

left side of the jeep, the appellant came from the left side of the jeep while driving the scooter and could not control the same because of heavy material kept by him on the footboard of the scooter where the brake of the scooter was situated. The learned Claims Tribunal, therefore, held that it was a case of contributory negligence by the scooter driver as well as the jeep driver. The Tribunal has calculated the total amount of compensation of Rs. 73,000 on different heads and awarded 50 per cent of this amount as compensation to the appellant.

4. I have heard Mr. Manish Jain, the learned Counsel for the appellant and Ms. Seema Sharma, learned Panel Lawyer for the respondent Nos. 1 and 2. However, none appeared for the respondent No. 3, and gone through the entire record.

5. The contention of the learned Counsel for the appellant that the Claims Tribunal has erred in holding the contributory liability of the appellant for the accident and also awarded a very less amount for ten to twenty per cent disability and shortening of 2 cm. right leg of the appellant. He relied on the judgment rendered by the Apex Court reported in Swatantra Kumar Vs. Qamar Ali and Others, (SC), as well as rendered by this Court in State of Madhya Pradesh and Another Vs. Pawan Kumar and Another, (MP). The learned Counsel for the respondent Nos. 1 and 2, in reply submits that the learned Claims Tribunal has arrived at the conclusion of contributory negligence after full consideration of the pleadings and evidence adduced by the parties and this finding is based on proper reasonings and logic. The version of the appellant was found to be incorrect about the manner of the accident, i.e., his scooter was dashed from behind. Learned Counsel for the respondent Nos. 1 and 2 further contends that the Claims Tribunal has granted reasonable award looking to the age of the appellant of 45 years, his profession, earning capacity and the injuries suffered. He remained hospitalised only for eight days.

6. The learned Counsel for the respondents has distinguished the aforementioned both the judgments on the ground that in the judgment delivered by the Supreme Court, the claimant suffered injuries and remained hospitalised in different hospitals for a long period and the appellant suffered shortening of leg by 13/4". In this case, there was no finding given by the Claims Tribunal or the appellate court about the contributory negligence. In the judgment passed by this Court, the claimant was a boy of 18 years and there was a shortening of his leg by 1.5 cm. He was also hospitalised for a long period and in this judgment also, there was no finding given by the Claims Tribunal about contributory negligence of the appellant and the jeep driver for the said accident.

7. Having considered the rival contentions this Court is of the view that the finding arrived at by the Claims Tribunal about contributory negligence of the appellant as well as of the jeep driver for the accident appears to be just and proper on the basis of the statement given by the appellant and the jeep driver and looking to the extent of damage at the front side of the scooter. The appellant was also carrying 18 kg. weight keeping the same on the front side

footboard and because of that, he could not control his scooter at the exact point of time when the jeep was taking a turn at its left side for entering the Rest House. However, the learned Claims Tribunal has erred in calculating the total amount of compensation of Rs. 73,000 on all different heads. The appellant has adduced evidence and also submitted a certificate of his earnings at Rs. 4,500 per month. The learned Tribunal has accepted the certificate Exh. P-1 showing his earnings by working on a lathe machine at the rate of Rs. 1,500 per month, but without assigning any reason fixed his monthly earnings at Rs. 1,500 by selling khaman to the hotel owners. The appellant was doing both the jobs in a day.

8. Therefore, looking to the evidence adduced by the appellant for his monthly earning, i.e., Rs. 4,500, it would be just and proper to fix his monthly earnings at the rate of Rs. 4,000. The appellant is entitled to Rs. 4,000 per month damage for nine months, in which he remained under plaster and could not perform his work for earning. So, the total claim awarded by the Tribunal was Rs. 73,000. Now it would be by adding Rs. 9,000 in total Rs. 82,000. For pain and suffering also, the award of Rs. 10,000 is reasonable. For shortening of leg by 2 cm. the total award granted was Rs. 30,000. It appears to be at lower side and should have been at least Rs. 50,000, looking to the judgments passed by the Apex Court as also by this Court.

9. In view of the aforesaid discussion, the total amount of the award comes to Rs. 1,02,000 out of which the appellant is entitled for half of the amount which comes to Rs. 51,000, together with interest at the rate of 12 per cent per annum from the date of filing of the claim petition till realisation.

10. Consequently, this appeal is allowed in part as indicated above with proportionate costs in favour of the appellant.