
(1986) 02 MP CK 0013
In the Madhya Pradesh High Court

Saleem	Vs	APPELLANT
Harimal and Others		RESPONDENT

Date of Decision : 28-02-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D

Citation : (1986) 2 ACC 216

Hon'ble Judges : Faizanuddin, J

Bench : Single Bench

Judgement

Faizandd-din, J.—This claimant's appeal u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as the "Act") against the award dated 10th July, 1980, made by the Motor Accidents Claims Tribunal, Raipur, in claim case No. 4 of 1977, whereby the appellant's petition for claim award of damages has been rejected.

1-A. According to the claimant-appellant while he was going on foot from his house to the nearby shop and was crossing the road, the respondent No. 2 Shanker came from behind on scooter No. CPR 2829, belonging to the respondent No. 1 Harimal and knocked down the appellant. The claimant was thrown on the ground and sustained fracture of his right leg besides abrasion and swelling in the left leg. The appellant, therefore, filed a petition claiming Rs. 10,000/-as damages. The respondent No. 3 is the Insurance Company, with which the said scooter was insured. The respondents contested the claim petition by contending that the accident took place entirely due to the negligence of the claimant himself. The learned Judge of the tribunal found favour with the defence taken by the respondents and, therefore, dismissed the claim petition against which this appeal has been directed.

2. Learned Counsel for the appellant assailed the award rejecting claim petition by contending that the claimant-appellant was not negligent and it was the Scooter driver who was negligent; in causing the accident.

3. It may be pointed out that no evidence was adduced by any of the respondents. It has also not been disputed that the scooter involved in the accident was insured with the respondent No. 3.

4. The claimant Saleem Ahmad examined himself as (AW 1) as well as one Rafique (AW 2). The accident had occurred on the road in village Mowa on 23-10-1976, at about 6 p.m. According to the evidence it had not become dark when the accident took place. It is also clear from the evidence of the above named two witnesses that the road was 4-5 steps wide that is to say 10-12 ft. There was also about 8-10 ft. wide Kachcha Road on both sides of the metal road on which the accident took place. The scooter driven by the respondent No. 2. came from behind the claimant. The claimant-appellant had hardly moved two paces on the metal road from left to right to cross the road when the respondent No. 2 came from behind and knocked down the appellant. According to the evidence there was no other traffic on the road and the road was also wide enough together with its Kachchi siding on both and there being no intervening object, the visibility was clear. In these circumstances, if the scooter driver had taken least care the impact would have been avoided and the scooter would have been taken safely from either side of the claimant-appellant. But, it appears that the respondent No. 2 was in great speed on his scooter and he did not try to avoid the impact with the claimant which resulted into collision causing fracture of the appellant's leg. The respondent No. 2, was, therefore, clearly negligent in driving the scooter on a road unmindful of the other users of the road.

5. From the above discussion, it cannot be said that the claimant-appellant was not negligent at all. According to the claimant's own statement, he had seen the scooter approaching towards him in speed from a distance of about 50 ft. yet he took the risk in crossing the road. If he had seen the fast approaching scooter the safest course was to avoid the crossing at that point of moment. In these circumstances, I find that the respondent No. 2 and the claimant both were negligent, I fixed the negligence to the extent of 50 per cent each.

6. The tribunal on evaluation of the facts and circumstances of the present case recorded a finding that in the event, the respondent No. 2 was responsible for accident, the appellant would have been entitled to a compensation of Rs. 1,000/- for pain and suffering due to the injuries sustained by him and further sum of Rs. 1,000/- on account of temporary 5 percent disability. The tribunal thus, held that the appellant would have been entitled to a compensation of Rs. 2,000/- I accept the said finding. But as I find that it is a case of contributory negligence in which the scooter driver and the claimant both have been found negligent to the extent of 50 per cent each, I accordingly awarded proportionate compensation sum of Rs. 1,000/- to the appellant.

7. In the result, the appeal partly succeeds and is hereby allowed with proportionate cost. The appellant is awarded Rs. 1,000/- compensation with interest at 6 per cent from the date of his application that is with effect from 7-4-1977, till recovery of the amount against the respondents jointly and

severally. Counsel fees Rs. 150/-, if certified.