
(1985) 07 MP CK 0014
In the Madhya Pradesh High Court
Case No : Appeal No. 83 of 1983

Sanjay Kumar

APPELLANT

Vs

Shokatali and Others

RESPONDENT

Date of Decision : 04-07-1985

Acts Referred:

Motor Vehicles Act, 1988 — Section 110D

Citation : (1985) 07 MP CK 0014

Hon'ble Judges : P.D. Mulye, J;K.K. Verma, J

Bench : Division Bench

Advocate : B.K. Samdani, for the Appellant; Surjit Singh, for the Respondent

Final Decision : Allowed

Judgement

P.D. Mulye, J.—The Appellant, who is a claimant, has filed this appeal u/s 110-D of the Motor Vehicles Act against an award dated 14th December, 1982 passed by the Member, Motor Accidents Claims Tribunal, Jhabua in Claims Case No. 16 of 1979, whereby his claim for compensation amounting to Rs. 2,75,000/- has been dismissed.

2. Facts giving rise to this appeal, which are no longer in dispute, may be stated, in brief, thus: Respondent No. 1 Shaukatali was the driver of the Jeep CPR 602, which was owned by Respondent No. 2 M.P. Electricity Board. The said jeep was insured with Respondent No. 3, the Oriental Fire and General Insurance Company Ltd.

3. On 16.1.1979, at about 10 a.m., the Appellant Sanjay Kumar, a boy aged about 15 years, was proceeding on a scooter on the Indore-Ahmedabad road in Jhabua near Dileep Gate. At that time the said jeep was being driven by Respondent No. 1, which was going ahead of the scooter. According to the claimant the jeep driver without giving indication suddenly stopped the jeep by applying brakes with the result that the Appellant who was following the jeep dashed against the jeep from its rear side as a result of which he sustained

injuries. Further according to the claimant at the time of the said accident a tanker was coming from the opposite direction and there was no time for the Appellant to take his scooter towards the right to avoid any accident. Further according to the claimant on account of the said accident he sustained fracture of his right thigh and as a result of the accident he has to limp while walking and he being a student his prospects have thus become bleak. Besides he also has to suffer physical pain occasionally. He, therefore, filed the present claim.

4. The Respondents by their written statement contested the Appellant's claim mainly on the ground that the claimant had no driving licence he being a minor and that it is the Appellant who was driving the scooter in such a rash and negligent manner with a high speed that he dashed against the jeep which was in fact standing by the left side of the road. Therefore, according to them they are not at all liable to pay any compensation as the jeep driver was neither rash nor negligent. Further according to the Respondents admittedly the scooter dashed against the jeep from the back side and, therefore, no fault could be put on the jeep driver, it being day time and the road being quite broad.

5. The claimant-Appellant in support of his case examined AW 1 Dr. Vasudeo Mujumdar and himself as AW 2. The Respondents examined the driver of the jeep Shaukatali as DW 1.

6. The learned Member of the Tribunal, after considering the evidence and material on record came to the conclusion that the accident did not occur on account of the rash and negligent driving by the jeep driver. He also found that the claimant at the time of the accident did not have a driving licence and consequently he is not entitled to claim any compensation thereby resulting in the dismissal of the petition.

7. The learned Counsel for the Appellant submitted that it is no doubt true that the claimant did not have a driving licence at the time of the accident, but that by itself would not be a valid ground to reject his claim because even a person holding a driving licence can and is capable of causing accident and in support of this submission he placed reliance on the decisions reported in *Parminder Singh Vs. Mnkatsar Janta Co-operative Transport Society Ltd.*, and *Mohinder Singh Sohal and Another Vs. Ramesh Kumar and Others*, . On this point the learned Counsel for the Respondents submitted that as the claimant had no driving licence the Respondents cannot at all be held liable even though there was an accident, but he was unable to point out any such authority even if it is found that the jeep driver was also to some extent responsible for the accident. Therefore, in our opinion, merely because the claimant did not have a driving licence, would not by itself negative his claim.

8. From the medical evidence of AW 1 Dr. Mujumdar it has been proved that on account of the said accident the claimant sustained a fracture in his right thigh on account of which the claimant has to limp, which cannot be completely cured. Further according to him the claimant may have to suffer from pain in the winter

season. In cross-examination he has stated that the disability is to the extent of 10 per cent or 12 per cent.

9. As regards the factum of accident it is not in dispute that the accident did occur. The learned Counsel for the Appellant submitted that the claimant was following the jeep which was going ahead and without giving any indication or sign the jeep driver suddenly stopped the jeep by applying the brakes at which time a tanker was coming from the opposite direction and the claimant had no time to apply the brakes of the scooter and it is on account of this fact that the accident occurred. The learned Counsel further submitted that the jeep driver in his statement has admitted that he did not give any indication either by show of hand or by putting up the red light to indicate that he was stopping the vehicle. He, therefore, urged that as the tanker was coming from the opposite direction the Appellant could not swerve the scooter towards the right to overtake the jeep and in these circumstances it is the jeep driver who is responsible for the accident. On this point the learned Counsel for the Respondents submitted that admittedly the claimant dashed the scooter on the backside of the jeep and the jeep driver could not be expected to see who is following the jeep. He further submitted that from the evidence of the jeep driver it is clear that actually the jeep was parked by the left side of the road and it was for the claimant-Appellant to see carefully that the jeep was standing by the side of the road. He, therefore, urged that it was the Appellant who was driving the scooter in such a rash and negligent manner that without seeing what is ahead of him dashed against the jeep and consequently even though it resulted in an accident the Respondents cannot be held liable at all.

10. However, after hearing the learned Counsel and after going through the evidence and material on record we are unable to agree with the reasoning adopted by the learned Member of the Tribunal that the claimant alone was wholly and solely responsible for the accident. From the evidence on record it has not been satisfactorily established that in fact when the accident occurred the jeep was standing by the side of the road as apart from the driver no one else has been examined, as according to the driver himself he had parked the jeep in front of the bungalow of the official who had just alighted from the jeep before the accident occurred. Therefore that person ought to have been examined to show how the accident occurred. Therefore, in our opinion, both the Appellant as also the Respondent No. 1 namely the jeep driver are liable. But the contributory negligence of the claimant-Appellant is greater to the tune of 75 per cent. Admittedly the accident having taken place in broad day light the Appellant also should have slowed down the speed of the scooter when he saw that a tanker was coming from the opposite direction, which he did not do. That apart he should have driven the scooter by keeping a reasonable margin from the jeep which was going ahead. But it appears that the distance between the jeep and the scooter at the time of the accident was quite close and, therefore, if the Appellant would have been more careful he could have avoided the accident though it may also be noted that it was also the duty of the jeep driver to give

some indication to the vehicles following him to the effect that he was stopping the vehicle. In such a situation, in our opinion, the liability of the jeep driver comes to the tune of 25 per cent.

11. So far as the question of quantum of compensation is concerned, we are of opinion that considering the facts and circumstances of the case, a sum of Rs. 5,000/- would be just and reasonable. But as we have found that the Appellant is also liable for his contributory negligence to the tune of 75 per cent, he is not entitled to claim this compensation from the Respondents as he was at major fault and, therefore, the claimant-Appellant is entitled to claim only Rs. 1,250/- and interest thereon at the rate of 6 per cent per annum from the date of filing of the application from all the Respondents who are held jointly and severally liable.

12. In the result this appeal succeeds partly. The Respondents are held jointly and severally liable to pay a sum of Rs. 1,250/- by way of compensation to the claimant-Appellant plus interest at the rate of 6 per cent per annum on this amount from the date of filing of the application. However, considering the facts and circumstances of the case the parties are directed to bear their respective costs throughout.