

(1985) 08 MP CK 0038

In the Madhya Pradesh High Court

Case No : Miscellaneous (First) Appeal No. 187 of 1980

Sewaram alias Sewan

APPELLANT

Vs

Nanhe Khan alias Asgar Beg and Others

RESPONDENT

Date of Decision : 07-08-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Employees State Insurance Act, 1948 — Section 2(15A), 2(18)
Madhya Pradesh Motor Vehicles Rules, 1994 — Rule 298(3)
Motor Vehicles Act, 1939 — Section 110, 110A, 110CC, 110D

Citation : (1987) ACJ 354 : (1986) ILR (MP) 525

Hon'ble Judges : B.M. Lal, J

Bench : Single Bench

Advocate : P.V. Pandit, for the Appellant; R.P. Verma, for the Respondent

Final Decision : Dismissed

Judgement

B.M. Lal, J.—This appeal u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act") is directed against the award dated 19.1.1980 passed by the Claims Tribunal, Hoshangabad, awarding Rs. 8,000/- to the Respondent No. 1, Nanhe Khan against which the present appeal has been filed by one of the truck owners, Sewaram alias Sewan.

2. The short facts leading to this appeal are as under The claimant-Respondent No. 1, Nanhe Khan alias Asgar Beg preferred a claim before the Claims Tribunal, Hoshangabad, on the ground that he was working as a labourer in truck No. MPC 4824 which was owned and registered in the Regional Transport Office, Hoshangabad, in the names of Sewaram alias Sewan and Respondent No. 2, Udaram son of Takanmal Sindhi. The truck in question was driven by one Latif Khan. When the truck reached near the bridge of river Dolariya which is in between Hoshangabad and Seoni-Malwa, due to high speed and rash and negligent driving, it turned turtle. This accident had taken place on 14.7.1978 as a result of which the claimant, Respondent No. 1 suffered several injuries on his

person, including grievous injuries on the hip and the hand. He had to remain in the Government Hospital, Hoshangabad, for about a month. Therefore, he filed a claim for Rs. 50,000/-.

3. The Appellant and the Respondent No. 2, truck owners, denying the averments of the claim petition, stated that the accident was not the result of rash and negligent driving but it was due to all of a sudden bursting of the tyre and that the driver of the truck could not balance the steering. The insurance company, Respondent No. 3, completely denied the liability of the claim.

4. The Claims Tribunal after considering the pleadings of the parties and assessing the evidence on record reached the conclusion that the alleged accident was the result of rash and negligent driving of the truck. However, the Tribunal awarded Rs. 8,000/- only as compensation, out of the claim of Rs. 50,000/- against which the present appeal has been filed by one of the truck owners.

5. The learned Counsel appearing for the Appellant pressed the following three grounds: first, the Tribunal had committed an error of law and fact in reaching the conclusion that the alleged accident was due to rash and negligent driving of the truck, secondly while awarding compensation to the tune of Rs. 8,000/-, the Tribunal erred in making proper assessment in passing the award and thirdly, since the claimant jumped out from the truck, which resulted in his bodily injuries, his claim does not fall within the ambit of Section 110 and Section 110-A of the Act.

6. The claimant-Respondent No. 1, though served, did not turn up, probably because of his poverty he could not manage to engage a counsel here.

7. The Respondent No. 3 New India Assurance Company, is represented through Mr. R.P. Verma, Advocate.

8. After hearing the arguments of the learned Counsel appearing for the Appellant and perusing the entire record of the case minutely, as in cases where the parties are not represented through counsel, it is the duty of the court to go through the entire case in detail carefully so that no injustice may be caused to the party who has not engaged counsel for want of funds, I have reached the conclusion that this appeal has no force and it must be dismissed. However, orders u/s 110-CC of the Act, which the Tribunal failed to pass, while awarding compensation, must be passed.

9. As far as rash and negligent driving of the truck is concerned, from the perusal of the record, including the evidence of the parties it appears that there is sufficient material to reach the conclusion that the truck was driven at an excessive speed. Although the cleaner of the truck, Birbal (NAW 2) stated that the accident took place due to bursting of the tyre yet Ghasiram (AW 2) and Sitaram (AW 3) who were in the truck at the time of the accident have deposed that due to rash and negligent driving of the truck, the alleged accident had

taken place. In such circumstances where it is pleaded by the truck owner or the driver that suddenly on account of some mechanical defect or bursting of the tyre, the accident had taken place, then strict burden of proof lies on them to discharge their liability and the doctrine of *res ipsa loquitur* applies in the cases of motor accidents that where the thing is shown to be under the control and management of the Respondent owner of the truck or his servant driver and the accident is such as in the ordinary course of things does not happen, if those who have the management, use proper care, it affords reasonable evidence in the absence of reasonable explanation by the truck owner or his driver that the accident arose for want of care.

10. From the perusal of the evidence on record in the instant case, it is proved beyond doubt that the driver of the vehicle was responsible for the alleged mishap and an inference of negligence can be drawn. Therefore, there is no force in the argument of the learned Counsel appearing for the Appellant against the finding as reached by the Tribunal that due to rash and negligent driving of the truck, the accident has occurred.

11. The next question urged was about the quantum of compensation. Dr. H.G. Kalyani (AW 4) who had referred the Respondent No. 1 Nanhe Khan for X-ray has stated that the Respondent No. 1 claimant was admitted as an indoor patient in the hospital and he remained there for about a month. The doctor also stated that the claimant Nanhe Khan was not in a position to do his normal duties as a labourer. Dr. C.S. Mehta (AW 5) who took skiagrams of left wrist and left hip of the claimant-Respondent No. 1 found that he had suffered Colles' fracture of left radius in the hand and fracture of left pubes bone of left ilium (hip). In para 3 of his statement, he has stated in so many words that these two fractures (grievous injuries) could be caused due to motor accident. However, he opined that there is no permanent disability.

12. The learned Counsel appearing for the Appellant hammered his arguments by pointing out that Dr. Mehta (AW 5) has stated that there is no permanent disability and therefore, the Tribunal erred in awarding compensation to the tune of Rs. 8,000/-. Although Dr. Mehta has stated that despite these two fractures on the vital parts of the body, the claimant has not suffered any permanent disability, yet in this context if we look to the statement of the claimant Nanhe Khan (AW 1) he states that due to this accident, he is not able to perform his normal manual labour. This statement was not challenged by the Appellant truck owner. Therefore, according to the medical opinion, it may not be a permanent disability but if the statement of the claimant is believed then certainly the second injury of hip bone fracture results in permanent partial disability, meaning thereby, disablement of a permanent nature and it reduces the earning capacity of an employee in every employment which he is capable of undertaking at the time of the accident resulting in the disablement. Such type of injuries causing "permanent partial disablement" have been specified in Part II of the Second Schedule and the words "permanent partial disablement" have been defined in

Section 2(15A) of the Employees' State Insurance Act, 1948. Therefore, for awarding compensation if we take aid of the provisions of this Act, we find that such type of injuries result in permanent partial disablement.

13. Therefore, the damages as awarded by the Tribunal for such injury cannot be said to be excessive. On the other hand, if the injury is of the nature of "permanent partial disablement", then the Tribunal should have awarded much more than Rs. 8.000/- as compensation.

14. While awarding damages it has to be seen that damages are awarded in respect of pain and suffering already undergone and likely to be undergone in future in respect of the loss of the amenities of life and in respect of the reduction in the expectation of life. In the instant case, no doubt if we consider the nature of the injury then capacity of the claimant to work, though not permanently but partially has been reduced considerably, as stated by him in his statement.

15. Therefore, in my opinion, the Tribunal has not committed any error of law in awarding damages of Rs. 8.000/- to the claimant. It is settled law that while estimating damages, loss of pleasure of life, youth and age are important considerations. Age may be a material factor justifying a lower estimation for an old man. In the instant case, at the time of the accident the claimant was found aged about 30 years. Therefore, according to the maximum longevity of life in this country which is about 65 years, awarding of compensation of Rs. 8.000/- cannot be said to be excessive in any manner, whatsoever.

16. The learned Counsel for the Appellant also contended that since the Respondent No. 1 himself jumped from the truck which has resulted into the alleged injuries, therefore, his case does not fall within the purview of the provisions of Section 110 of the Act and no application u/s 110-A thereof was maintainable as the alleged injury has no nexus with the accident in question, but it was due to the jumping from the truck. In the The General Manager, Karnataka State Road Transport Corporation Vs. Sangappa Satalingappa Goudar and Others, ; followed in V.G. Sumant Vs. Shailendra Kumar and Others, , it has been held that if an accident occurs out of the use of the motor vehicle that accident falls within the meaning of Section 110 of the Act and as such giving jurisdiction to the Claims Tribunal to entertain application of the claimant u/s 110-A of the Act. As far as the definition of "motor vehicle" is concerned, it is given in Section 2(18) of the Act and it has not been disputed that the truck in question does not fall within the definition of "motor vehicle". Therefore, in my opinion if accident of any nature occurs out of the use of the motor vehicle, whether it is propelled or standing, then the Claims Tribunal constituted u/s 110 of the Act, definitely gets jurisdiction to adjudicate upon the application filed before it u/s 110-A of the Act, but the passing of the award depends upon the proving of the fact relating to the negligence or rashness on the part of the driver. Hence I do not see any force in the argument of the learned Counsel that because of the jumping from the truck, if the claimant sustains injuries, such a claim does not

come within the purview of Section 110 and Section 110-A of the Act. While using a motor vehicle in any manner, if accident takes place, then such application for compensation is maintainable. In the instant case, the claimant jumped from the truck which due to rash and negligent driving, turned turtle.

17. While awarding compensation, it appears that provisions of Section 110-CC of the Act were lost sight of by the Tribunal with the result that it failed to pass necessary orders in awarding interest. Interest on damages is a just claim and must form part of the compensation awarded. Therefore, applying the principle of natural justice, I do not see any reason why the claimant-Respondent No. 1 should be deprived of interest on the compensation awarded to him. It is true that to award interest is in the discretionary power of the Tribunal. It has been vested in the Tribunal u/s 110-CC of the Act, but the Tribunal is expected to pass a reasonable order either by passing or negating awarding of interest by assigning its reasons, otherwise it would amount to a failure of exercising beneficial jurisdiction vested in the Tribunal u/s 110-CC of the Act and in such circumstances the appellate court while exercising its appellate jurisdiction and power under Rule 298(3) of the M.P. Motor Vehicles Rules, 1974, can award interest, notwithstanding the fact that the claimant neither has preferred any appeal nor cross-objection. Even then, in appropriate cases taking aid of Order XLI, Rule 33 Code of Civil Procedure, the appellate court can award interest in the interest of justice.

18. For the aforesaid reasons, while exercising powers and jurisdiction of the appellate court, it is directed that u/s 110-CC of the Act, the claimant Respondent No. 1 is entitled to get interest at the rate of 10 per cent per annum with effect from the date of presenting the claim petition before the Tribunal, i.e. 10.1.1979 till its realisation.

19. From the discussion aforesaid. I do not see any force in this appeal which fails and is hereby dismissed. It is further directed that the Respondent No. 1, claimant is entitled to get interest on compensation of Rs. 8,000/- from the date of his presenting application, i.e., with effect from 10.1.1979 till its realisation. Since the Respondent No. 1-claimant has not been represented through counsel. I make no order as to costs.