
(1981) 03 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 15 of 1975

Shaktimal

APPELLANT

Vs

The Union of India (UOI) and Another

RESPONDENT

Date of Decision : 05-03-1981

Acts Referred:

Citation : (1981) WLN 94

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.C. Jain, J.—This is an appeal by the claimant against the Award of the Motor Accidents Claims Tribunal, Jodhpur, dated 30-5-1974 whereby a sum of Rs. 8,000/- was awarded by way of compensation to the claimant, who had suffered injuries in an accident, which took place on 6-5-1971.

2.The appellant's case is that on 6-5-1971, at about 2.30 p.m., he was going on a cycle at. Paota "B" Road. When he was on left side of the road Jeep No. U.B. 28523, driven by Major V.K. Kochar, came from behind and collided against the claimant and his cycle, as a result of which he fell and sustained four injuries, out of which two were grievous. There was a comunited intro inochentric fracture of the right femur and the second fracture was of the neck of the right radius. He was lifted by Kan Singh (P.W. 2) and Sumermal (P.W. 3). The Jeep stopped at some distance when hue and cry was raised. Thereafter, Major Kochar brought his car and took the appellant to the hospital. First the appellant was taken to the Military Hospital for first aid. Subsequently, he was admitted into Mahatma Gandhi Hospital, Jodhpur. The appellant submitted a claim application for award of compensation of Rs. 25,000/- stating that he sustained injuries on account of rash and negligent driving of Major V.K. Kochar. The defence was that the accident took place not in the manner, as alleged by the claimant. The claimant is hard of hearing. Horn was blown and suddenly the claimant, in order to go to the right hand side of the road, took a turn and came in the middle of the road.

The Jeep was immediately swerved towards the right, but could not be swerved more in the right, as there was a pit. There were hook poles fitted in the Jeep and it might be that the appellant came into the contact of the hook poles. It was stated that there was no negligence on the part of the driver of the Jeep, who was Anil Baral Mahato. A case of contributory negligence was also pleaded and it was prayed that the claim application be dismissed.

3. Necessary issues were framed. The claimant examined, himself as (PW 2), Sumermal (PW 3), Dr. Prasanmal Bhandari (PW 4) and two more doctors Shiv Kumar (PW 5) and G.P. Sinha (PW 6). In rebuttal, statements of Major V.K. Kochar (PW 1) and Major M.S. Parmar (D.W. 2) were recorded. After hearing the arguments, the learned Tribunal decided issue No. 1 in favour of the claimant and held that the accident took place on account of rash and negligent driving by Shri V.K. Kochar. As a result of the accident, the claimant sustained injuries and the Tribunal awarded a sum of Rs. 8,000/- by way of compensation. Dissatisfied with the Award, the claimant has preferred this appeal. The respondents have also filed cross-objections.

4. I have heard Shri P.C. Mathur, learned Counsel for the claimant-appellant and Shri N.P. Gupta and Shri D.M. Lodha, learned Counsel for the respondents.

5. The first important question, which requires consideration in this appeal, is as to whether the finding recorded on issue No. 1, is correct or not. I have been carried through the statements of the claimant Shaktimal (PW 1) and two eye witnesses of the occurrence, viz., Kansingh (PW 2) and Sumermal (PW 3) on the side of the claimant and the statements of Major V.K. Kochar (DW 1) and Major M.S. Parmar (DW 2). The learned Tribunal found the evidence of the claimant independent, weighty and credible, and, on that basis decided issue No. 1 in favour of the claimant. The crucial question, in order to determine the negligence of the driver of the Jeep, is on what part of the road the impact took place. According to the claimant's evidence, the actual impact took place on the left side of the road. This case has been emphatically denied by the claimant that he suddenly swerved his cycle and took a turn towards the middle of the road and the impact took place in the middle of the road. Both Kansingh and Sumermal have clearly and categorically stated that the claimant was cycling on the left side of the road. Sumermal has been very specific in his statement as to on what side of the road the claimant was actually cycling. His statement is that the cycle was at a distance of about 1/2 feet from the left edge of the road and the Jeep passed closely by the side of the cycle. It has been denied by both the witnesses that the actual impact took place not from the front side of the Jeep, but by its back portion, and, it has been further denied by Sumermal that the impact took place on the right corner of the road. Both the witnesses, namely, Kansingh and Sumermal do not appear to be in any way interested in the claimant. The credibility of these witnesses, in my opinion, is not in any way effected and if the entire evidence is weighed then there cannot be any reason to disregard the testimony of these independent witnesses. According to respondents, the driver

of the Jeep was Mr. Mahato, who has not been examined in the case. The claimant's case is that the two officers were sitting in the front side of the Jeep and one person was sitting in the rear portion of the Jeep. If it was not true and if Mahato was driving the Jeep, it was all the more necessary for the respondents to have examined Mr. Mahato. Although the claimant's case is definite as to who was driving the Jeep and when the claimant's evidence is believed, then it can be said that the case put forward by the respondents that Mr. Mahato was driving the Jeep, does not appear to be true. In view of the respondents' case, it was necessary for them to have examined Mr. Mahato, and, if he had been produced the veracity of the version of the respondents could have been judged. In the present case it is true that no report of the occurrence has been lodged and there had been no investigation conducted by the police, else a better and more clear picture of the occurrence would have been available. But, in my opinion, two independent witnesses have been examined by the claimant and issue No. 1 has been decided on their evidence. In the light of their testimony, issue No. 1 has been rightly decided.

6. The next question is as to whether the compensation awarded is in any way excessive or less. Shri P.C. Mathur, learned Counsel for the appellant, invited my attention to the statement of Dr. G.P. Sinha regarding the physical condition of the injured. He urged that the claimant cannot ride cycle and sit properly in a flexing condition and his right leg has been shortened by 1 1/2". There remained no disability as a result of the fracture of the right radius. The question is that for the injuries suffered by the claimant, what compensation would be fair and reasonable, the claimant was aged about 50 years at the time of the accident. It is true that he has suffered permanent disability and two deformities, as mentioned in Certificate Ex. 3. The claimant had to undergo treatment for a period of about six months. Considering the age of the claimant, in my opinion, the compensation appears to be quite reasonable and fair and it does not call for any interference.

7. In the result, there is no force in the appeal and in the cross-objections. The appeal and the cross-objections are, therefore, dismissed. The parties shall bear their own costs.