
(2003) 02 MP CK 0024

In the Madhya Pradesh High Court

Case No : M.A. No"s. 419 and 563 of 1997

State of Madhya Pradesh

APPELLANT

Vs

Vivek Agrawal and Others

RESPONDENT

Date of Decision : 25-02-2003

Acts Referred:

Citation : (2004) ACJ 893

Hon'ble Judges : Bhawani Singh, C.J.;Ajit Singh, J

Bench : Division Bench

Advocate : Shashank Shekhar, G.A, for the Appellant; Sanjay Agrawal and S. Gupta, for the Respondent

Judgement

Bhawani Singh, C.J.—Both these appeals, State of Madhya Pradesh v. Vivek Agrawal, M.A. No. 149 of 1997 and Vivek Agrawal v. State of Madhya Pradesh, M.A. No. 563 of 1997, are proposed to be decided by this judgment since they arise out of the same award of Motor Accidents Claims Tribunal, Bhopal in M.C.C. No. 317 of 1996 dated 17.1.1997.

2. On 11.3.1990 at about 11 a.m., Vivek Agrawal (claimant) was going on his motor cycle from Arera Colony to his residence, D 11/20, Char Imli, Bhopal. On the crossing of Reserve Bank Colony, Mohan Singh (driver) came from Char Imli driving jeep CPZ 4112 rashly and negligently and hit the motor cycle of the claimant without giving signal when claimant was turning towards his residence. Claimant fell down, came under the right side tyre of the jeep, sustained injuries and became unconscious. Jeep driver sped away from the spot. The claimant was brought home in state of unconsciousness, shifted to New Bhopal Hospital and after preliminary treatment, taken in serious condition to Hamidia Hospital, Bhopal, where he remained hospitalised up to 16.3.1990. On account of the accident, claimant suffered fracture of right hand, shoulder, feet, left leg, etc. He was also taken to Dr. K.T. Dhplakia and Dr. H.R. Jhunjhunwala, Bombay for treatment. There he had remained from 16.3.1990 to 9.4.1990. After his treatment, the physical condition of the claimant did not improve significantly,

disability prevailed with the claimant.

Claimant who was a brilliant student throughout his education had passed IAS Preliminary Examination in 1989 and 1992 but could not sit in the final examination due to injuries suffered in this accident. His future has been marred. His eyesight has diminished. He cannot move about nor can he run and play. Accordingly, compensation of Rs. 14,40,000 is claimed. State of Madhya Pradesh has denied the claim. Taking place of accident with vehicle CPZ 4112 has been denied. Therefore, it is submitted that the claim be rejected. Insurance company with which the motor cycle was insured has not admitted the liability. It is submitted that it has been impleaded without any basis.

3. On the pleadings of parties, Claims Tribunal framed issues, parties led evidence and thereafter the Claims Tribunal held that the accident took place as alleged resulting in serious injuries to the claimant resulting in permanent disablement to the extent of 27.3 per cent to shoulder and 45 per cent to the left foot. Compensation of Rs. 1,45,000 has been awarded with interest at the rate of 12 per cent per annum under various heads. Against this award, State of Madhya Pradesh and the claimant have filed these appeals, former seeking setting aside of the award and the latter, enhancement of the same. Counsel for the parties heard and record perused.

4. First question for determination is: whether the jeep bearing registration No. CPZ 4112 owned by State of Madhya Pradesh and driven by Mohan Singh caused the accident? Mr. Shashank Shekhar, the learned counsel for the State of Madhya Pradesh referred to evidence on this question and submitted that in the absence of satisfactory evidence, finding that the accident was caused by this jeep cannot be sustained. Therefore, conclusion of the Claims Tribunal that the accident was caused by this jeep is liable to be set aside. Mr. San-jay Agrawal, learned counsel appearing for New India Assurance Co. Ltd., submits that the accident was not caused by the motor cycle of the claimant and jeep CPZ 4112 was not insured with it.

5. After going through the evidence, it is plainly clear that the accident was caused by Government jeep No. CPZ 4112. The claimant states that this jeep caused the accident and stated this fact to his father in the hospital. Vijay Taran is another eyewitness to the occurrence. The most significant statement given by this witness is that the jeep was being driven by sardar (Sikh). This fact completely demolishes the statement of witnesses of the State alleging that the jeep could not be taken out without permission of Executive Engineer and chowkidar has also stated that the jeep was in the garage on the day of occurrence being Holi holiday. Evidence clearly points out that the jeep was being driven by sardar who happens to be driver Mohan Singh of the offending vehicle owned by the State. After causing the accident, he ran away from the place instead of halting the jeep and taking the claimant to hospital for treatment. Conduct displayed by him, therefore, reinforces our conclusion that this jeep was involved in accident which was caused by driver Mohan Singh and the statement

that the jeep could not be taken out of the garage without permission of the Executive Engineer and the chowkidar supporting this claim cannot be accepted since they have said so to avoid liability to pay the compensation and save the driver from administrative action. Above all, driver Mohan Singh has not come in the witness-box to say that he did not take the jeep out of the garage on that day nor caused the accident as alleged by claimant. Therefore, conclusion drawn by the Claims Tribunal is sustainable and is confirmed. Consequently, M.A. No. 419 of 1997 has no merit and the same is liable to be rejected.

6. Next we turn to examine the claim of Vivek Agrawal for the enhancement of compensation. From the evidence, it seems that the claimant was a brilliant student. He had passed two Preliminary Examinations of Indian Administrative Service. He could not appear in the final examination due to the accident and injuries sustained by him. It is also evident that he had been selected in Indian Air Force, Administrative Branch 3 years prior to the accident. In this accident, he suffered compound fracture of left foot, fracture of humerus bone, upper part and also femur bone, head injury and injury on above part of the waist. According to Dr. Sharma, he was referred to Bombay. Doctor has proved the documents of treatment in the hospital. A plate was fixed at the foot joint. Screw has been fixed and the plate was removed later after operation. According to Dr. Sharma, claimant suffered permanent disability of 27.3 per cent to shoulders and 45 per cent to foot. The permanent disability could be minimised to some extent by operation in future. The claimant cannot play nor can he carry weight. He cannot live a normal life. During treatment, he must have undergone great pain and suffering due to the injuries, incurred expenditure on treatment, transport, medicines, special diet, attendant, etc. Therefore, it seems to us that the Claims Tribunal has not awarded just compensation to appellant. The appellant is entitled to compensation as follows:

(1) Permanent disability	Rs. 1,25,000
(2) Pain and suffering	Rs. 20,000
(3) Medical treatment including future expenditure on treatment and operation	Rs. 50,000
(4) Special diet	Rs. 10,000
(5) Transport	Rs. 10,000
(6) Attendant	Rs. 5,000
(7) Loss of enjoyment of life and other acquisitions	Rs. 30,000
----- Total	Rs. 2,50,000 -----

Accordingly, the claimant is awarded compensation of Rs. 2,50,000 (rupees two lakh fifty thousand) payable by the State of Madhya Pradesh within a period of two months. Enhanced compensation to carry interest at the rate of 9 per cent per annum from the date of application till payment.

7. Consequently, MA. No. 419 of 1997 is dismissed and M.A. No. 563 of 1997 is allowed in terms aforesaid. Parties to bear their own costs.