

(1986) 09 RAJ CK 0044

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 137 of 1984

Surendra Kumar

APPELLANT

Vs

B.R. Oil Mills and Others

RESPONDENT

Date of Decision : 03-09-1986

Acts Referred:

Evidence Act, 1872 — Section 145

Citation : (1987) ACJ 539 : (1986) RLW 689 : (1987) 1 WLN 8

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Guman Mal Lodha, J.—Surendra Kumar has filed this appeal u/s HOD of the Motor Vehicles Act, 1939 against the judgment and award of the Motor Accidents Claims Tribunal; Bharatpur dated 24th February, 1984 by which the appellant's claim against the respondents for recovery of Rs. 60,000/- for injuries sustained in an accident, was rejected.

2. The Motor Accidents Claims Tribunal, relying upon the petitioner-appellant's earlier statement in criminal case, in which he has stated that there was no negligence or absence of care or caution on the part of the driver, held that the accident was not on account of negligence or rashness of the driver. The learned Counsel for the appellant submits that this was never put to the witness in cross examination for controverting and without that the statement before the Tribunal could not have been considered.

3. I have carefully gone through the relevant record and I find that the Tribunal has committed serious mistake in holding that accident by car No. WMC 8124 was not on account of the negligence and rashness of the driver who was driving the car. It was not permissible for the Tribunal to use the earlier statement, of the criminal case, against the appellant-petitioner without confronting him u/s 145, Evidence Act. This is requirement not only of law but principles of natural

justice and equity also that one must be allowed to explain in what circumstances he gave earlier statement and whether he at all gave it. It is more so, when victim is being deprived of his compensation on the basis of it.

4. The driver of the car did not appear in the case nor he rebutted the statement of the appellant-petitioner nor he filed a reply. The site plan Ex 68 of the spot of the occurrence prepared by the police authorities shows that the accident took place in such a manner that the Ambassador car even after crossing the foot path it had dashed against a tree which was standing about 15 ft. away from the extreme corner of the foot path itself. The claimant who was sitting in the car suffered injuries resulting in permanent disablement to his left arm and the right leg and the knee. Apart from the above the principles of *res ipsa loquitur* applies. I am therefore, convinced that the appeal deserves to succeed and consequently it is accepted. The petitioner who was sitting in the car with the express authority of the owner of the car and therefore was entitled to compensation for the injuries sustained by him. The insurance company covered the complete risk of all the persons driving in the car or even otherwise who received injuries on account of the accident caused by the driver of the car and the policy being comprehensive one the insurance company could not escape the liability to pay compensation.

5. I am further of the opinion that the Tribunal committed serious lapse in not considering the impact and implication of Section 92A of the Motor Vehicles Act.

6. Consequently the appeal is allowed. The Tribunal has come to the conclusion that the compensation of Rs. 20,000/- only could have been allowed to the claimant and I have got no reason to take different view in this matter. The appellant has also not made any submission to convince for increasing this amount.

7. Consequently the appeal is allowed. The appellant would get compensation of Rs. 20,000/- from all the three respondents, who are jointly and severally liable. The appellant would also get the interest at rate of 12 per cent from the date of application till the date of realisation. The parties would bear their own costs of their appeal.