
(2017) 05 MP CK 0002
In the Madhya Pradesh High Court
Case No : 257 of 2004

Virendrasingh Rana

APPELLANT

Vs

Pratap Singh & Ors.

RESPONDENT

Date of Decision : 11-05-2017

Acts Referred:

Citation : (2017) 05 MP CK 0002

Hon'ble Judges : Vivek Agarwal

Bench : Single Bench

Advocate : R.P.Gupta, ?B.D.Verma,?R.V.Sharma

Final Decision : Allowed

Judgement

1. Claimant has filed this appeal being aggrieved by award dated 10.11.2003 passed by the Court of 8th Additional Motor Accident Claims Tribunal, Gwalior, whereby claim case No.11/2002 has been rejected on the ground that claimant has failed to point out negligence of the driver, as a result he is not entitled to any compensation.

2. Brief facts leading to the present appeal are that on 24.2.1998 at about mid night claimant/appellant was travelling from Bhind to Gohad in a car bearing No.MP 07 W 1784 driven by respondent No.1 which was insured with respondent No.3. As per the claimant, respondent No.1 was driving very carelessly and at high speed, as a result steering of the car wavered and car collided with a tree on roadside. It is alleged that due to the accident, claimant suffered multiple injuries and his spleen had burst. The incident of accident was reported at police Choki, Barohi, Distt. Bhind and thereafter FIR was lodged at police Station, Dehat Bhind, and the car was confiscated and claimant was taken to District Hospital where he was given first aid and

thereafter he was treated at K.G.Hospital, Morar, where he was operated for removal of spleen and remained admitted in K.G.Hospital from 2.3.1998 to 15.3.1998. It is submitted that he was working as General Secretary of a political

party in the District Unit and because of removal of spleen he has suffered infirmity and is not able to perform his work properly.

3. Defendant No.1 in his defence had taken a stand that he was driving the car at normal speed when all of a sudden a blue bull (Generic name : Rohira) came on the road, as a result incident had taken place and there was no negligence from his side and the car was owned by respondent No.2 and was insured by respondent No.3, therefore, he has no liability to pay any compensation. Insurance Company had taken a plea that driver was not having a valid driving licence to drive the vehicle and since the vehicle was driven in violation of the conditions of insurance policy, the Insurance Company is not liable to pay any compensation.

4. Learned Claims Tribunal has recorded a finding that as far as plea of driver not having a valid driving licence is concerned, that was not correct inasmuch as Insurance Company had failed to discharge this burden that driver was not having valid driving licence, but it also recorded a finding that there is contradiction in Dehati Nalish which was recorded by claimant himself inasmuch as Ex.P/24 is the copy of Rojnamacha and claimant had given intimation at police Station, Barohi, that he was travelling in car No.MP 07 W 1784 and that car was driven by Pratap Jatav. Because it was raining and weather was not conducive, car had slipped from the road and collided with a tree, as a result of which they sustained injuries. There is no mention of car being driven at a very high speed and negligently, whereas the story which was developed by respondent/driver in regard to car meeting with an accident is because of a blue-bull came on the road, accident had occurred. Thus, holding that unless and until negligence of driver is proved, the Insurance Company is not liable to pay any

compensation, claim petition has been dismissed.

5. Learned counsel for the appellant submits that connotation of negligence is to be seen from particular context and the findings recorded by the Claims Tribunal are erroneous. It is submitted that slipping of the vehicle itself was an act of negligence, and therefore, the Claims Tribunal erred in not awarding compensation by recording a finding that no negligence was committed.

6. On the other hand, learned counsel for the respondents have supported the decision of the Claims Tribunal and learned counsel for the Insurance Company has placed reliance on the judgment of this Court passed in M.A.No.760/2001 (Jitendra Sharma Vs. Yaduveer Singh & Ors.) on 30th August, 2016, wherein this Court after quoting a paragraph from the judgment in the case of Minu B. Mehta & Anr. Vs. Balkrishna Ramchandra Nayan & Anr. as reported in AIR 1977 SC 1248 held that onus was on the claimant to prove the negligence of driver of the bus in which he was travelling, to claim the amount of compensation. Thus, placing reliance on this decision, learned counsel submits that since the claimant has failed to prove the negligence, claimant is not entitled to any compensation. He has also placed reliance on the judgment of Karnataka High Court in the case of

Appaji (since deceased) and another v. M.Krishna and another as reported in 2004 ACJ 1289 wherein it has been held that if death was caused on account of rash and negligent act of the deceased himself, claim for death of a person who himself is responsible for the accident is maintainable under Section 163-A. It has been held that Parliament did not intend to provide compensation to the person responsible for the accident on structured formula basis; neither the provisions nor the background in which the same were introduced disclose any such intention. Similarly, reliance has been placed on the judgment of this Court in the case of Oriental Insurance Company Ltd. Vs.Sanju Bai and other as reported in 2016 ACJ 1000 wherein

the Court has held that claim application filed by victim of accident under Section 163-A is maintainable, but the owner/Insurance Company is entitled to plead and prove that victim himself was the victimizer to avoid the liability.

7. On the other hand, learned counsel for the claimant has placed reliance on the judgment of the Supreme Court in the case of M.S.Grewal and another v. Deep Chand Sood and others as reported in 2001 ACJ 1719, so also on the judgment of Madhya Pradesh High Court in the case of Gayatri Bai and Another v. Ahmadji and others as reported in 1999(1) T.A.C.651 (MP) as well as to the judgment of the Supreme Court in the case of Kaushnuma Begum and others v. New India Assurance Co. Ltd. and others as reported in 2001 ACJ 428. In the case of Kaushnuma Begum supreme Court has held that owner of vehicle is liable for damages to a person who suffered on account of accident even if there is no negligence on the part of driver or owner because accident occurred when the vehicle was in use and it was held that rule of strict liability propounded in Raylands v. Fletcher is applicable in claims for compensation made in respect of motor accidents.

8. In the Law of Torts by Ratanlal and Dhirajlal updated 26 th Edition by justice G.P. Singh, Former Chief Justice of Madhya Pradesh High Court, it has been mentioned that there are three constituents of negligence; (i) duty to take care (ii) breach of duty and (iii) consequential damage. It is mentioned that actionable negligence constitutes in the negligence of use of ordinary care or skill towards a person to whom defendant owes the duty of observing ordinary care and skill, by which negligence the plaintiff has suffered injury to his person or property. According to Winfield "negligence as a tort is the breach of legal duty to take care which results in damage, undesired by the defendant to the plaintiff". Therefore, in this backdrop the concept of negligence is to be examined and chronology of events leading to the accident is to be appreciated. As per Rochnamacha entry, it is mentioned that because of weather and rain car had slipped and collided with a tree on the roadside. Under such facts and circumstances, the duty of the driver was to drive cautiously when the weather is not conducive and when the road conditions are such that it may create slippery conditions on the road for several reasons like mixing of dirt and water making the road slippery or mixing of vehicular emission with water or dirt or both

rendering the vehicle slippery and also tyres of vehicle are not having appropriate grip and groove, and these may be the conditions which will determine the speed of driving and skill of driving. It is true that in Dehati Nalishi only one facet has been recorded regarding slipping of vehicle due to rain and thunderstorm and its collusion with tree, but at the same time, if the vehicle is being driven in such weather condition, then a duty is cast on the driver either not to drive and wait for rain and thunderstorm to pass or to take all possible precautions so that vehicle may not slip and collide with a tree. This degree of care should have been higher looking to the time of the accident. Collusion with a tree in itself gives a presumption to the facet of negligence inasmuch as under such weather conditions also if vehicle would have been driven with due care and caution, then it would not have slipped and collided with a roadside object. Therefore, in the opinion of this Court, Claims Tribunal has failed to understand and appreciate the concept of negligence into its three components, namely duty to take care, breach of duty and consequential damage and has wrongly held that there was no negligence on the part of the driver, and therefore, denied compensation. In the opinion of this Court, once vehicle had met with an accident and that accident is not disputed, then in the light of the law laid down by the Supreme Court in the case of Kaushnuma Begum (supra) applying the rule of strict liability propounded in Raylands v. Fletcher compensation is payable. The decision rendered by this Court in the case Jitendra Sharma (supra) cited by learned counsel for the Insurance Company is not applicable in the facts and circumstances of this case.

9. As the claimant was made to lose his spleen and as per medical jurisprudence spleen is an organ which provides immunity against infections and removal of spleen results in reduced immunity of the body, claimant has been subjected to unwarranted and unwanted exposure to infections because of reduced immunity. Therefore, in the interest of justice, this Court is of the opinion that a total sum of Rs. Two lac will meet the ends of justice for the expenditure incurred by the claimant in his treatment inasmuch as there are bills of Kalyan Memorial Hospital, Gwalior, to the tune of Rs.40,085/- duly supported by discharge ticket etc. and also investigation reports, ultra sonography etc. are on record, and thereafter there is a specific averment in the claim petition that claimant, who was General Secretary of a political party and owner of 60 Bigha of land, was required to be admitted in hospital twice firstly at Bhind and thereafter at Gwalior and he has already lost his several working days which are very crucial for a political worker & agriculturist and also in view to compensate him for pain, agony and future treatment. Therefore, award of the Claims Tribunal is set aside. Claim petition is allowed. It is directed that claimant will be entitled to a sum of Rs.2,00,000/- (Rs. Two Lac Only) which will be jointly and severally payable by respondents No.1 to 3 within a period of three months.