

(1992) 11 MP CK 0011
Madhya Pradesh High Court
Case No: None

Devi Prasad Yadav

APPELLANT

Vs

Bhaiyaram and Others

RESPONDENT

Date of Decision: Nov. 9, 1992**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 110A

Citation: (1993) 2 ACC 62**Hon'ble Judges:** P.P. Naolekar, J**Bench:** Single Bench

Judgement

P.P. Naolekar, J.

The appellant/Claimant Devi Prasad Yadav filed a petition before the Motor Accidents Claims Tribunal, Seoni u/s 110-A of the Motor Vehicles Act Claiming compensation of Rs. 1,20,000/- as damages for the injuries sustained by him in an accident that occurred on 24.12.1983 by Jeep CPZ 1871 driven by respondent No. 1 Bhaiyaram and owned by respondent No. 3 State of M.P.

2. The Claims Tribunal assessed the damages at Rs. 31,500/-. However, the Tribunal was of the opinion that the appellant failed to prove that the injuries were sustained on account of the accident by Jeep No. CPZ 1871 driven by respondent No. 1 Bhaiyaram and owned by respondent No. 3 the State. The aforesaid finding was arrived by the Tribunal on the ground that the First Information Report made by Devi Prasad (A.W. 1) does not contain the name of the driver or the number of the vehicle, although it is stated by Devi Prasad in his statement in Court that he knew Bhaiyaram from before. The Claims Tribunal has also taken the view that Girish Kumar Shrivastava (A.W.3) must have come to know about the number of the jeep from some other source and he has not seen the incident nor recognised the driver and, therefore, he is not a reliable witness. However, the Claims Tribunal has relied on the diary maintained by Rampal Singh (N.A.W. 1) wherein it has been shown that the jeep was in his control on the relevant date, i.e. on 24.12.1983 when he was on

tour.

3. Devi Prasad has examined himself as a witness and has stated before the Court that he met with the accident by vehicle CPZ 1871 which was driven by Bhaiyaram and he knew Bhaiyaram from before, as he used to come to Rampal Singh on Saturday's and Sunday's at the residence in Girija Kunj, Seoni. It is further stated that the jeep came from Jabalpur side with great speed and dashed against his Luna, as a result thereof he fell and sustained injuries; he was admitted in the hospital at Seoni for 15 days and thereafter was sent to Jabalpur for further treatment. In his statement the witness further stated that when he was injured and was admitted in the hospital, police have come and made inquiries; at that time he has given the number of the vehicle and the name of the driver. However he could not say as to why this did not find place in the F.I.R. It is just possible that Devi Prasad was seriously injured and was admitted in the hospital and was under great mental and physical pains and, therefore, would not have reported the name of the driver or the number of the jeep to the police party, but if the police by their own independent investigation had come to know about the number of the vehicle and name of the driver and had started criminal prosecution against Bhaiyaram and seized the jeep from the office that will be a sufficient circumstance to show that the Jeep CPZ 1871 met with an accident and at the relevant time was driven by Bhaiyaram. A Criminal case being started against Bhaiyarm and the Jeep was seized by the police were admitted by Bhaiyaram when he was examined as N.A.W.1 and, therefore, non-mention of the number of jeep and name of the driver in the F.I.R. cannot be given much weight and the probability of the Jeep CPZ 1871 having met with an accident cannot be dislodged.

4. Another witness examined Girish Kumar (A.W. 3) has stated that he saw the accident and he was on the spot; when he rushed to the spot of the accident, he saw Bhaiyaram was driver of the vehicle; he has noted down the number of jeep on his palm and when the police recorded his statement he gave the number of the Jeep. The statement of Girish Kumar (A.W.3) recorded by the police is proved by Head Constable, Sewaram (N.A.W. 2). Bhaiyaram, in order to avoid the responsibility of driving the vehicle at the relevant time has stated before the Court that from 11.00 a.m. to 3.40 p.m. on the relevant date, i.e. 24.12.1983 the jeep was standing at the house of the Commandant, (N.A.W. 1) whereas the statement of Rampal Singh is to the effect that the jeep was standing from 11 a.m. to 4 p.m. at his residence on 24.12.1983. He has not stated anything about handing over of the key to him by Bhaiyaram. Thus, these witnesses cannot be relied on for proving the fact that the jeep was standing from 11 a.m. to 4 p.m. and was not in use.

5. Another very material circumstance that has been overlooked by the Tribunal is that in the normal course no body wants to falsely implicate a person who has not caused injuries to him, unless and until there is a specific motive to falsely implicate another person. There is not an iota of evidence in this case to show that there was

pervious animosity between the appellant Devi Prasad and driver Bhaiyaram or the Area Commandant Rampal Singh. In the absence of any motive, it is difficult to believe that Devi Prasad, who has sustained injuries, will falsely implicate Bhaiyaram.

6. On an over all consideration of the evidence on record, I am of the opinion, that the finding arrived at by the Claims Tribunal that the Jeep C.P.Z. 1871, driven by Bhaiyaram, was not involved in the accident is not correct. The Claims Tribunal has already assessed damages at Rs. 31,500/-. not correct. The Claims Tribunal has already assessed damages at Rs. 31,500/- For the reasons stated above I hold that Jeep CPZ. 1871 driven by Bhaiyaram was involved in the accident and the accident was caused by Bhaiyaram by his rash and negligent driving of the vehicle and, therefore, driver Bhaiyaram and State of Madhya Pradesh, as owner of the vehicle, are liable to pay compensation of Rs. 31,500/- jointly and severally. As a result thereof, the appeal is allowed and the order of the Trial Court is set aside and the appellant is entitled to receive compensation as assessed by the Claims Tribunal, i.e. Rs. 31,500/-, with interest at the rate of 6% per annum from the date of filing of the application till realisation. In the circumstances of the case, there shall be no order as to costs.