(1988) 10 MP CK 0010

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Appeal No. 38 of 1982

Bhanwarlal		APPELLANT
	Vs	
Sardar Kabul Singh and others		RESPONDENT

Date of Decision: Oct. 15, 1988

Acts Referred:

- Evidence Act, 1872 - Section 137

Citation: (1989) MPLJ 16

Hon'ble Judges: S.K. Dubey, J

Bench: Single Bench

Advocate: B.K. Samdani, for the Appellant; Bhasin and A.K. Khan, for the Respondent

Final Decision: Allowed

Judgement

S.K. Dubey, J.

A poor, illiterate and rustic villager has filed this appeal u/s 110-D of the Motor Vehicles Act, 1939 (for short "the Act"), against the award dated 4th November, 1981, passed in Claim Case No. 33/79, by Shri L.J. Mandlik. Member, Motor Accidents Claims Tribunal, Ujjain, whereby the claim for compensation for the injuries arising out of the motor accident occurred on 25-1-1979, by the truck No. M.P.M. 3369, owned by the respondent No. 1, driven by respondent No. 2 and insured by respondent No. 3, has been dismissed.

Brief facts leading to this appeal are : When the claimant-appellant was going on his bicycle the respondent No. 2 came from behind in a high speed and dashed the cyclist, as a result of which the cyclist fell down and the cycle was crushed. The claimant-appellant received multiple severe injuries i.e. fracture in his right leg. He remained under plaster for a period of about 6 months. After the removal of the plaster, he became lame and there is shortening of leg by 3". Thus, there was permanent disablement in the right leg. It is also alleged that the claimant lodged the report at 4.30 a.m. in the morning in the concerning police station. The claimant

submitted an application on 23-7-1979 before the Motor, Accidents Claims Tribunal, Ujjain, whereby he claimed compensation of Rs. 53,000/- for the injuries received by the use of the motor vehicle. After the notice, the owner, driver and insurer of the vehicle filed their written statements separately. The main contest of the non-applicants before the Tribunal was that their truck was not involved in the accident nor it went towards the site or place of the accident but went through some other site. During the trial, the claimant examined himself as PW-1 and one eye witness PW-2 Balwant. PW-1 in para 1 specifically stated on oath that the truck, which caused accident and injuries to him was of Sardar Kabulsingh, i.e. the owner of the vehicle, the respondent No. 1. In paras 10, 15 and 18 also the claimant affirmed on oath that it was the truck No. MPM 3369. During the cross-examination, the respondents confused him in para 18, by asking questions in respect of his illiteracy and difference in letters and numbers in English and Hindi. The respondents did not put their case in cross-examination that it was not their truck, which caused injuries to him nor the other witnesses were also examined on the point, that the truck did not go towards the place of the accident, but went towards some other place. PW-2 Balwant, who is an eye witness also affirmed on oath that it was the same truck MPM 3369, caused accident, as a result of which the claimant-appellant received injuries. To this witness also, the respondents did not put their case in the cross-examination, as aforesaid. The claimant-appellant also examined one Head Constable, who proved the First Information Report (Ex. P-8). To this witness also, there is no cross-examination at all. The respondents have examined the owner Kabulsingh as DW-1 and Bhagirath DW-2, though this witness in examination-in-chief has denied that no accident was caused by him on 25-1-1979 on Sanwer-Indore Road but this witness has not proved by any other evidence that his truck though went on trip on 25-1-1979 went to some other place and not to the site or place of the accident. Except these two witnesses on behalf of the respondents, there is no other evidence to support the case of the defence.

On the basis of the total evidence, the learned Tribunal held that the claimant has failed to prove the identity of the truck and as such it cannot be said that the accident occurred with the truck No. MPM 3369, owned by respondent No. 1, driven by respondent No. 2 at the relevant time and insured by respondent No. 3. The Tribunal determined compensation of Rs. 15,245.85 only for the injuries in the leg. As the respondent was not held to be liable to make any payment, hence interest was not awarded.

Shri B. K. Samdani, appearing on behalf of the appellant-claimant, contended that the Judges are not the computers and the Courts have to see the probabilities particularly in Civil Cases. The burden on the claimant is not that of criminal charge. Learned counsel contended that it was the duty of the respondents to cross-examine the claimant and his witnesses to prove their case, as pleaded, in their written statement but the respondents have failed to do so. In such circumstances, the tribunal merely on the discrepancy with respect to the number,

which has arisen in the cross-examination and also not mentioning of the number of the vehicle in the F.I.R. was not right in dismissing the claim.

Shri Sudhir Bhasin, learned counsel appearing for the respondents Nos. 1 and 2 and Shri A. H. Khan, learned counsel appearing for respondent No. 3, contended that the findings of the Tribunal are based on the evidence. The findings are not perverse and the appellate court will be slow to disturb the findings in the appeal. Learned counsel contended that from the evidence, it is amply proved that the claimant has failed to establish that the accident occurred with the truck in question and also that at the relevant time of the accident, the respondent No. 2 was driving the truck. Therefore, the findings of the Tribunal on this issue are not liable to be interfered with.

After hearing the learned counsel for the parties, I am of the opinion that the Tribunal Has in fact misdirected itself on the evidence on record in holding that the identity of the truck is not established and also that the truck in question was not the same, which dashed against the appellant-claimant. It is true that the trial Court is the best Judge and its findings on facts should not be lightly interfered with. As alluded from the evidence, it is clear that the statement on oath corroborated by another independent eye witness Balwant has proved that the accident was caused by the truck No. MPM 3369, which was being driven by the driver of the owner. On the face of the evidence produced in the case by the parties, the contention of the learned counsel for the respondents cannot be accepted that because in the FIR the number of the truck has not been mentioned, as such the liability cannot be fastened on the respondents. It is settled law even in the criminal trials, the FIR is not a substantive piece of evidence, the object of the FIR is to set the criminal law in motion and after the lodging of the FIR it is the duty of the police to investigate the offence. Further the FIR can be used either for the purpose of contradicting the lodger of the FIR or for the purpose of corroboration. The FIR is not an encyclopaedia, where all the details can be given nor it is like a plaint in the civil suit, where the complete case has to be pleaded. When the claimant and his witness affirmed on oath in examination-in-chief and thereafter there was cross-examination, an illiterate person was made to confuse with respect to the digits of the number of the vehicle in Hindi and English. The respondents did not dare to cross-examine the claimant and his witnesses with respect to the identity of the vehicle, i.e. colour, size, shape etc Not only this, the respondents did not put even their case in cross-examination. For demolishing the case of the claimant, it is incumbent on the part of the respondents to cross-examine the witnesses on the facts stated in their examination-in-chief and the case of the respondents ought to have been put to them. u/s 137 of the Evidence Act, a stray line in the cross-examination cannot be read to throw out the case of the claimant. The statement in the examination-in-chief and cross-examination is to be read together for correct appreciation to find out the truth therefrom. Mere reading one sentence or few sentences of the cross-examination, completely ignoring the chief portion

and other portions of the cross-examination, in my opinion, was very much misleading particularly in case of motor accident, where the drivers usually after hitting a person run away. From the evidence it does not reason to appeal that only because of confusion in the digits of vehicle number by a rustic illiterate claimant, the claim petition for compensation for the injuries arising out of the motor accident should be thrown out. Unless, of course if it is found that the statement of the witnesses suffers from inherent weaknesses which has been said earlier, I do not find it so. Therefore, it cannot be held that the accident did not occur with the vehicle of the respondents nor the fact of the accident with the vehicle of the respondents Nos. 1 and 2 was in non-existence, under the particular circumstances and facts of the case. Therefore, In my opinion, all minor inconsistencies in the evidence of the claimant and by giving an undue weight of non-mentioning of the number of the vehicle in the FIR by the Tribunal, the Tribunal misdirected itself in holding that the accident did not occur with the vehicle of the respondents Nos. 1 and 2. The Tribunal further erred in holding that as there are no marks of dents on the truck, as such it cannot be said that the accident occurred with the said truck. Suffice it to say that it has come in the evidence that the accident occurred by the front wheel of the truck, the question of dents or discolouring of the portion of the truck may or may not be, which depends on the impact. Merely, on this basis also a claim case for compensation for injuries, cannot be nullified.

There is another feature in the case that why an illiterate person will involve the respondents in a case if the accident would not have occurred with the said truck of the respondents Nos. 1 and 2. No enmity or any ulterior motive has been proved nor there is any cross-examination to that effect on the claimant. In such circumstances, when both the parties led evidence and the burden lost its importance, it was the duty of the respondents to prove that the accident was not caused by the said truck and according to their plea of alibi, the truck at the relevant time was at some other place and it could not have been there where the accident occurred. In such circumstances, I am of the view that, the findings of the Tribunal arrived at with an erroneous approach deserve to be set aside and I hold that it was the truck No. MPM 3369, which was involved in the accident and to evade the liability, a false defence was raised by the respondents-owner and driver. As the truck dashed against the claimant who was going on his bicycle on the left side of the road and the claimant fell down on the road as a result of dash, his Cycle was crushed, he received multiple injuries and the truck did not stop at the site, this also suggests that the truck driver was rash and negligent in the circumstances of the case. Moreover, the aid of principle of "res ipsa loquitur" can also be taken for holding that the truck in question was being driven rashly and negligently causing accident to the claimant.

Now coming to the question of compensation, learned counsel for the appellant meekly submitted that the compensation deserves to be enhanced. He could not place any data or any authority that looking to the injuries, compensation awarded

as long as back in the year 1979 was too low. In such circumstances, in appeal when the compensation is neither too low nor is too excessive, the appellate court will not interfere in the award of the compensation.

Now the question remains for consideration that the Tribunal has not awarded any interest on the amount of compensation. It is the highest judicial pronouncement that the interest in the claim cases should be awarded at the rate of 12% per annum but looking to the facts and circumstances of the case, instead of awarding the interest at the rate of 12% p.a., I award the interest at the rate of 9% p.a., from the date of the application till payment. The respondent No. 3, the National Insurance Company, shall deposit the amount under award of Rs. 15,245.85 with interest at the rate of 9% p.a. from the date of the application till payment. The amount shall be deposited by the respondent No. 3 within 6 weeks from today. In case of default, this amount shall carry interest at the rate of 12% p.a. after the expiry of 6 weeks.

The result is this that this appeal is allowed with costs. Counsel''s fee Rs. 500/- if already certified.

At this stage Shri A.H. Khan, learned counsel, made a prayer that for depositing the amount within the time, a certified copy of the judgment be delivered to the National Insurance Company at an early date. Hence, I order that a certified copy of this judgment shall be given to Shri Khan, learned counsel, within three days from the date of delivery of this judgment, on payment of necessary charges.