

**(1987) 01 MP CK 0013**

**Madhya Pradesh High Court (Indore Bench)**

**Case No:** M.A. No"s. 287 and 301 of 1983

Suresh Singh and Others

APPELLANT

Vs

Kamlesh

RESPONDENT

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**Date of Decision:** Jan. 23, 1987

**Citation:** (1987) ACJ 429

**Hon'ble Judges:** K.K. Verma, J; G.G.Sohani, J

**Bench:** Division Bench

**Advocate:** B.K. Samdani, for the Appellant; P.K. Sharma, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

R.K. Varma, J.

This appeal shall also govern the disposal of Misc. Appeal No. 287 of 1983 Sureshsingh v. Ramkishan.

2. This is an appeal filed by the Appellants-non-Applicants, viz., the truck owner, the driver and the insurer against the common award dated 8.7.1983 made by the Second Additional Motor Accidents Claims Tribunal, Indore in Claim Case No. 134 of 1980 whereby the learned Tribunal has awarded a total amount of Rs. 15,000/- as compensation to the claimant-Respondent Kamlesh, aged 16 years, a student of Class VII.

3. Similarly, the learned Tribunal has in Claim Case No 135 of 1980 awarded a total compensation of Rs. 28,060/- to the claimant-Respondent Ramkishan, aged about 40 years, an employee of "Nai Duniya" Press by the-aforesaid common award. Costs of the proceedings and interest at the rate of 6% per annum from the date of claim application till the date of realisation have also been awarded in either case.

4. The claimants Kamlesh and Ramkishan have filed cross-objections in the two appeals, viz., MA. No. 301 of 1983 and M.A. No. 287 of 1983 respectively.

5. The facts leading to the award to Kamlesh and Ramkishan, briefly stated, are as under:

On 17.5.1980, Ramkishan was going from the side of Holkar College towards Bhanwarkuwa Road Crossing, Indore, on a moped and Kamlesh was sitting on its pillion. When they reached the University Bungalow at about 11.00 or 11.15 a.m. truck No. MPN 5888 which was driven rashly and negligently by the truck driver, Appellant No. 2, came from behind and dashed against the moped as a result of which Kamlesh and Ramkishan fell down and sustained grievous injuries. Kamlesh suffered a fracture in his right leg and Ramkishan suffered fracture in the right side of his lower jaw breaking as many as 22 teeth besides injuries on his face, head, right leg and right hand. The injured claimants were taken to M.Y. Hospital, Indore, where they were admitted as indoor patients. After recovery, both the claimants got themselves examined by Dr. S.K. Ohari (PW 6) of M.Y. Hospital for assessment of physical impairment and disability. Dr. Ohari (PW 6) has stated that the right thigh of claimant Kamlesh was shortened by one inch and he has suffered loss of physical function by 10%. As regards the claimant Ramkishan, Dr. Ohari has stated that he had fracture of tibia fibula right side and fracture dislocation wrist right side. He experienced difficulty in writing and also in walking and cycling a long distance. He assessed the disability at 20%.

6. The learned Tribunal, after considering the evidence on record, has found that the accident was caused by the rash and negligent driving of the driver of the truck MPN 5888. He has assessed the compensation amount payable to the claimants Kamlesh and Ramkishan as Rs. 15,000/- and Rs. 28,060/- respectively with interest @ 6% per annum. Being aggrieved, the Appellant-non-Applicants have filed these appeals and the claimants have also filed cross-objections praying for enhancement of the compensation amounts as aforesaid.

7. Learned Counsel for the Appellants has contended that it was not proved that the accident was caused by the truck No. MPN 5888 belonging to the Appellant No. 1 In reply learned Counsel for the claimants-Respondents on the other hand has submitted that the eye-witness Prakashchandra (PW 9) has stated that the truck which had dashed against the moped of the claimants was bearing Registration No. MPN 5888 and that he had made a note of it at the time of accident. There is further corroboration about the identity of the truck by the F.I.R. which mentions the same number. The claimant Kamlesh has also stated in his evidence that the number of the truck in question was MPN 5888 which he had noticed at the time of accident before getting unconscious as a result of injuries sustained by him. There is, however, no evidence adduced by the Appellants to the effect that the truck in question was elsewhere at the material time.

8. In view of the evidence, as stated above, it has been rightly held by the learned Tribunal, in our opinion, that the truck involved in the accident was MPN 5888.

9. On the question of quantum of compensation while it has been submitted on behalf of the Appellants that the amount of compensation awarded is on a higher side and is liable to be reduced, on the other hand, the learned Counsel appearing for the claimants has contended that the compensation amount awarded by the learned Tribunal is not just and proper and deserves to be enhanced in the circumstances of the case and the cross-objection of the claimants ought to be allowed. He has submitted that in case of Kamlesh his right leg has become disabled as a result of the fracture and his thigh is shortened by an inch as has been proved by Dr. Ohari (PW 6), who has assessed the physical disability to the extent of 10%. He has cited a comparable case of the High Court of Karnataka, reported in [S.D. Balaji Vs. General Manager, Karnataka State Road Transport Corporation](#), of a student 16 years of age who met with an accident in similar circumstances sustaining similar fracture in the leg where general damages of Rs. 30,000/- were awarded as the proper amount of compensation. The learned Counsel has submitted that it would be only just and proper that Kamlesh is also awarded Rs. 30,000/- as general damages besides Rs. 1,000/- as special damages which has been awarded by the learned Tribunal.

10. The learned Counsel for the claimants-Respondents has further submitted that the interest at the rate of 6% per annum as awarded by the learned Tribunal on the compensation amounts awarded, is too low compared to the present rate of interest and the same needs to be enhanced and modified as 12% per annum.

11. Having heard the learned Counsel for the parties and having considered the evidence on record and the award made by the learned Tribunal we are of the opinion that the contention of the learned Counsel for the claimant-Respondent Kamlesh must be accepted. We accordingly determine general damages awardable to the claimant-Respondent Kamlesh as Rs. 30,000/- instead of Rs. 14,000/- as awarded by the learned Tribunal and Rs. 1,000/- as special damages as has been awarded by the Tribunal. The rate of interest is also modified as 12% instead of 6% as awarded by the learned Tribunal.

12. As regards the other claimant-Respondent Ramkishan learned Counsel appearing on his behalf has submitted that Ramkishan has suffered 20% physical disability as a result of the accident as assessed by Dr. Ohari (PW 6) who has certified fracture of tibia and fibula right side and a fracture dislocation of wrist. It is urged that the compensation amount of Rs. 28,060/- awarded by the learned Tribunal in respect of Ramkishan is liable to be enhanced appropriately.

13. Having heard the learned Counsel we are of the opinion that the amount of general damages in the case of Ramkishan also should be fixed at Rs. 30,000/- instead of Rs. 25,000/- as has been awarded by the learned Tribunal. The special damages of Rs. 3,060/- awarded by the learned Tribunal, however does not call for any modification. Thus a total amount of Rs. 33,060/- would, in our opinion, be just and proper compensation awardable to claimant-Respondent Ramkishan.

14. In the result this appeal as well as Appeal No. 287 of 1983 Sureshsingh v. Ramkishan, fail and are hereby dismissed. However, the cross-objection filed by the claimant-Respondent Kamlesh is allowed. The award of the learned Tribunal is hereby modified inasmuch as the claimant shall be entitled to receive from the Appellants a total amount of Rs. 31,000/- as compensation together with interest at the rate of 12% per annum till realisation.

15. As regards the cross-objection in Misc. Appeal No. 287 of 1983, the same is partly allowed. The award of the learned Tribunal in this case is hereby modified inasmuch as the claimant-Respondent Ramkishan shall be entitled to receive from the Appellants a total amount of Rs. 33,060/- as compensation together with interest at the rate of 12% per annum till realisation.

16. The learned Counsel for the Appellants has stated that certain amounts of compensation have been deposited by the Appellants in the two cases. In view of this the interest amount payable to the claimants shall be rateably reduced in respect of the deposits already made.

17. There shall, however, be no order as to the costs in these two appeals which shall be borne by the parties as incurred.