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Date: 18/10/2025

Chandrakant Goswami Vs Ramkesh Patel and Others

Miscellaneous Appeal No. 1001 of 2000

Court: Madhya Pradesh High Court

Date of Decision: July 5, 2005

Acts Referred:
Motor Vehicles Act, 1988 â€" Section 166

Citation: (2007) ACJ 2268 : (2005) ILR (MP) 840 : (2005) 4 MPHT 40 : (2006) 1 MPJR 427

Hon'ble Judges: S.S. Kemkar, J; A.K. Mishra, J

Bench: Division Bench

Advocate: Akshay Dharmadhikari, for the Appellant; S.K. Rao and Ajit Agrawal, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Shantanu Kemkar, J.

This appeal is directed against the award dated 3-3-2000 passed by the Additional Motor Accident Claims Tribunal, Maihar District Satna in

Claim Case No. 153/1997.

As per the claimant/appellant, on 26-8-1997 he was returning on scooter from Maihar to Jabalpur. When he reached near Itma Mandi a Truck

No. UGY 8507 driven rashly and negligently by the respondent owned by the second respondent and insured with the third respondent came from

the opposite side and dashed his scooter. As a result, the appellant and the pillion rider Rajendra Bihari sustained grievous injuries. The appellant,

therefore, filed a claim petition u/s 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs. 5,95,000/- from the respondents.

The respondents resisted the claim petition and denied the averments made in the claim petition. The Tribunal framed issues and after recording

evidence held that the appellant is entitled for compensation of Rs. 74,000/-. However, the Tribunal held that as the appellant was not having

driving licence to drive the scooter apart from the negligence of truck driver, there was contributory negligence on the part of the appellant to the

extent of 50%. Accordingly, the Tribunal directed the respondents to pay compensation of Rs. 37,000/- to the appellant. Feeling aggrieved, the

appellant has filed this appeal for enhancement.

Shri Akshay Dharmadhikari, learned Counsel for the appellant has contended. that the approach of the Tribunal in holding the appellant liable for

contributory negligence on the ground that the appellant was not holding licence to drive the scooter, is erroneous. He contended that merely for

the reason the appellant was not holding driving licence it can not be inferred that there was contributory negligence on his part. He also contended

that the compensation awarded is on lower side and deserves to be enhanced. On the other hand Shri S.L. Rao, learned Senior Counsel for the

insurer has supported the view taken by the Tribunal and has contended that admittedly the appellant was not holding driving licence to drive the

scooter, in the circumstances his negligence has rightly been inferred by the Tribunal.

In order to prove the accident the appellant examined himself as A.W. 1. He deposed that when he and Rajendra Pandey reached Itma Mandi, a

Truck No. UGY 8507 came at excessive speed. It was driven by the first respondent rashly and negligently. On seeing the truck he stopped his

scooter at the side of the road. However, the truck dashed the scooter. He further deposed that he suffered fracture injury in his left leg. As per

disability certificate Ex. P-51 there was shortening of left leg by 2"" and permanent disability was to the extent of 18%. In rebuttal Umashankar

(NAW 1) was examined. He is not an eye witness to the accident. The driver of the truck was not examined by the respondents.

In view of the aforesaid evidence it is clearly established that the appellant was driving the scooter with due care and caution and, therefore, merely

because he had no driving licence he can not be held guilty of contributory negligence. It was not the case of the respondents that the appellant had

no knowledge of driving the scooter. In our view the onus of proof that the appellant was driving the scooter rashly and negligently was on the

owner and driver of the truck and unless the said burden is discharged by leading positive evidence the presumption of contributory negligence can

not be drawn only on the ground that the appellant was not possessing driving licence. The first respondent driver of the Truck did not enter the

witness box to controvert the evidence of the appellant. In this view of the matter the Tribunal has erred in holding that there was contributory

negligence on the part of the appellant.

In the said accident the appellant"s left leg was fractured, and as per disability certificate Ex. P-51 the shortening of leg was 2"", and the permanent

disability was to the extent of 18%. At the time of accident the appellant was aged 36 years. He was getting salary of Rs. 4455/- p.m. as teacher.

His loss of earning capacity can be assessed to 10% of his income which comes to Rs. 450/- p.m. annually Rs. 5400/-. As the appellant was of 36

years, adopting the multiplier of 16 the loss of earning capacity comes to Rs. 86,400/-. In addition the appellant is also entitled for Rs. 8,000/- for

medical expenses, Rs. 5500/- for special diet, expenses of transportation and attendant. Thus, total compensation payable by the respondent is Rs.

99,900/- rounded to Rs. 1 lakh. The enhanced compensation shall carry interest @ 6% per annum from the date of claim petition till payment.

Thus, the appeal is partly allowed. No order as to cost.