

(2001) 07 MP CK 0038
Madhya Pradesh High Court
Case No: M.A. No. 275 of 1986

Ajay Kumar

APPELLANT

Vs

Madhya Pradesh State Road
Transport Corporation and
Another

RESPONDENT

Date of Decision: July 31, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 22

Citation: (2003) ACJ 1206 : (2002) 2 MPLJ 98

Hon'ble Judges: Bhawani Singh, C.J; Rajeev Gupta, J

Bench: Division Bench

Advocate: S.P. Khirwadkar, for the Appellant; P.K. Mishra, for the Respondent

Final Decision: Allowed

Judgement

Bhawani Singh, C.J.

This appeal is directed against the award dated 26.3.1986 passed by the Motor Accidents Claims Tribunal, Bhopal, in Claim Case No. 23 of 1981.

On 20.9.1980, the claimant was going towards Roshanpura Naka as pillion rider with his brother, Vijay Kumar, on the scooter No. MPD 739 at 6.30 a.m. The scooter was being driven at normal speed by his brother, Vijay Kumar, P.W. 1. Abdul Kadir, driving the city bus No. MPG 8917 rashly and negligently, came from opposite direction and dashed his bus against the scooter. The allegation is that the bus driver had crossed the middle line of the road and knocked down the scooter, which was on wrong side of the bus. The impact of the bus against the scooter was such that it was thrown to a distance. The claimant suffered multiple injuries in this accident. He remained in hospital from 20.9.1980 to 26.10.1980. For three days, he remained unconscious, he suffered double fracture in the right leg, therefore, he suffered permanent disability to his right leg and similar disability to the vision of his

right eye. At the time of accident, he was studying in Higher Secondary and could not continue the studies. He used to assist his father in grocery business and earn Rs. 800 per month. This work, he could not perform after the said accident. His brother, Vijay Kumar, had also suffered injuries and the scooter was badly damaged. Under various heads like pain and suffering, permanent disability, loss of enjoyment of life, medical treatment and damage to the scooter, compensation of Rs. 4,90,000 has been claimed.

Defence taken by the bus driver is that the claimant's brother was entirely responsible for this accident. He was driving the scooter rashly and negligently at a high speed on the wrong side of the road. He blew the horn several times and brought his vehicle to a complete stop. The claimant's brother visualising that he was on the wrong side of the road became nervous and attempted to cross over to his left side and while doing so, he lost the balance and hit the scooter at the right side of bumper of the bus. As a result of his own negligence, the claimant fell down 10 ft. away from the right front wheel of the bus. He received only minor injury and his scooter was intact. His brother did not receive any injury. Consequently, the claimant was not entitled to compensation and the claim petition deserves to be dismissed.

On the respective pleadings of the parties, the Claims Tribunal framed three main issues. Parties led evidence and the finding recorded by the Claims Tribunal is that the accident took place on account of rash and negligent driving of the bus by the driver and that there was no negligence in driving the scooter. However, the claimant was not entitled to compensation for damage to the scooter. Compensation of Rs. 20,000 has been awarded with interest at the rate of 6 per cent per annum from the date of application (i.e., 17.3.1981) till realization. Neither the claimant nor the Madhya Pradesh State Road Transport Corporation are satisfied with the award. The claimant has filed this appeal for enhancement of compensation and latter for reduction thereof.

Learned Counsel for the parties were heard. Record perused carefully.

Mr. P.K. Mishra, learned Counsel appearing for M.P.S.R.T.C., submitted that the award is liable to be set aside, since finding of the Claims Tribunal on issue No. 1 is not sustainable. There is ample evidence on record demonstrating quite clearly that accident was caused by rash and negligent driving of the scooter by Vijay Kumar, brother of the claimant, at the relevant time. This contention is seriously opposed by Mr. S.P. Khirwadkar, learned Counsel appearing for the claimant. In view of the stand taken by the parties, it is desirable to examine the evidence on this issue.

Taking place of accident is not in dispute. What is to be found out is who is responsible for causing this accident. The claimant has stated that he was pillion rider on the scooter driven by his brother Vijay Kumar. It was being driven at a normal speed when the driver Abdul Kadir came driving the bus owned by

M.P.S.R.T.C. rashly and negligently from opposite side and hit the scooter and as a result of which, the claimant fell at a distance suffering number of serious injuries. His statement is supported by Vijay Kumar, P.W. 2, who happens to be his brother and was driving the scooter at the relevant time. Abdul Majid, P.W. 5, owns a flour mill near the site of the accident. He also supports what has been stated by the claimant and his brother. From the other side, the driver has come up with case that the scooter was being driven rashly and negligently at a high speed because the scooterist were being chased by a dog, who was barking, as such their attention was distracted and it was the scooter which hit the bus. The Claims Tribunal has rejected the evidence of Abdul Kadir. Apart from other grounds, the Claims Tribunal also found that Abdul Kadir was trying to set up a case, which was not pleaded in the written statement. We find from the evidence that appreciation of evidence by the Claims Tribunal on this aspect of the matter is quite logical, dependable and satisfactory. The evidence clearly suggests that Abdul Kadir was responsible for causing the accident. He was driving heavy vehicle on highway with a down gradient, therefore, he should have been careful in driving the vehicle so that accident particularly with regard to small vehicle, is avoided. High speed at which the bus was being driven, is clear from the impact as a result of which the scooter was thrown away, so was the claimant. Consequently, it is not difficult to confirm the finding of the Claims Tribunal on this issue.

Next question is what kind of injury was sustained by the claimant in this accident. Abdul Kadir states that the claimant suffered minor injuries. But the claimant states that he suffered grievous injury on his right leg, tibia and fibula. He lost vision of right eye. He was admitted in the hospital after the accident and was discharged after 36 days. For 3 days, he remained unconscious and he has a limp in his right leg. The claimant has produced Dr. O.P. Sharma, P.W. 3 and Dr. J.K. Raizada, P.W. 4, in support of his claim. Dr. O.P. Sharma is the Orthopaedic Surgeon in Hamidia Hospital, Bhopal. He states that the claimant was admitted and treated under his care in the hospital for crush injury of the right leg. He was operated upon and a nail was inserted in the leg. He was discharged on 26.10.1980. After that, he attended the hospital as an outdoor patient off and on. There is disability in the leg, which is permanent in nature. The claimant had been under the treatment for a long time and was advised to consult the Ophthalmology Department, of which Dr. J.K. Raizada, P.W. 4, states that the claimant Ajay Kumar was his patient from 20.10.1980 and was as such till his examination in the court on 1.5.1985. He had haemorrhage in the right optical nerve leading to optic atrophy in the right eye, which meant that he could not see by the right eye beyond 2 metres for rest of his life. Therefore, it is a case of total loss of sight in the right eye. As per the World Health Organization norms, this is permanent disability. It cannot be cured and vision cannot be restored. Therefore, from the evidence, it is aptly clear that the claimant has suffered serious injuries in this accident. He has developed a limp in his right leg, which was subjected to operation with two fractures and insertion of iron rod at the

time of operation. That apart, he has lost the vision of the right eye. Both these disabilities are permanent in nature at a young age of 18 years. The claimant must have suffered great pain during treatment and thereafter. He states that after this accident, he has discontinued his studies and is not in a position to do the work, which he had been doing before it. In his statement, he has pointed out that he used to help his father in grocery business and received Rs. 800 per month. The Claims Tribunal has not accepted this evidence. We are of the opinion that this evidence should not have been rejected on the ground that neither father nor the record of the shop has been produced in this case. This extent of income or the value of assistance normally rendered by a boy of this age is normal in the family carrying on business. Therefore, it can be said that the claimant was earning some amount from the shop by helping his father in grocery business and it is not necessary that the record of the shop should have been produced or the father should have testified this fact.

Therefore, taking into consideration the facts and circumstances of the case, evidence on record, it would be in the interest of justice that lump sum compensation is awarded to the claimant, which would take care of permanent disability to the right leg, right eye, loss of enjoyment of life, medical expenses, loss of earnings, pain and suffering, etc. The claimant has claimed enhancement of Rs. 1,25,000. We think, this extent of enhancement of compensation is absolutely justified in this case.

Accordingly, this appeal is allowed and claimant is held entitled to enhanced compensation of Rs. 1,25,000 with interest at the rate of 6 per cent per annum from the date of application (17.3.1981) till realisation. Compensation be paid within a period of three months. The cross-objections filed by respondent No. 1, M.P.S.R.T.C., under Order 41, Rule 22 of the CPC are dismissed, being devoid of merit. Costs on parties.