

**Moolshankar Vs. Ramgopal and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/506309](http://sooperkanoon.com/506309)

**Court :** Madhya Pradesh

**Decided On :** Jan-16-1986

**Reported in :** 1(1986)ACC367

**Judge :** P.D. Mulye, J.

**Appellant :** Moolshankar

**Respondent :** Ramgopal and anr.

**Judgement :**

**P.D. Mulye, J.**

1. The claimant-appellant has filed this appeal under Section 110-D of the Motor Vehicle? Act, for enhancement of compensation

against an award dated 29th July, 1978 given by the Member, Motor Accidents Claims Tribunal, Ratlam, in Claim Case No. 10/76, whereby be has awarded compensation of Rs. 4,000/- plus interest at Rs. 6% per annum from the date of the award, though the appellant had put up a claim for Rs. 40,000/- for the injuries sustained by him in the accident that took place on 22-2-1976.

2. The facts giving rise to this appeal may be stated, in brief, this : Respondent No. 1 Ramgopal is the owner of auto-rikshaw number NPN 8089 which on the relevant day of the accident, which took place on 22-2-76 was insured with respondent No.

2. United India Fire and General Insurance Company.

3. The appellant who was then posted as a Deputy Collector at Ratlam was on 22-2-76 at about 5 P.M proceeding in the said auto rikshaw along with the members of his family. When the auto-rikshaw reached near the officer of Municipal Corporation, Ratlam because of the rash and negligent driving of the said auto-rikshaw, which was driven by respondent No. 1 the same overturned on the road as a result of which the appellant sustained injuries. The appellant was taken to the hospital in the same rikshaw, where he was given the necessary treatment. The appellant, therefore, filed the present claim petition for recovery of Rs. 40,000/- as according to the appellant because of the fractures sustained by him to the collar bone of his right hand he had to remain at home on leave for a period of one month and even thereafter he has been suffering from physical and mental pain and thus there is physical disability on account of which he cannot carry on his normal duties with the right hand.

4. The respondent No. 1 did not dispute the factum of accident but contended that the accident did not occur because of his negligence. According to the said respondent he was driving the said auto-rikshaw at a moderate speed but all of a sudden a boy riding on a bicycle came in front of the auto-rikshaw and in order to save the boy he had to apply brakes suddenly and it is in these circumstances he lost the balance due to which the rikshaw overturned. He denied that the appellant had received serious injuries.

5. The respondent No. 2 also supported the stand taken by respondent No. 1, though they did not dispute that according to the terms of the policy, in view of the provisions of Section 95(2) of the Motor Vehicles Act their liability was limited to the tune of Rs. 10,000/- only.

6. The appellant, in support of his case, examined PW 1 Dr. V.S. Jain and PW 2 Dr. R.S. Tomar, who treated him for the injuries sustained by the appellant. In addition the appellant also examined his wife, PW 3 Indira Ben and himself as PW 4, On the other hand the respondent examined DW 1 Shyamsunder, who was working as an orderly with the appellant at the relevant time and was also travelling in the said rikshaw as also respondent No. 1 examined himself as DW 2.

7. The learned Member of the Tribunal, after considering the evidence and material placed on record came to the conclusion that a sum of Rs. 4,000/- would be just, proper and reasonable compensation. Hence this appeal.

8. The learned Counsel for the appellant mainly contended that considering the nature of injuries sustained by the appellant, the learned Member of the Tribunal has committed an error in awarding a very meager compensation, simply because as a Deputy Collector he was at the relevant time drawing a salary of Rs. 1,000/- per month and that even though he had to remain in bed for about a month at home, he had suffered no financial loss as he was granted the leave on full pay. The learned Counsel further submitted that the learned Member of the Tribunal has not properly considered the medical evidence of the two doctors so far as the nature of injury and its permanent effect is concerned by treating it to be a superficial injury. He also submitted that interest ought to have been allowed from the date of the filing of the application i.e. 30th June, 1976 and not from the date of the award.

9. The learned Counsel for the appellant, therefore, took me through the entire evidence which I have considered carefully, PW 1 Dr. V.S. Jain, Assistant Surgeon in-charge X-ray Department, Civil Hospital, Ratlam has deposed that on 23-2-76 at 5.30 p.m. he examined the appellant and found clinical fracture of right clavicle and that there was deformity of right clavicle. He has further deposed that he called PW 2 Dr. Tomar, who is M.S. in Orthopedics, who applied bandage to the patient. He has further stated that the normal period for healing of the fracture is one month that on 1st March, 1976 he took skiagram of the right clavicle of the appellant and found comminuted fracture of right clavicle, that the appellant was complaining of continuous pain at the site of the fracture. In order to ascertain whether there was any complication or not he took X-ray and found that on account of the comminuted fracture union of the bone is not proper with the result that the appellant will not have the same power of movement of the normal limb. He thus found that the fracture had occurred on account of the mal union of the bone which mal union was a permanent feature.

10. PW 2 Dr. R.S. Tomar the Orthopaedic Surgeon had also deposed that on examining the appellant on the day of the accident he found fracture of right clavicle bone, applied figure or 8 bandage which was changed 3 or 4 times in the interval of 10 days as the collar bone fracture takes about 3 to 4 weeks for healing. Further according to him the bandage was changed in order to minimise the deformity of the bone. After about 8 or 10 days he had seen the X-ray and found that there was angulation of fracture bone; that on account of the fracture the appellant had to take bed rest for a complete month and even after the removal of the plaster, on examination he found that there was--deformity which according to him, was of a permanent feature in case of an adult, the effect being it is not possible for the appellant to lift the weight and do even the writing work efficiently as he was doing prior to the accident. He also found that there was prominence in the middle of the right clavicle due to mal union.

11. The learned Counsel for the respondents criticised the evidence of these two doctors on the ground that after the accident the doctors did not intimate the police that X-ray was not taken immediately and that from the cross-examination of Dr. Tomar it is quite clear that according to this witness it is just possible that the efficiency may improve to some extent by lapse of time. Therefore, the learned Counsel for the respondent submitted that the nature of injury could not be said to be so severe. However, PW 1 Dr. Jain has also clearly stated that when he examined the appellant on 5th July, 1977 when the said witness was examined before the Tribunal, there appeared mal union which he could conclude from the clinical examination.

12. So far as the nature and type of injury and its effects on the appellant is concerned PW 3 Indira Ben has clearly deposed as to how the accident occurred as according to her it was on account of the rash and negligent driving of the rikshaw that the accident occurred, though he was warned to reduce the speed to which he paid no heed. From the evidence of the wife it is further clear that the appellant had to remain in bed for about a month that her husband continued to suffer from pain; that because of the fracture the appellant could not turn his right hand properly nor could he put on his clothes with the result that she had to help him in putting on his clothes and giving him a bath for about six months; that as a

result of the accident her husband received mental shock and that after the accident her husband cannot do his normal work with his right hand nor can he drive the scooter.

13. The appellant Moolshankar Nagar (PW 4) has also described as to how the accident occurred and according to him the accident occurred because of the rash and negligent driving of the rikshaw. So far as the injuries sustained by him are concerned, he has clearly stated that after the accident he was taken to the hospital where he was treated by Dr. Jain and Dr. Tomar because he had sustained a fracture of the collar bone of the right hand. Further according to him he had to remain in bed for about a month, was unable to use his right hand in a normal way with the result that he suffered continuous pain and disability for about six or seven months during which period he could take his bath and put on his clothes only with the assistance of his wife; that he is still having pain off and on and after the accident his lifting and gripping power have been reduced to a considerable extent, finds difficulty in turning while sleeping and in short, according to him, apart from the mental pain and suffering he still is suffering physically.

14. The evidence of the appellant and his wife was also criticised on the ground that the appellant immediately after the accident did not lodge the report at the police station, which according to the learned Counsel for the respondent indicates that the accident was not so serious nor the injuries sustained by the appellant that no X-ray was taken immediately after the accident and that the appellant in his claim petition has nowhere stated that he is unable to drive his scooter. However, both these witnesses have denied the respondents' case that the accident occurred because to the fact that a boy riding on a bicycle suddenly came in front of the rikshaw. Therefore, from their evidence it has been satisfactorily proved that the accident occurred because of the rash and negligent driving of the rickshaw driver namely respondent No. 1 as a result of which the appellant sustained injuries.

15. The respondents have no doubt examined Shyamsunder (DW 1) who was then working as an orderly at the house of the appellant, was also travelling in the said rickshaw at the time of the accident. But though he has tried to support the

case of the respondent his evidence does not inspire confidence as he has been confronted with his previous deposition recorded in the criminal case and it is apparent that he has tried to support the case of the respondent because of his subsequent bad relations with the appellant.

16. The respondent Ramgopal has, as DW 2, deposed that the accident did not occur because of his fault but in order to save the two boys who were riding on one and the same bicycle who came all of a sudden before the rickshaw, he had to apply brakes suddenly and in the process the rickshaw overturned in which the appellant sustained injuries and it is he who took the appellant to the hospital. However, his testimony has also been rightly disbelieved as it is difficult to believe that if the rickshaw was being driven by him at a normal speed in the town of Ratlam, the same would have overturned because of the fact that a boy came suddenly in front of the rickshaw. The very fact that on a busy street in the town despite applying brakes the auto-rickshaw overturned clearly indicated that it must have been driven at an excessive speed which was not expected of the respondent and therefore, I see no reason to differ from the finding recorded by the learned Member of the Tribunal on this point that the accident occurred because of the rash and negligent driving of the rickshaw.

17. So far as the quantum of compensation is concerned, I am of opinion that considering the type and nature of injuries sustained by the appellant and its lingering effect especially when the fracture was sustained to the right hand with which the appellant has been working and the effect thereon has been that the appellant has lost the grip with the right hand and is thus incapacitated to some extent and thus there appears no reason to doubt his testimony that he suffered physically and mentally also and is still suffering from the after-effects thereof. I am, therefore, unable to agree with the submission made by the learned Counsel for the respondents that merely because the appellant has not produced any medical bills coupled with the fact that the appellant is still in service that he is quite fit to do his work with his right hand as was being done by him prior to the accident. In such a situation the appellant, no doubt, must have suffered from physical and mental pain and even though the fracture is healable, because of the mal-union of the bone, as has been proved by the medical evidence of the two

doctors, obviously the appellant has been handicapped in the normal work with his right hand. Thus, taking all these facts into consideration I am of opinion that the compensation awarded to the appellant is some that low and deserve to be enhanced and in fitness of things a total compensation of Rs. 10,000/- would be just, proper and reasonable.

18. In the result this appeal succeeds partly. The award given by the learned Member of the Tribunal is modified to the extent that instead of Rs. 4,000/- the appellant is entitled to claim compensation of Rs. 10,000/- from both the respondents, who are jointly and severally held liable to pay the same. It is further ordered that on this amount of Rs. 10,000/- the appellant shall be entitled to claim interest at the rate of Rs. 9 per cent per annum from the date of the filing of the claim petition i.e. 30-6-76 till realisation instead of at Rs. 6 per cent per annum from the date of the award as has been ordered by the Tribunal, for which also the respondents are held jointly and severally held liable. The rest of the award is maintained. So far as the costs of this appeal are concerned, the parties are directed to bear their respective costs. The appeal is disposed of accordingly. The respondents shall within three months from to day deposit the entire amount as ordered by this Court with the Tribunal. In case they have paid the amount as ordered by the learned Member of the Tribunal they shall deposit the balance amount within that period. The amount on being deposited shall be paid to the appellant in person.