

ismail Khan and ors. Vs. Anil Kumar

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Court : Madhya Pradesh

Decided On : Aug-20-1993

Reported in : 2(1993)ACC593

Judge : R.D. Shukla, J.

Appellant : ismail Khan and ors.

Respondent : Anil Kumar

Judgement :

R.D. Shukla, J.

1. This order shall dispose of the appeal and the Cross-objection filed by the parties.
2. The appeal is directed against the judgment and award dated 27.2.1982 of the Motor Accident Claims Tribunal, Shajapur passed in Claim Case No. 12/79 whereby the claimant-respondent has been awarded compensation of Rs. 19,410.65 paise with interest @ 6% per annum from the date of application till realisation for the injuries sustained by respondent in a motor accident on 7.3.1979 near Kaked river while coming from Sahpur to Agar.
3. The brief history of the case is that motor-bus No. MPU-5056 is owned by non-applicant No. 1 (appellant No. 1 here) and was driven by non-applicant No. 2

(appellant No. 2 here). The bus was insured with non-applicant No. 3 (appellant No. 3 here). A bridegroom party was taken from Agar to Shahpur district Shajapur in the motor-bus referred to above. It was coming back from Shahpur to Agar on 7.3.1979. The claimant-respondent was sitting on a seat by the side of the gate on the left side of the motor bus. The gate had defective bolt and because of the weak latches it used to open on slight jerk. While the bus was crossing the river there was a jerk. The door opened and the claimant-respondent fell down. The rear wheel of the motor-bus over-ran the claimant who sustained injuries on his leg. There was a commuted fracture and the leg of the claimant had to be amputated. The claimant,-therefore, filed a petition for compensation which is as follows:

The expenses for coming and going from Ujjain to Betul thereafter from Betul to Indere including the expenses of medicines and the fee of the doctors Rs. 12,750/- . The general damages for pain suffering and the future loss of income because of permanent partial disability Rs. 75,000/-.

4. The N.As. (appellants here) denied the claim by filing a joint written-statement. they have denied the rash and negligent driving by the driver and as to the defect in the left door of the motor-bus. It was also asserted that claimant is a naughty boy and despite instructions he was playing with the bolt and latches of the door and because of the disturbance it opened all of a sudden and the claimant fell down. Thus, the accident was due to negligence of the claimant himself.

5. The learned Tribunal has found that the left front door of the motor-bus had a defective bolt and latches. No safety measures and precautions were taken of the sudden opening of the door. The conductor was also not vigilant about the door and the passengers thereof.

6. Learned Tribunal awarded Rs. 9,410.65 Paise as special damages and Rs. 10,000/- as general damages for the pain, suffering and loss of future income.

7. Learned Tribunal has further limited the liability of the Insurance Co., to the tune of Rs. 10,000/- only. This appeal has been filed against the said Award.

8. The claimant-respondent has filed cross-objection for the enhancement of the compensation.
9. The contention of the learned Counsel for the appellants is that as the claimant himself was playing with the bolt and latches of the left front door and, therefore, he himself was responsible for the fall out of vehicle. In any way the claimant was liable for the contributory negligence. It has also been submitted that the claimant was a boy of 12 years and was a member of a lower middle family. There was no chance of high rise. He had no brilliant career the compensation thus, awarded is on the higher side which deserves to be reduced.
10. As against it learned Counsel for respondent has submitted that it was the duty of the bus-owner to have kept the motor-bus in proper and safe condition. He ought to have deputed the conductor to see that no-body intermeddles with the doors of the bus specially when they were carrying children in their bus.
11. It has further been submitted that a permanent partial disability has been created as the leg of claimant had to be amputated and, therefore, the compensation for general damages deserves to be enhanced sufficiently.
12. Now so far as the fact of negligence in driving of the vehicle is concerned, the contention of claimant appears to be correct that it was the duty of the bus-owner, driver and the other workers working in the motor-bus to have kept the motor-bus safe and proper. Any defect or looseness in the door which opens on slight jerk would show that the proper safety measures have not been taken and there was no proper maintenance of the bus. If the accident occurs because of improper safety measures and maintenance the responsibility of payment of compensation would definitely lie on bus-owner.
13. The claimant has examined C.W. 1 Anilkumar (claimant), C.W. 2 Balkrishna Yadav, C.W. 3 Shyamlal, C.W. 5 Noorkhan, C.W. 6 Madanlal (the uncle of claimant) and C.W. 7 Balrnukund, father of the claimant. All the witnesses excepting C.W. 7. Riyazah-mad have stated that the door was loose and it had to be tied with a rope though there is no pleading to that effect and that fact has not been shown in the notice also but all the witnesses referred to above have stated

on oath. They were occupants and passengers of the motor-bus. C.W. 2 is a teacher. Hence his statement cannot be rejected merely on the ground that specific detail was not given in the claim petition. In the opinion of this Court therefore, it has rightly been held by the learned Tribunal that the door was loose so-much-so, it had to be tied with sutli. This goes to show that proper safety measures were not taken and there was no proper maintenance of the vehicle.

14. Even otherwise when a bridegroom party including women and children were being taken in a bus it was the duty of the bus-owner to have deputed sufficient member of staff to see to the safety of the passengers specially the children travelling therein.

15. It also appears that the motor driver took the vehicle inside the Kaked river with a high speed and for that reason it had a high jerk which resulted in the sudden opening of the door. As such, the finding of rash and negligence driving of the bus is hereby confirmed.

16. The claimant is a boy aged about 12 years. He sustained injuries. His leg had to be amputated as has been proved from the evidence of Dr. Agarwal (C.W. 8) Dr. V.K. Solemon (D.W. 9) and the statement of other witnesses including the claimant and his father.

17. The documents Ex. P/1-C, P/2-C to P/7-C goes to show that the claimant had a good academic record and he was taking part in the scouts and other extra curricular activities as well. Because of the amputation of the leg not only a permanent partial disability has been created but the future of the claimant has also been marred. He must have suffered pain and agony during his admittance in the hospital and he will have to suffer that pain and agony for the whole of his life.

18. In the opinion of this Court nearly 15 to 20% of disability has been created thereby. In such cases where a leg of a boy with a bright academic and extra curricular career had to be amputated the compensation of Rs. 10,000/- as general damages would be too meagre to be supported. In the opinion of this Court, therefore, the compensation on this head deserves to be enhanced to the tune of Rs. 25,000/-.

19. If this amount is kept in a Nationalised Bank as interest paying fixed deposit the claimant would be getting nearly Rs. 250/- per month throughout his life and that would be sufficient to compensate the loss caused due to the accident.

20. The learned Tribunal has awarded Rs. 9,410.65 Ps. as Special Damages in the opinion of this Court that appears to be correct. However, that may be rounded up to RS. 10,000/-.

21. It has also been submitted on behalf of the Insurance Co., that the liability of the Insurance Co. is limited to Rs. 10,000/- only and the same has been accepted by the learned Tribunal as per para 43 of the Award. There is no challenge to this, as such, that calls for no interference.

22. As a result the appeal fails and the cross-objection of the claimant-respondent is allowed. The claimant would be entitled to a compensation of Rs. 35,000/- in all. He shall further be entitled for interest @ 12% per annum from the date of application till realisation of the same. The liability of N.A. 3 (appellant No. 3 here) Insurance Co., shall be limited to Rs. 10,000/- plus the proportionate interest and the cost thereon.

Counsel fee Rs. 500/- if certified.

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