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**Mohammad Rafique Vs. Narayan Chabada and ors.**

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**SooperKanoon Citation** : sooperkanoon.com/507692

**Court** : Madhya Pradesh

**Decided On :** Sep-13-1993

**Reported in** : 1(1994)ACC239

**Judge** : R.D. Shukla, J.

**Appellant** : Mohammad Rafique

**Respondent** : Narayan Chabada and ors.

**Judgement** :

**R.D. Shukla, J.**

1. This order shall also dispose of Cross-objection filed by the respondent Nos. 1 and 2.

2. The appeal is directed against the judgment and award dated 18.4.1984 of the Motor Accident Claims Tribunal, Indore passed in Claim Case No. 91/81; whereby the claimant has been awarded Rs. 4,750/- as compensation.

3. The undisputed facts of the case are that applicant-appellant was a tailor at the time of accident. Motor-car No. MPB 7871 was owned by respondent No. 1. It was being driven by respondent Non-applicant No. 2 on the date of accident i.e. 10.1.81 at about 11.00 a.m. The Vehicle was insured with respondent N.A.No. 3. The claimant filed a petition before the Tribunal with the assertions that he was

proceeding from Daulatganj to Jail Road and was walking on his left side. Meanwhile the motor-car being driven by N.A respondent No. 2 came in a high speed and dashed against him. He was thrown few feet away. He sustained injuries on his left hand. There was a fracture in the left elbow. He was treated in M.Y. Hospital and a plaster was put on his hand on 14-1-81. He had to remain out of work for about two months and had to take special diet during the treatment. He spent Rs. 750/ for the treatment. He further suffered mental and physical agony. He, therefore, claimed as follows:

Rs. 7,50/- for treatment and special diet.Rs. 7,000/- for pain and agony.Rs. 10,000/- for loss of earning capacity (permanent-partialdisablement.Rs. 2,250/- loss of wages for three months.Rs. 10,000/- for further permanent disability.----------Rs. 30,000/- Total----------

The respondent non-applicants denied the claim and the assertions of the claimant about the permanent disability and physical incapacity regarding the tailoring work.

4. It was also asserted that the claimant was walking absent-minded on the road and thus contributed to the accident.

5. Respondent-non-applicant No. 3 has filed separate written-statement but has adopted the plea of N.A. respondent Nos. 1 and 2.

6. Learned Tribunal after hearing the parties has awarded Rs. 4,750/- in all. Hence this appeal for enhancement of the compensation.

7. N.A. respondent Nos. 1 and 2 have filed cross-objection with the assertions that the claimant-appellant is not entitled for the compensation awarded to him.

8. The contention of the learned Counsel for the appellant is that the learned Tribunal has erred in not granting any compensation for the future loss.

9. It has also been asserted that the other damages have also been estimated on the lower side.

10. The contention of the learned Counsel for the respondents is that firstly the claimant himself was responsible for the accident and secondly he was not entitled

for the compensation for loss of work as there was no documentary evidence.

11. P.W. 1 Mohd. Nairn, P.W. 2 Mohd. Rashid, P.W. 3 Mohd. Iliyas and the claimant as P.W. 5 himself have stated about the rash and negligent driving of the vehicle.

12. D.W.1 Manoj Chhabaria, the driver of the vehicle has stated that a cow come all of a sudden on the road and therefore, the claimant tried to run away on the right-side i.e. towards the road and as such he came in contact of the left side of the vehicle. But this fact has been denied by the three eye-witnesses. No other witness has been examined on behalf of the N.A. the driver. The burden of proving this fact that the accident occurred due to sudden movement of the claimant lies on the driver. He has failed to discharge it and it has rightly been held by the learned Tribunal that the accident occurred due to rash and negligent driving of the driver.

13. Now so far as the denial of compensation for future loss is concerned, P.W. 6 Dr. Ashok Kumar Sharma has stated that there is restrictions in the movement of elbow joint but no evidence as to the permanent partial disablement in the case has been adduced and, therefore, it has rightly been held that there is no permanent partial disability. However, the accident had occurred on 10-1-81. Dr. Sharma was examined in April, 1984. If the restriction of the elbow continued up-to 1984 i.e. for nearly three years some compensation for the loss of Working capacity ought to have been awarded in that heading. In the opinion of this Court if that loss is taken to be 10 to 20% for three years it will not be more than Rs. 2000/-. As such, the claimant is entitled for a compensation of Rs. 2000/- on that count.

So far as the compensation claimed on other headings are concerned, the compensation appears to be proper as the claimant has been awarded Rs. 500/- against treatment, Rs. 3000/- for pain and suffering Rs. 1000/- for loss of earning for 2-1/2 months and Rs. 250/- for special diets. Looking to the financial status of the claimant though compensation appears to be correct and calls for no interference.

14 As a result the appeal partly succeeds and the cross-objection is rejected. It is directed that the claimants shall be entitled for a compensation of Rs. 6,750/- in all with an interest @ 12% per annum from the date of application till realisation. Counsel fee Rs. 200/- if certified.

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