

**Rajendrasingh Vs. SheetalDas and ors.**

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**Court :** Madhya Pradesh

**Decided On :** Nov-15-1991

**Reported in :** 1992ACJ130

**Judge :** T.N. Singh, J.

**Appeal No. :** M.A. No. 16 of 1988

**Appellant :** Rajendrasingh

**Respondent :** SheetalDas and ors.

**Advocate for Def. :** Vijay Kant Sharma, Adv.

**Advocate for Pet/Ap. :** N.M. Haswani, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**T.N. Singh, J.**

1. This is claimant's appeal who suffered fracture of femur bone of the thigh and was confined to hospital for 30 days. His claim being rejected he has appealed challenging findings of the Motor Accidents Claims Tribunal, for short 'the M.A.C.T.', on two grounds. Admittedly, the accident took place on 6.7.1977 at 6.00 p.m. and claim petition was lodged on 2.5.1983. Mr. V.K. Sharma, counsel

appearing for respondent No. 3, has contended, in support of the award, that there was no application for condonation of delay and real facts were suppressed by the claimant-appellant about his age. However, the second question to be decided is, whether the claimant-appellant did prove that he had suffered injury in the course of accident in which Tempo No. MPH 5350 was involved. Indeed, it is not denied that, that vehicle was insured during the relevant period with the contesting respondent. In the court below two separate written statements were filed. Those were by the driver and insurer.

2. Mr. N.M. Haswani, counsel appearing for the appellant, has submitted that the driver having taken upon himself the burden to prove the case set up by him he had to have established his plea that it was a case of the claimant suffering injury not as a result of any accident caused by the vehicle, but due to his fall from the bicycle which did slide into a ditch. On the other hand, he did not enter into the witness-box and did not adduce any evidence otherwise also in support of his case. It is a fact that only claimant adduced evidence and examined himself and no witness has been examined on behalf of any of the defendants.

3. In so far as the question of limitation is concerned there is certainly some doubt about appellant's age when the accident took place.

4. Section 6(1) of the Limitation Act, 1963 takes care of a legal disability of a man against whom running of limitation is suspended during his minority. He is entitled to the same period of limitation as would have been available to him in the normal course and that is to be reckoned on cessation of his disability. As per Sub-section (3) of Section 110-A of the Motor Vehicles Act, 1939 the Tribunal is empowered to entertain an application for compensation, if made within six months of the occurrence of the accident and indeed as per proviso thereof on sufficient cause being shown that period can be extended. It was evidently claimant's burden to establish that within six months of his attaining majority the claim was lodged and in the alternative to plead that a case for extension of time under the proviso was made out. Mr. Sharma has, therefore, contended that neither of those two conditions having been satisfied, the M.A.C.T. was well within its jurisdiction to dismiss the claim as time barred.

5. In the instant case, it cannot be disputed on facts that if actually the claimant-appellant was aged 12 years his claim would be within limitation but the evidence is conflicting. The doctor who was examined by the claimants, CW Dr. V.K. Diwani, stated that on 6.7.1977 when he examined the claimant in the hospital, who was sent to him by the Huzrat Kotwali Police, he recorded his age as 13 years. He was deposing from the hospital records which he proved as Exhs. P-1 and P-2. What I find looking at the records is that in Exh. P-3 age is also recorded as 14 years and the same age is recorded in Exhs. P-2 and P-5. The evidence of doctor can be accepted only with respect to Exh. P-1 in which the age recorded was 13 years and that document of course deserves priority because that document was drawn up immediately after the occurrence on 6.7.1977. The statement of injuries in the prescribed form is to be read in that document. Tribunal's own finding on the relevant issue No. 8 is that reckoning claimant's age as 14 years at the time of accident, the claim was time barred by one year and two months. That being the position if benefit of doubt is given to claimant for one year on account of discrepancies in their hospital's documents aforementioned, the claim petition would be out of time only by two months. Although, there is no separate application for condonation contemplated under the proviso to Sub-section (3) of Section 110-A, that will not effect my jurisdiction to condone the delay and indeed I am of the view that jurisdiction in this regard should have been exercised below in the facts and circumstances of the case. After carefully going through the entire judgment what appears clear to me is that the court below had doubts about the truth of the claim. That doubt I do not entertain because I have gone through the entire gamut of the evidence. On that, I will add few words hereinafter.

6. On the merit of the claim, therefore, the evidence adduced is to be examined and in my view trial court has erred in the law in misreading evidence of the claimant due to which he has reached a wrong conclusion and perverse finding. It is not his admission, as unfortunately the court below has assumed, that he had fallen from bicycle and he had not been hit by the Tempo. At para 6 of his evidence in cross-examination what he admitted is that on the road there was a ditch and there was water in the ditch and he also stated that the bicycle which he was riding slid into the ditch and he fell down. That does not absolve the Tempo

driver of his responsibility because there is clear evidence of the claimant and the other eyewitness, examined by him, Kailash Singh, that the Tempo came from the backside and hit him. How he fell into the ditch was a fact to be considered. If the bicycle had slipped because of the impact of the accident, the Tempo driver was liable as he overran the fallen man. That fact, unfortunately, is ignored by the M.A.C.T. Another fact which had weighed with the court below is that though F.I.R. was lodged and prosecution had been initiated, those records have not been called for and produced by the claimant. I had also at one stage entertained some doubt, but those vanished when I looked into the other documents proved in the case. Exh. P-1 is signed by Medico-Legal Officer in the hospital. That apart, in other documents, Exhs. P-3 and P-5, the fact that injuries which the claimant suffered accrued from the Tempo accident, is also mentioned. The doctor himself gave evidence that from Huzrat Kotwali at 11.00 at night the injured claimant had come for treatment in the hospital after the accident which had taken place at 6.00 p.m. The time gap evidently shows that delay took place through processing of police and the claimant on that account was belatedly hospitalised. As held by the Apex Court in *N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal* 1980 ACJ 435 (SC), 'the courts are not supposed to succumb to niceties, technicalities and mystic maybes'; and that 'culpability must be inferred from circumstances, where it is fairly reasonable'. In the instant case, the circumstances are initiated and I am compelled to take the view that the claim is not a false one, as I have already demonstrated.

7. One word, however, I still say that the driver not having entered the witness-box, according to the settled law his rash and negligent driving has to be presumed and from that claimant-appellant is entitled to derive due benefit. For all these reasons, I hold that the claimant-appellant has duly proved his case and that he is entitled to get compensation for the injuries he suffered aforesaid.

8. Now the question is of quantum of compensation. The evidence that has come on record deserving consideration is that of doctors; but Dr. V.K. Diwani has only deposed of his examining the injured and of steps taken by him in dealing immediately with the medico-legal case. Beyond that, he has said nothing. The other doctor, Anant Kumar Dubey, did say something about the treatment which

the injured claimant received for a long time. However, even he does not say that the leg of the injured claimant was shortened though he speaks of a limp. It is true that his evidence is that the injured's leg had become thinner and his fast movement was impaired. He also deposed that he had to operate on the injured's leg and he had inserted rod during that operation.

9. Taking an overall view of the claimant's impairment and of his pain and sufferings I hold him entitled to be paid Rs. 30,000/- (Rupees thirty thousand only) and if that payment is made within three months the claimant-appellant shall not be entitled to any interest. In the event of default, he shall also be entitled to interest legally payable from the date of application till payment at the rate of 12 per cent per annum.

10. In the result, the appeal succeeds and is allowed to the extent aforesaid. No costs.

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