

**Devisingh Vs. Haramjan Singh and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/508121](http://sooperkanoon.com/508121)

**Court :** Madhya Pradesh

**Decided On :** Jun-21-1993

**Reported in :** II(1994)ACC352

**Judge :** R.D. Shukla and; V.S. Kokje, JJ.

**Appellant :** Devisingh

**Respondent :** Haramjan Singh and ors.

**Judgement :**

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

1. The appeal is directed against the judgment and Award dated 1.5.93 of 1st MACT, Indore passed in Claim Case No. 419/87 whereby the claimant-appellant has been awarded compensation of Rs. 40,000/- for having sustained injury in a motor-accident on 16.12.86.

2. The brief history of the case is that claimant-appellant was going to village Pigdambar from village Rau on motorcycle MPN 9332 which was driven by Naharsingh (who died in the accident), claimant and one Jugalkishore were pillion riders. At about 10.15 p.m. they reached near Mittal Cold Storage on A-B Road, National Highway, Indore, meanwhile a truck driven by respondent No. 2 owned by respondent No. 1 and insured by respondent No. 3 came with high speed and dashed against the motor cycle. All the three sustained injuries. Naharsingh died

in the accident. This claimant and the other persons i.e. Jugal Kishore sustained injuries. The matter was reported to the police. They were medically examined.

3. Three separate claim-petitions including petition by the claimant was filed. All the three claim petitions have been disposed of by a common judgment.

4. The respondents have denied the fact of rash and negligent driving and it was also asserted that the claimants contributed to the accident.

5. Learned Tribunal has held that the accident occurred due to rash and negligent driving of the motor vehicle (motor truck) this claimant sustained injuries and has incurred permanent partial disability as such Rs. 7000/- per pain, suffering and medical expenses and Rs. 33000/- as general damages has been awarded. This appeal has been filed for the enhancement of the same.

6. The contention of the learned Counsel for the appellant is that the infirmity incurred by the claimant who is a labourer is not only likely to persist for the whole of his life but is likely to adversely affect his working nor capacity as labourer.

7. Learned Tribunal has discussed the case of the present appellant in para 28 to 34 of the judgment and has held that the partial infirmity has been created and taking into consideration the receipts of medical bills produced by the claimant and on the basis of common experience of general expenses Rs. 7000/- has been awarded on that count. That amount appears to be proper and that has not been seriously challenged as well.

8. Now so far as the fact of permanent partial disability and compensation on that count is concerned, may be observed as per the statement of claimant. Devi Singh was working as a labourer and was looking after agricultural operation. He has stated his left leg has shortened. P.W. 9 Dr. Surendra Kumar Lunawad has given description of infirmity of shoulder joint, knee joint and the leg. He has stated that he will have difficulty in climbing the stair-case. The maximum what can be said in favour of the claimant is that taking his capacity in totality it has affected to the tune of 25%. He was a labourer and with the irregular employment if his income is taken to be Rs. 600/- per month i.e. Rs. 20/- per day the loss would be coming to

Rs. 150/- per month and Rs. 1800/- per year. If the multiplier of 15 is applied the compensation would come to Rs. 27000/-. as against it Rs. 33,000/- has been awarded on that Count.

9. Even otherwise if this 33,000/- is kept in a fixed deposit it will fetch an interest of Rs. 330/- per month while keeping the principal amount intact. Thus it will compensate the claimant for the infirmity suffered by him for the whole of his life and that would be nearly more than 50% of his income (which has been estimated to be nearly Rs. 600/- per month).

10. Though the fact of rash and negligent driving has been accepted by learned Tribunal but this aspect as to whether riding the motor cycle with two pillion riders would amount to rash and negligent driving of the vehicle has not been considered. Normally it would be breach of Rules and may amount to rash and negligent driving and if that view is taken the claimant as also deceased Naharsingh and other pillion rider Jugal Kishore would be held liable for contributory negligence and for this reason also it would not be proper to entertain the appeal for enhancement of compensation awarded to the claimant.

In view of the discussions above we do not find it to be a fit case for admission. There is no substance in this appeal. The appeal is, therefore, dismissed without notice to the other party.

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