

Sabal Singh Vs. Madhya Pradesh State Road Trans. Corpn. and ors.

Sabal Singh Vs. Madhya Pradesh State Road Trans. Corpn. and ors.

SooperKanoon Citation : sooperkanoon.com/509840

Court : Madhya Pradesh

Decided On : Feb-15-1995

Reported in : 1996ACJ162

Judge : R.D. Shukla, J.

Appeal No. : M.A. No. 207 of 1987

Appellant : Sabal Singh

Respondent : Madhya Pradesh State Road Trans. Corpn. and ors.

Advocate for Def. : M.L. Dhupar, Adv.

Advocate for Pet/Ap. : S. Patwa, Adv.

Disposition : Appeal allowed

Judgement :

R.D. Shukla, J.

1. The appeal is directed against the judgment and award dated 20.7.1987 of Motor Accidents Claims Tribunal, Mandleshwar, passed in Claim Case No. 37 of 1986 whereby claimant-appellant has been awarded compensation of Rs. 17,534/- with interest at the rate of 12 per cent per annum from the date of filing of application till realisation of the same for having sustained injury in a motor

accident on 23.11.1985.

2. This appeal has been filed for the enhancement of compensation amount.

3. This is not in dispute that the claimant-appellant was moving on a Luna moped on the date of accident and the motor bus No. MBI 2558 driven by respondent No. 2 and owned by respondent No. 1 came from the opposite side near Bodgaon crossing. The driver took a sudden turn towards Sanawad side and dashed against the Luna. The claimant became unconscious, sustained injuries on head and leg including fracture of tibia and fibula. He was taken to M.Y. Hospital, Indore and remained there for 11/2 month and had to continue with the treatment for about ten months. He, therefore, filed a petition for award of compensation of Rs. 1,00,000/-.

4. The claim was resisted by the respondents first on the ground that there was no rash and negligent driving and secondly, on the ground that the compensation is highly exaggerated.

5. Learned Tribunal has given a finding that the accident occurred due to rash and negligent driving of the motor bus by the respondent No. 2 and has awarded compensation as follows:

Rs. 1,534/- for the expenses for treatment and Rs. 15,000/- for the injuries sustained by the claimant. He has further awarded Rs. 1,000/- for the damage to Luna moped.

6. This appeal has been filed for enhancement as above.

7. The respondents have filed a cross-objection and have challenged the rash and negligent driving and the fact of award of compensation as well.

8. The contention of learned counsel for appellant is that learned Tribunal has not taken into consideration the loss of work. The claimant had to take leave for ten months and he is entitled for the compensation for the same.

9. The second contention of the learned counsel for appellant is that the claimant has been under great pain and one tube is still inside the body for breathing. He

has sustained permanent partial disability.

10. As against it, learned counsel for the respondents has submitted that the claimant being a teacher had obtained commuted leave and he was paid by the Government and, therefore, he is not entitled for the compensation for loss of work during the period of medical leave.

11. The second contention of the learned counsel for respondents is that the fact of rash and negligent driving of the vehicle has not been proved.

12. This court was taken to the record and the evidence adduced in the case. Motilal, P.W. 2, Nand Ram, P.W. 3, Sabal Singh, P.W. 1, claimant himself, have stated that the motor vehicle driven by respondent No. 2 came with a speed and took a sudden turn and dashed against the Luna of the claimant. The claimant was thrown and sustained injuries.

13. Narmada Lahari, DW 1, the driver of the vehicle and Balram, DW 2, have tried to state that the claimant who came on Luna dashed against the rear portion of the motor bus. The contention of these two witnesses does not appear to be correct, as if the person driving a Luna dashes against the bus he will not sustain that much injuries and will not be thrown to that distance. The claimant has filed document Exh. P-3, site map prepared by the police officer. That shows that the accident occurred on the right side of the road and the bus owned by the respondent No. 1 and driven by respondent No. 2 took turn for going to Sanawad. It appears the vehicle was in speed and, therefore, a bigger circle was required for taking the turn. The driver swerved the vehicle all of a sudden and that resulted in the dash to Luna and the claimant and it was for this reason that the impact was high, the claimant was thrown and, therefore, he sustained so much of injuries. In the opinion of this court this contention of the learned counsel for respondents cannot be accepted and it has rightly been held by the Tribunal that the accident occurred due to rash and negligent driving of the respondent No. 2.

14. Now, so far as the amount of compensation is concerned, this may be observed here that nowadays the leave accumulated is encashable. If any Government servant is required to take leave for medical purposes or because of

the injuries as in this case he loses the salary of commuted leave and, therefore, the claimant in this case would be entitled for the loss of work of that period for which he remained absent because of the injuries.

15. It has come in the evidence of Nathulal, P.W. 4, that the accident occurred on 23.11.1985 and the claimant had to remain on leave up to 30.9.1986. Dr. Satish Shukla, P.W. 5, was examined on 21.2.1987. The tube inserted in the windpipe was present in the body of the claimant that day also. This goes to show that the claimant was suffering up to September, 1986. This period comes to ten months and seven days. The claimant was getting a pay of Rs. 1,393/- p.m. and, therefore, he will be entitled for the compensation of loss of work for the period of leave which comes to Rs. 14,000/-.

16. The claimant must have been under great pain and suffering for all this period as he sustained fracture of tibia and fibula and injury on the head. This created difficulty in breathing and for that reason a tube had to be inserted in the wind-pipe and that continued up to 1987. The claimant would be entitled for an amount of Rs. 6,000/- for pain and suffering.

17. Dr. Shukla, P.W. 5, has stated that there is a disability to the extent of 25 per cent in the leg of the claimant. There is absolutely no cross-examination challenging this aspect of the evidence of Dr. Shukla. This goes to show that some deficiency in the strength of the leg has been created and that is likely to continue for some time and may continue for the whole of life. The claimant would further be entitled for a compensation of Rs. 5,000/- on this count also, i.e., for permanent partial disability.

18. The learned Tribunal has awarded Rs. 1,534/- towards the expenses for medicines but has not awarded anything for keeping the attendant during that period and for taking special diet during that period. It has come in the evidence of Dr. Shukla that the claimant remained unconscious for about 40 days. Some attendant, may be his relation, must have been there to look after him. Since the claimant continued to remain indisposed for ten months he must have been advised to take special diet for that. In the opinion of this court, therefore, Rs. 1,000/- and Rs. 3,000/- (at the rate of Rs. 300/- per month) would be just

compensation for meeting the expenses of attendant and for special diet.

19. Learned Tribunal has awarded Rs. 1,000/- for damage to Luna. That appears to be just and proper.

Thus, in the opinion of this court the claimant is entitled for compensation as follows:

Loss of work: Rs. 14,000/-

Pain and suffering: Rs. 6,000/-

Disability: Rs. 5,000/-

Expenses of medicines: Rs. 1,534/-

Expenses for attendant: Rs. 1,000/-

Special diet: Rs. 3,000/-

Damage to Luna: Rs. 1,000/-

Total: Rs. 31,534/-

20. As a result the cross-objection having no substance deserves dismissal and is hereby dismissed. The appeal deserves to be allowed and is hereby allowed in following terms:

21. The claimant-appellant shall be entitled for a compensation of Rs. 32,000 with interest at the rate of 12 per cent per annum from the date of the application till realisation of the same. The respondents shall pay the costs of claimant-appellant. Counsel's fee Rs. 500/-.