

**Raju Vs. Rajender and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/511379](http://sooperkanoon.com/511379)

**Court :** Madhya Pradesh

**Decided On :** Mar-14-2008

**Reported in :** 2009ACJ2060

**Judge :** N.K. Mody, J.

**Appellant :** Raju

**Respondent :** Rajender and ors.

**Judgement :**

**N.K. Mody, J.**

1. Being aggrieved by the award dated 20.4.2007 passed by Fourth Additional M.A.C.T. (Fast Track), Khar-gone, West Nimar in Claim Case No. 26 of 2006, whereby claim petition filed by the appellant was allowed and a sum of Rs. 1,25,200 was awarded on account of injuries sustained by the appellant and 50 per cent of the amount was deducted on account of contributory negligence, the present appeal has been filed.

2. Short facts of the case are that the appellant filed a claim petition alleging that on 26.5.2005 at about 1.30 p.m., appellant was going on Khargone-Khandwa Road on his motorbike, at that time appellant met with an accident with a bus bearing registration No. MP 46-E 0277, which was being driven by respondent No. 1 rashly and negligently, owned by respondent No. 2 and insured with respondent

No. 3. It was alleged that appellant sustained compound fracture of femur bone in right leg. It was alleged that the appellant was hospitalised for a period of 16 days, where appellant was operated. There was permanent disability up to the extent of 15 per cent. It was prayed that compensation be awarded. The claim petition was contested by the respondents. After framing of issues and recording of evidence the learned Tribunal allowed the claim petition and awarded a sum of Rs. 1,25,200 and deducted 50 per cent of the awarded amount on the ground that appellant was equally liable for the accident, against which the present appeal has been filed.

3. The learned Counsel for the appellant submits that learned Tribunal awarded a sum of Rs. 1,25,200, break-up of which is as under:

|                               |            |                                         |            |
|-------------------------------|------------|-----------------------------------------|------------|
| Towards future loss of Income | Rs. 38,200 | Towards permanent Disability            | Rs. 25,000 |
| Towards loss of income        | Rs. 3,750  | Towards pain and Suffering              | Rs. 5,000  |
| Towards medical Expenses      | Rs. 51,225 | Towards expenses incurred on attendants | Rs. 2,000  |

4. Learned Counsel submits that looking to the injuries sustained by the appellant, amount awarded by the learned Tribunal is on lower side. It is also submitted that criminal case was registered against the respondent No. 1. It is submitted that the appellant examined himself and also one eyewitness. Learned Counsel submits that in the facts and circumstances of the case learned Tribunal committed error in holding that the accident occurred because of contributory negligence. It is prayed that the amount be enhanced and the findings regarding contributory negligence be set aside.

5. Learned Counsel for respondent No. 3 submits that looking to the injuries sustained by the appellant amount awarded by the learned Tribunal is just and proper. So far as findings of learned Tribunal relating to contributory negligence is concerned, the learned Counsel submits that appellant himself was in a drunken condition, which is evident from Exh. P4. It is further submitted that respondent No. 1, who was the driver has examined himself and after due appreciation of evidence learned Tribunal has held that because of contributory negligence the accident occurred, which requires no interference.

6. From perusal of the record it is evident that in MLC, which is Exh. P4, it is mentioned that appellant is alcoholic but it is not mentioned in Exh. P4 that at the relevant time appellant was in a drunken condition. Appellant examined himself and has also examined Punjansingh as AW 2, who was eyewitness, who has stated that in what circumstances the accident occurred. In the written statement filed by respondent No. 3, it is nowhere stated that the accident occurred because of rash and negligent driving of the appellant. Criminal case was also registered against respondent No. 1. In the facts and circumstances of the case, there was no justification on the part of learned Tribunal in holding that the accident occurred because of contributory negligence. So far as amount of compensation is concerned, it appears that looking to the injuries sustained by the appellant, amount awarded by the learned Tribunal is just and proper and no further enhancement can be made.

7. In view of this appeal stands allowed in part. The findings regarding the contributory negligence stands set aside. The appellant shall be entitled for a sum of Rs. 1,25,200 as awarded by the learned Tribunal.

8. With the aforesaid observation appeal stands disposed of. No order as to costs.