

Subhash Gautam Vs. State of Madhya Pradesh and ors.

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Court : Madhya Pradesh

Decided On : Aug-13-2002

Reported in : 2004ACJ1097

Judge : Bhawani Singh, C.J. and ;S.L. Jain, J.

Appeal No. : M.A. No. 894 of 1997

Appellant : Subhash Gautam

Respondent : State of Madhya Pradesh and ors.

Advocate for Def. : P.D. Gupta, D.A.G.

Advocate for Pet/Ap. : Amrit Ruprah, Adv.

Disposition : Appeal allowed

Judgement :

Bhawani Singh, C.J.

1. This appeal is directed against the award passed by the Motor Accidents Claims Tribunal, Bhopal, in the Claim Case No. 318 of 1996 dated 15.1.1997. Subhash Gautam (claimant) is a lecturer in the Government School. On 17.9.90 at about 7.15 p.m. he was going on his scooter with his brother from Jawahar Chowk to Roshanpura. When, for going to T.T. Nagar, he turned towards the Rang Mahal Road, Dilip Kumar (driver) of jeep No. MPP 1240, driving the jeep rashly and

negligently hit him resulting in compound fracture to both legs. Immediately, he was shifted to Hamedia Government Hospital. Thereafter, he went to Ujjain and took treatment. Afterwards he had to go to Bombay for treatment. There he was admitted in Hinduja Hospital. For treatment he had to go to Bombay repeatedly. The treatment continued for about 2 years incurring expenditure of Rs. 2,00,000/-. Respondents submit that accident took place due to negligence of claimant who came in front of the jeep resulting in the accident, otherwise the jeep was being driven at normal speed with due care and caution.

2. With regard to the income claimant submits that he was earning Rs. 3,200/- per month. He was 40 years old at the time of the accident. Respondents have not disputed this aspect of the matter by setting up some other income of claimant. Claims Tribunal, after the evidence, came to the conclusion that drivers of jeep and scooter were equally responsible for the accident, though it is found that claimant suffered serious injuries in this accident. Consequently, compensation of Rs. 1,93,000/- is assessed against the claim of Rs. 9,12,000/-. On account of contributory negligence by claimant, award amount has been reduced to half.

3. Through this appeal, claimant has challenged the award with regard to the finding on issue Nos. 1 and 2. Mrs. Amrit Ruprah contends that accident took place due to rash and negligent driving of jeep by its driver. With regard to objection of Mr. P.O. Gupta, the learned counsel for respondents, that in the claim, averment is that the jeep hit the scooter head-on, it is contended that in fact this pleading is not in consonance with the actual happening of the accident which according to the learned counsel took place when the jeep hit scooter from behind. This is also supported by contents of the first information report, Exh. P-1, statement of the claimant and the ground of realities. The Claims Tribunal has also accepted this averment but goes wrong when it decides that both the drivers were equally responsible for the accident. Reference to the reply of the respondents would show that accident took place because the legs of claimant were hit with the front portion of the jeep but in evidence it is stated that the accident had not taken place with the jeep. As a matter of fact the claimant was driving the scooter speedily and when he took turn, he hit against the iron grill resulting in the accident.

4. From careful perusal of the evidence, it can legitimately be said that the scooter was moving on the road driven by the claimant with his brother as pillion rider. When it turned to the right at the crossing, due to iron grill on the road divider the speed slowed down and the jeep at this stage hit it from behind resulting in accident and injuries to the claimant. The rash and negligent driving on the part of jeep driver is clearly established. He should have been careful to drive the jeep at the relevant time at a place where accident took place. He should have seen that he was following a scooter, speed of which was likely to slow down on the divider therefore, he should have driven the jeep by keeping reasonable distance. Failure to do so, demonstrates rash and negligent driving on his part, for which the claimant was not responsible. Consequently, finding of contributory negligence on the part of claimant is unsustainable and is, therefore, set aside.

5. After coming to aforesaid conclusion, we turn to examine the question of compensation payable in this case.

6. Mrs. Ruprah submits that just compensation has not been awarded looking to the nature of injuries, long treatment, pain and suffering, loss of salary and other expenses incurred by the claimant. While Mr. P.D. Gupta, Deputy Advocate General, submits that compensation is reasonable and case for enhancement is not made out under any of the heads against which claim has been laid.

7. From perusal of the evidence, it is found that the claimant suffered serious injuries in the accident. Both legs had compound fractures. He got treatment in Hamedia Government Hospital, Bhopal for sometime. Later in Ujjain and then in Hinduja Hospital, Bombay, for about two years. He remained absent from duty for 479 days. He has not been paid for this period, since leave availed by him was without payment.

8. During treatment plates were inserted, bone grafted and operated as many as four times. Obviously, during all this period he must have undergone pain, shock and suffering. Bombay he went seven times. Obviously to Bhopal and Ujjain may be many times. Medical version is that he suffered permanent disability to the extent of 50 per cent. May be so, but actually his physical frame has been seriously battered and shattered. He would no longer be of that health which he

once enjoyed at the age of 40 years. Therefore, for years, he is going to suffer socially and physically on account of this disability. He states that due to these injuries he can neither sit properly nor move comfortably. He has to take help of stick and medical instrument for this purpose. The Claims Tribunal has noticed this state of health in the impugned award. For treatment, he must have spent sufficient amount. Mr. P.D. Gupta submits that definite amount with regard to the treatment is Rs. 33,176.45/- and Rs. 35,000/- have been awarded. Mrs. Ruprah submits that although the claimant spent Rs. 2,58,000/- for the treatment but from Exh. P-6 to Exh. P-138 amount of Rs. 70,662/- appears to have been spent towards treatment. It is also submitted that payment of Rs. 5,000/- for transport and Rs. 5,000/- for special diet is grossly inadequate since claimant had to remain on special diet for years and spent huge amount for transport 2-3 different places on number of occasions.

9. Giving consideration to respective submissions advanced by learned counsel for the parties, we are of the opinion that award deserves to be modified and compensation enhanced as follows:

Award by Tribunal	Amount after enhancement
(1) Permanent disability	Rs. 75,000
(2) Pain and suffering	Rs. 1,25,000
(3) Treatment	Rs. 25,000
(4) Transport	Rs. 50,000
(5) Loss of income	Rs. 35,000
(6) Special diet	Rs. 75,000
	Rs. 5,000
	Rs. 15,000 (including attendant)
	Rs. 48,000
	Rs. 48,000
	Rs. 5,000
	Rs. 10,000
Total	Rs. 3,23,000

Therefore, the appeal is allowed. The award is modified to the extent that the claimant shall be entitled to compensation of Rs. 3,23,000/- (rupees three lakh twenty-three thousand) from the respondents jointly and severally. The enhanced amount will carry interest at the rate of 9 per cent per annum from the date of application till payment. Costs on parties.