

Mohan Vs. Bherulal and anr.

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Court : Madhya Pradesh

Decided On : Oct-09-2007

Reported in : 2008ACJ1735

Judge : N.K. Mody, J.

Appellant : Mohan

Respondent : Bherulal and anr.

Advocate for Def. : Mrs. Preeti Saxena

Disposition : Appeal allowed

Judgement :

N.K. Mody, J.

1. Being aggrieved by the award dated 5.7.2005 passed by Additional M.A.C.T., Kukshi, District Dhar in Claim Case No. 72 of 2002 whereby the learned Tribunal assessed the compensation on account of injuries sustained by appellant as Rs. 7,750 but dismissed the claim petition filed by the appellant on the ground that the appellant failed to prove that respondent No. 1 was driving the offending vehicle rashly and negligently, hence, the present appeal has been filed.

2. Short facts of the case are that the appellant filed a claim petition alleging that on 16.5.2001 when the appellant was coming in a truck bearing registration No.

MP 14-B 1110 along with livestock of animals and was travelling for the safety of animals at that time accident occurred. It was alleged that respondent No. 1 was the owner and driver of the offending vehicle while the same was insured with respondent No. 2. It was alleged that the matter was reported with Police Station, Gandhwani. It was alleged that because of the accident, appellant sustained injuries, hence the claim petition was filed.

3. Respondent No. 1 submitted written statement wherein all the allegations made in the claim petition were denied. It was prayed that the suit be dismissed. Respondent No. 2 also submitted the written statement wherein allegations made in the claim petition were denied. It was also alleged that the respondent No. 1 was not having valid driving licence at the relevant time. It was prayed that the claim petition be dismissed.

4. After framing of the issues and the recording of evidence, learned Tribunal found that appellant sustained injuries and appellant is entitled for payment of compensation to the extent of Rs. 7,750, but since there was no fault on the part of respondent No. 1, therefore, respondent No. 2 cannot be held liable for payment of compensation.

5. Mr. Tarun Kushwaha, the learned Counsel for the appellant submits that from the documents submitted by appellant including the site map, Exh. P8, it is evident that because of failure of steering, the accident occurred. It is submitted that since the appellant was the third party, therefore, even if it is not proved that the accident occurred because of rash and negligent driving of the respondent No. 1, then too appellant is entitled for payment of compensation. Learned Counsel further submits that so far as amount awarded is concerned, looking to the injuries sustained by the appellant the amount awarded is on lower side. Reliance was placed on a decision in the matter of *Paramjit Kaur v. Murarilal Shankya*, wherein a Division Bench of this Court has observed that burden to prove that the driver of the offending vehicle was not negligent was upon the driver. It was further held that since driver did not enter the witness-box to prove that there was no negligence on his part, claimants are entitled to compensation. Further reliance was placed on a decision of Hon'ble Supreme Court in the matter of *Kaushnuma*

Begum v. New India Assurance Co. Ltd. : [2001]1SCR8 , wherein in a case where front tyre of jeep burst while in motion, the vehicle became unbalanced and turned turtle, crushing to death a person walking on the road, it was observed that there was neither rashness nor any negligence in driving the vehicle, hence driver has no liability and as such the owner has no vicarious liability to pay compensation to the dependants of the deceased. The Hon'ble Apex Court held that the accident occurred when the vehicle was in use, therefore, rule of strict liability is applicable in claims for compensation made in respect of motor accidents.

6. Mrs. Preeti Saxena, learned Counsel for the respondent No. 2, submits that since there was no evidence to the effect that respondent No. 1 was negligent, therefore, learned Tribunal has rightly held that the respondents are not liable for payment of compensation. Learned Counsel placed reliance on a decision in the matter of Oriental Insurance Co. Ltd. v. Premlata Shukla 2007 ACJ 1928 (SC), wherein the Hon'ble Apex Court observed that proof of rashness and negligence of driver of the offending vehicle is sine qua non for maintaining claim application. It is submitted that in the circumstance no interference can be made in the award passed by the learned Tribunal.

7. From perusal of the record and the award, it is evident that the break-up of amount awarded by learned Tribunal is as under:

Special diet and expenses incurred on attendant Rs. 2,500
Pain and suffering Rs. 3,000
Other heads Rs. 2,250-----Total Rs. 7,750-----

8. Looking to the injuries sustained by the appellant, it appears that the amount assessed by learned Tribunal is on lower side, the same is enhanced by Rs. 10,000. The amount of compensation comes to Rs. 17,750 instead of Rs. 7,750. So far as liability of respondents is concerned, it has come in evidence that the steering of the offending vehicle failed and because of imbalance of offending vehicle, the same was dashed. Since the appellant was third party, therefore, the only evidence which could have been adduced by the appellant that the accident occurred when respondent No. 1 was driving the offending vehicle. The burden was on respondent No. 1 to prove that respondent No. 1 was not liable for the accident. From perusal of para 6 of the award, it is evident that it has not come in

evidence that in what circumstance the accident occurred. Since burden to prove was on respondent No. 1 and respondent No. 1 failed to prove, therefore, the learned Tribunal committed error in dismissing the claim petition.

9. In view of this, the appeal stands allowed. The findings of learned Tribunal so far as liability of respondents for payment of compensation is concerned, are set aside. Appellant shall be entitled for a total sum of Rs. 17,750 along with interest at the rate of 7.5 per cent per annum from the date of filing of the application till realisation. No order as to costs.

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