

Vilas Vs. Madhya Pradesh State Road Trans. Corpn. and ors.

Vilas Vs. Madhya Pradesh State Road Trans. Corpn. and ors.

SooperKanoon Citation : sooperkanoon.com/511993

Court : Madhya Pradesh

Decided On : Apr-11-2001

Reported in : 2003ACJ1234

Judge : Bhawani Singh, C.J. and ;A.M. Sapre, J.

Appeal No. : M.A. No. 30 of 1998

Appellant : Vilas

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

Advocate for Def. : S.S. Kemkar and ;M.L. Dhupar, Advs.

Advocate for Pet/Ap. : H.S. Rajpal, Adv.

Judgement :

Bhawani Singh, C.J.

1. This appeal is directed against the award of Motor Accidents Claims Tribunal, Mandleshwar in Claim Case No. 10 of 1994 dated 17.11.97.

2. Accident took place on 17.4.1989. Two vehicles truck No. CPU 6333 insured with Oriental Insurance Co. Ltd. and the bus No. MPO 1483 owned by the Madhya Pradesh State Road Transport Corporation (hereinafter referred to as 'M.P.S.R.T.C.') are involved. The allegation is that these two vehicles collided with each other affecting on the rear portion of the bus. The claimant was injured in this

accident as a result of which his right hand has been amputated. The injured got the proficiency certificate from the Labour Department and was an apprentice in some firm at Dewas earning Rs. 700 per month. It is said that after completion of apprenticeship he was likely to get a monthly salary of Rs. 4,000. The accident, according to the claimant, was the result of rash and negligent driving by the truck driver. At the time of accident he was 24 years of age. The M.P.S.R.T.C. has denied the responsibility for taking place of the accident, therefore, it is stated that it is not liable to pay compensation. The Counsel for the insurance company has stated that there is no negligence for payment of compensation. The truck was being driven against the terms and conditions of the policy. The Tribunal has come to the conclusion that the accident took place on 17.4.1989 for which the bus was liable to the extent of 25 per cent and the truck 75 per cent. It is also found that due to this accident, right hand of the claimant has been amputated. Against claim of Rs. 2,15,000 compensation of Rs. 79,500 has been awarded carrying interest at the rate of 10 per cent per annum from the date of the application. The allegation that the truck was being plied against terms and conditions of the policy, has been rejected, as not proved. Claimant is not satisfied with the award, therefore, it has been assailed through this appeal.

3. Mr. H.S. Rajpal learned Counsel for the appellant contended that finding of the Tribunal with respect to apportionment of liability is not sustainable. It is contended that the truck was solely responsible for the accident, therefore, insurance company is liable to pay the compensation. The evidence of some witnesses was led in support of the contention. Mr. M.L. Dhupar learned Counsel appearing for Oriental Insurance Co. Ltd. contends that the bus was more liable than the truck and in case this court comes to the conclusion that both vehicles are involved in the accident, in that event, liability for the accident and payment of compensation should be equally distributed. Mr. S.S. Kemkar, the learned Counsel appearing for the M.P.S.R.T.C. contends that the bus was not liable for the accident, therefore, finding of the Tribunal holding the M.P.S.R.T.C. liable to pay compensation to the extent of 25 per cent should be set aside.

4. After giving consideration to the submissions raised by the learned Counsel for the parties, we are of the opinion that truck No. CPU 6333, insured with Oriental

Insurance Co. Ltd., was solely responsible for the accident. The bus was carrying passengers to its capacity. It was moving on the left side of the road during the night. The evidence suggests that it was moving with speed of 40 km. per hour. It was realised by the passengers that the truck sped away after hitting rear side of the bus. The bus halted but not the truck. It sped away and could be intercepted by the bus which followed it after being hit. There is no evidence suggesting that the bus intruded into the space through which the truck was to pass, rather it appears that the truck came towards side of the bus and hit it from the side which shows that the truck driver did not drive it carefully and cautiously and caused the accident.

5. Consequently, the contention of Mr. M.L. Dhupar that the truck was not responsible for the accident cannot be accepted. The finding of the Claims Tribunal on this aspect of the matter, is not based on correct appreciation of the evidence, therefore, it is liable to be set aside. After coming to this conclusion, we proceed to determine the compensation in this case.

6. Mr. H.S. Rajpal brought to our notice decision of Andhra Pradesh High Court in Gandhari Ramesh v. Janardhan 1999 ACJ 816 (AP) and submitted that the compensation of Rs. 2,50,000 should be awarded. The facts of the case and this case are similar to some extent but the difference is that in the case cited by Mr. H.S. Rajpal, the claimant was in receipt of monthly salary of Rs. 2,500 but in this case he was working as apprentice in some firm and was earning Rs. 700 per month. Learned Counsel submits that after completion of apprenticeship the claimant was likely to earn Rs. 4,000 per month, therefore, compensation may be calculated on that basis.

7. It may be true that the claimant was in possession of proficiency certificate in Electrician Course and was also earning Rs. 700 per month from the firm at Dewas. We accept that after completion of the course he was likely to earn some reasonable amount after getting the job in the firm but it is difficult to assess the compensation on Rs. 4,000 as submitted by the learned Counsel. However, Schedule attached to the Motor Vehicles Act, 1988 presumes income to non-earning member at Rs. 15,000 annually. Here is a claimant who lost his right hand

in the accident, his disability is worked out at 80 per cent with which we do not agree as the claimant has lost use of right hand completely after amputation.

8. Mr. M.L. Dhupar brought to our notice the Supreme Court decision in K. Narayanaswamy v. Mukunda 1999 ACJ 1599 (SC) and the decisions of Himachal Pradesh High Court in Rajesh Kumar v. Himachal Pradesh Electricity Board 1995 ACJ 1146 (HP) and National Insurance Co. Ltd. v. Bhag Devi 1998 ACJ 235 (HP), as also the decision of Punjab & Haryana High Court in Wasti Ram Kohli v. Idris 1998 ACJ 1354 (P&H;).

9. Out of these two decisions of the High Court of Himachal Pradesh, the decision nearer to the present case is Rajesh Kumar's case 1995 ACJ 1146 (HP), in which the deceased claimant lost left hand and serious injuries to the right hand to the extent of 25 per cent and compensation of Rs. 1,50,000 has been awarded. In the present case, the hand affected is the right one. It has been amputated. Disability is 100 per cent to the young man of 24 years undergoing apprenticeship course with reasonably better prospects in later life, thereafter, we are of the opinion that compensation in this case should be assessed taking into consideration the monthly income of the claimant at Rs. 2,000 and applying multiplier of 17. The recipient of compensation in this case is the injured. Taking into consideration the well settled principle that quantum of compensation in personal injury cases, is higher than fatal injury cases since in the former cases, it be utilized by the injured on themselves while in the later cases, the benefit accrued to the legal heirs. Therefore, just and reasonable compensation awardable in this case should be Rs. 3,84,000. This compensation will take care of medical expenses incurred by the appellant on his treatment, mental pain and suffering, transportation costs, etc. It will carry interest at the rate of 12 per cent from the date of application and the contention of Mr. M.L. Dhupar that it should be 10 per cent since the insurance company was impleaded after five years, is unsustainable. The compensation shall be paid by Oriental Insurance Co. Ltd. and the owner jointly and severally. It shall be paid within two months.

Costs on parties.

