

**Dikcha Vs. Jamaluddin**

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**Court :** Madhya Pradesh

**Decided On :** Jul-25-2003

**Reported in :** II(2004)ACC366; 2005ACJ1054

**Judge :** Deepak Verma and ;S.K. Seth, JJ.

**Appeal No. :** Misc. Appeal No. 1871 of 2002

**Appellant :** Dikcha

**Respondent :** Jamaluddin

**Advocate for Def. :** S.V. Dandwate, Adv.

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

**Judgement :**

**Deepak Verma and S.K. Seth, JJ.**

1. Mr. H.S. Rajpal, the learned counsel for the appellant; none for respondent Nos. 1 and 2 though served and Mr. S.V. Dandwate, learned counsel for respondent No. 3.

2. They are heard on I.A. No. 4490 of 2002. This application was filed for dispensing with filing of the vakalatnama. Learned counsel for the appellant submits that after filing of the application, he has filed the vakalatnama on behalf

of the appellant, therefore, this application has been rendered infructuous. The same is accordingly disposed of and stands closed.

3. With consent arguments heard. This appeal for the enhancement has been filed by the appellant Dikcha, who met with a road accident on 12.1.1998. The learned Tribunal after analysing (he evidence on record has awarded a sum of Rs. 2,70,522 on all heads relating to the pecuniary and non-pecuniary losses. The Tribunal also found that respondent No. 2 was responsible for causing the accident on the Ujjain-Dewas State Highway on account of his rash and negligent driving. At the time of accident, the offending vehicle belonged to respondent No. 1 and the same was insured with respondent No. 3. The Tribunal found all the respondents liable to pay the compensation jointly and severally.

4. The only contention urged by Mr. H.S. Rajpal, the learned counsel for the appellant is that the Tribunal has awarded a meagre sum looking to the nature of injuries sustained by the appellant and the prolonged treatment, which she was required to undergo in different hospitals. Mr. S.V. Dandwate, learned counsel for the insurance company submitted that the amount awarded by the Tribunal is just and proper and does not call for any interference. Mr. Dandwate also contended that the appellant cannot escape from the blame of causing the accident and to some extent not only the appellant but her parents are responsible for the same as they left the young child unattended on the said State Highway. In the light of the aforesaid contentions, Mr. Dandwate submitted that the amount is just and proper and does not require to be enhanced.

5. After hearing the learned counsel for the parties and perusal of the record, we find that the respondent No. 2 ought to have been more cautious while driving the offending vehicle especially when he had seen that the child is near the road. The respondent No. 2 should have regulated the speed in such a manner so as to avoid the accident anticipating the child psychology. It is well settled that heavier the vehicle, more caution and vigilance is required on the part of the driver. It is common knowledge that in India children often run across the road noticing the approaching vehicle little realising that in the process they may get hurt. In the present case, the accident had occurred in the broad daylight and the driver of the

offending vehicle did not step into the witness-box to explain how the accident had occurred. In view of this, it is a fit case in which the doctrine of 'res ipsa loquitur' applies as the accident speaks for itself. Thus, we confirm the finding of the Claims Tribunal that the respondent No. 2 alone was responsible for causing the accident resulting into grievous injuries to the appellant.

6. From the evidence on record and especially from the evidence of the treating doctor, who has been examined, it is clear that the appellant was given treatment initially at Ujjain and later on in M.Y. Hospital and Choithram Hospital, Indore. From the evidence it is also clear that the appellant remained in the hospitals for almost 27 months. Appellant had sustained compound fractures in tibia and fibula in her both legs, apart from the other injuries, for which skin-grafting was required and was done. From the photographs Exhs. P-500 to P-503, it is clear that both the legs of the appellant have lost their natural shape and the appellant has become bow-legged. From the photographs it is also clear that the appellant will not be in a position to move in the society freely unless she covers her lower portion of the body completely. The deformity and the damaged skin indicates that her marriage prospects have been greatly diminished, and even after the marriage, she would not lead a normal life. She has lost her natural gait. The damage to the skin is so extensive that it would not be possible to cure the defect even by skin-grafting as the amount of skin required would not be available on the body of the appellant. The appellant must have undergone great pain and suffering and the amount of agony, which the appellant must have suffered, cannot be expressed in words.

7. After going through the entire evidence in our considered opinion, a sum of Rs. 5,00,000 (rupees five lakh) inclusive of past and future medical expenses for pecuniary and non-pecuniary losses on all heads would be the just and proper amount of compensation, which the appellant is entitled to recover from the respondents jointly and severally. Out of the amount of Rs. 5,00,000, as awarded by us, the amount as already ordered by the Claims Tribunal shall remain in the F.D.R. of any nationalised bank till she attains the age of majority. Thus, the appeal is partly allowed. The impugned award is modified to the extent, indicated above. The enhanced amount shall carry interest at the rate of 8 per cent per

annum from the date of the application till it is actually paid to the appellant. The respondent No. 3 shall bear the costs throughout. Counsel's fees Rs. 1,000, if certified.

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