

SachIn Kumar Vs. Chuni Lal

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Court : Himachal Pradesh

Decided On : May-24-2005

Reported in : IV(2005)ACC5,2006ACJ1390,2006(3)ShimLC265

Judge : Deepak Gupta, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 166 and 173

Appeal No. : F.A.O. No. 55 of 1998

Appellant : SachIn Kumar

Respondent : Chuni Lal

Advocate for Def. : C.B. Singh, Adv.

Advocate for Pet/Ap. : N.K. Sood, Adv.

Disposition : Appeal dismissed

Judgement :

Deepak Gupta, J.

1. This appeal under Section 173 of the [Motor Vehicles Act, 1988](#) (hereinafter referred to as 'the Act'), is directed against the award of the Motor Accidents Claims Tribunal-II, Kangra at Dharamsala in M.A.C. Petition No. 37-D of 1994, dated 11.7.1997 awarding compensation of Rs. 77,600 to the claimants.

2. The facts necessary for the disposal of the case are that on 30.9.1994, the appellant, who was aged about 14 years at that time was driving scooter No. HP 15-0164. The claimant filed a claim petition under Section 166 of the Act alleging that he was hit by the scooter and that the accident occurred due to rash and negligent driving of appellant.

3. The minor, Sachin Kumar through his father, Kishan Lal and his mother, who is owner of the scooter filed a reply in which the factum of the accident was denied. It was stated that the injured while crossing the road had fallen down himself and sustained injuries and there was no impact with the scooter. In this reply it was also stated that minor Sachin Kumar was not driving the scooter with the consent of the owner of the scooter and that he had taken the scooter without their permission. The insurance company also filed reply and took up the plea that since the minor was driving the vehicle and admittedly he did not have driving licence, the insurance company was not liable to pay compensation.

4. The Tribunal came to the conclusion that the accident had occurred due to rash and negligent driving of the scooter driver. It awarded a compensation of Rs. 77,600 along with interest at the rate of 12 per cent per annum from the date of filing of claim petition till payment/deposit of the amount. It was further ordered that if the amount is not deposited within 30 days then claimant would be entitled to interest at the rate of 15 per cent per annum. The insurance company was exonerated from its liability on the ground that the minor driver did not have a driving licence.

5. Mr. N.K. Sood, learned Counsel for the appellant, has basically raised four contentions before me, i.e., (i) that there was no accident with the scooter in question and the Tribunal has wrongly held that the minor was responsible for the accident; (ii) that the amount awarded to claimant is very high; (iii) that the rate of interest awarded is excessive and awarding of 15 per cent penal interest is not justified; and (iv) that the liability, if any, is that of the insurance company.

6. So far as first contention is concerned, PW 4 states that though he had not seen the accident, the scooter had also fallen down and the accident appears to have been taken place. PW 5 states that the accident had occurred with the scooter and

due to the fact that the scooter was being driven at a very high speed and in a negligent manner. To the similar effect is the statement of claimant, PW 6. F.I.R., Exh. PW 1/A was lodged on the same date soon after the accident in which also a mention has been made that accident had occurred with the scooter. Minor Sachin Kumar, who was aged about 17 years when his statement was recorded in July 1997, has stated that in fact no accident took place.

7. Kuldip Kumar, RW 2, also supports the version of the respondent and states that the accident had not taken place.

8. After going through the evidence, in my opinion it has been proved on record that the accident had occurred and was a result of rash and negligent driving of respondent No. 1. The respondents have taken up a false plea that the accident in fact did not occur. The respondents' version that the accident did not occur is patently false and cannot be accepted. Further, PW5 has given a graphic account of the accident. There is nothing to show that he is making false statement. The finding of the Tribunal on this issue is upheld.

9. With regard to the quantum of compensation, Mr. N.K. Sood has vehemently contended that the amount granted for the medical expenses is on higher side since the bills produced on record are only for about Rs. 1,700 and Rs. 5,000 has been awarded. The claimant remained in hospital for 13 days. He must have been looked after by his family members day and night for 13 days. Thereafter he remained under plaster for about 6 weeks. He would require attendance for this period also. Normally persons who are in hospitals and thereafter discharged are required to be on special diet. The amount of Rs. 5,000 awarded cannot be said to be excessive by any stretch of imagination.

10. Mr. Sood has also contended that the amount of Rs. 57,600 granted for future loss of income is not justified. According to him there was no material on record to take the income of the injured at Rs. 2,000 per month. He further submits that in view of the statement of the doctor, PW 2, that this disability will not affect the earning capacity so far as running of tea stall is concerned, no amount should have been awarded under this head. He also submits that when claimant was admitted in hospital, he had shown his income at Rs. 3,000 per month.

11. I have given my careful consideration to the matter. It is common knowledge that when people are admitted in hospitals, especially in general wards, the income is recorded at the instance of the person accompanying the patient. The claimant was unconscious after the accident. There is nothing on record to show that the income shown in the records of the hospital was recorded at the instance of claimant. It has been proved on record that claimant was a tea stall owner. Therefore, the assessment of his income at Rs. 2,000 per month, cannot be said to be excessive. It has come on record that he was also having some agricultural land. Taking all these facts into consideration the assessment of his income is rather on the conservative side and cannot be said to be excessive.

12. Even assuming that 20 per cent loss to his disability would not lead to 20 per cent drop in the income of the claimant, the amount awarded is reasonable. Claimant as per his statement is still not working. Assuming this statement to be incorrect, keeping in view the nature of injuries, he could not have worked for about 4 months. Thereafter his working capacity and earning capacity will definitely be adversely effected. The claimant suffered 20 per cent disability to his body. He has to live with this disability for the rest of his life. He has to walk with a limp which is permanent in nature. Therefore, amount of Rs. 57,600 awarded can be justified under other heads. The total award is in fact on the lower side and calls for no interference.

13. The Tribunal has awarded 12 per cent interest and also ordered that in case the amount is not deposited within 30 days, 15 per cent interest is payable. In my view this portion of the award is not justified. Keeping in view the judgment of the Apex Court in *Kaushnuma Begum v. New India Assurance Co. Ltd.* : [2001]1SCR8 , the rate of interest should have been 9 per cent per annum. The Tribunal was also not justified in awarding 15 per cent interest in case the amount is not deposited within 30 days. Every party has a right to appeal to a higher court. The limitation prescribed is 90 days. The time taken for obtaining the award is also to be excluded. A right of a party to file an appeal and obtain stay order from the higher court cannot be frustrated by making such a stipulation in the award. The Tribunal should normally award only a flat rate of interest. The Tribunal at the time of passing of the award cannot assume the role of executing court also. In view of

the judgment in Kaushnuma's case it would be appropriate to order that the claimants shall be entitled to interest at 9 per cent per annum.

14. The last contention of Mr. Sood is that the insurance company should have been fastened with the liability to pay the awarded amount. In support of his contention he has relied upon a judgment of Apex Court reported in National Insurance Co. Ltd. v. Swaran Singh : AIR 2004 SC1531 . He submits that the driver was a minor and had taken the scooter without the permission of his parents. Therefore, there was no fault on the part of the owner of the vehicle and as such the insurance company should have been fastened with liability. From a reading of the evidence, especially the statement of RWs 1 and 3, i.e., minor Sachin Kumar and his father Krishan Lal Sood, who is also his guardian, it is clear that the minor was driving the scooter right from 1992, i.e., two years prior to the accident. According to the father he had taken the scooter many times without permission. A young boy of 12 years cannot learn how to drive a scooter without the express or implied consent of the parents. Even assuming that the parents had stopped him from driving the scooter, what steps they took to prevent him from performing the illegal act have not been placed before the Tribunal. The father and the son both admit that he had been regularly driving the scooter since 1992. The mother who is the registered owner of the scooter and also the insured has chosen not to appear in the witness-box. She was the best person to tell as to how the minor was driving the scooter without her permission. Since she has not cared to appear in the witness-box, an adverse inference has to be drawn against her. Keeping in view the fact that the minor had been driving the scooter for two years prior to the accident the version of the appellant that he was driving the scooter without the consent of his parents does not appear to be correct. Parents who permit their minor child to violate the law and drive without a licence must suffer for the misdemeanour of the minor. In the present case, it is admitted that this was not an isolated instance of the minor driving the scooter. Admittedly he had been driving it very often since 1992. Therefore, it can be presumed that the minor was driving the scooter with the tacit consent of his parents. Therefore, the insurance company cannot be burdened with the liability to pay the awarded amount.

15. Appeal is accordingly dismissed. It is, however, ordered that interest on compensation shall be payable at the rate of 9 per cent per annum from 29.11.1994, i.e., the date of filing of the claim petition till the date of payment/deposit of the amount. No costs.

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