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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH**

ON THE 3rd OF JANUARY, 2024

MISC. APPEAL No. 3436 of 2023

BETWEEN:-

**MADHORA S/O SHRI DAGU DESHMUKH, AGED ABOUT
84 YEARS, OCCUPATION: AGRICULTURIST R/O AASTHA
TEHSIL MULTAI DISTRICT BETUL (MADHYA PRADESH)**

.....APPELLANT

(BY SHRI PAWAN CHOUDHARY - ADVOCATE)

AND

- 1. RATTESINGH S/O SHRI BALAK SINGH DHURVE
R/O GEHUBARSA TEHSIL MULTAI DISTRICT
BETUL (MADHYA PRADESH)**
- 2. NATIONAL INSURANCE COMPANY LTD.
THROUGH ITS BRANCH MANAGER AT BRANCH
OFFICE GURUDWARA ROAD BETUL (MADHYA
PRADESH)**

.....RESPONDENTS

(BY NONE)

.....
*This appeal coming on for admission this day, the court passed the
following:*

ORDER

- 1. Though this appeal is listed for orders on admission, however, with consent of learned counsel for the appellant, it is finally heard.**

Notice to opposite party has not been issued.

Record is received.

- 2. This appeal has been filed against the award dated 28.04.2023 passed in**

M.A.C.C. No. 92/2018 (Madhorao Vs. Ratte Singh and others) by the learned Second Additional M.A.C.T., Multai, District Betul.

3. The appeal has been filed on the ground that learned Tribunal has dismissed the claim petition filed for compensation on the ground that no motor accident causing serious injuries and permanent disability took place. It is submitted that since police has filed charge-sheet and appellant had produced eye-witnesses, therefore, Court should have awarded compensation and should not have dismissed the claim petition.

4. In short, the appellant/ claimant filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 alleging that on 8.6.2017, in afternoon at about 1:30 p.m. near village Raiamla, the appellant along with his son Devrao were going on foot. Suddenly a scooty No. M.P. 48 MN 9299 came from behind and non-applicant No.1 driving the scooty rashly and negligently hit them, due to which the appellant/ applicant got injured and sustained a fracture. Son picked him up. Claimant was admitted to a hospital. He was treated at Nagpur. Injury has caused permanent disability. Police registered a case against non-applicant No.1 Omkar (since deceased) in Crime No. 572/2017.

5. Non-applicants No. 1 and 2 before the Tribunal filed a written statement and denied the allegations. They stated that applicant had an old injury and case has been registered falsely. If any liability arises then it is the Insurance Company which has to pay. The Insurance Company also denied the accident and any liability of payment of compensation.

6. The learned trial Court framed the issue regarding occurrence of accident and gave a finding that accident has not been proved and regarding the grievous injury, the Court gave a finding that grievous injury is proved but not due to accident in question as alleged, and dismissed the petition.

Perused the record.

Most important is the statement of claimant Madhorao (A.W.1), who admitted that he is a retired Incharge Police Station Officer. On the date of accident, he did not lodge a report. He admitted that he came to know about the number of offending vehicle after 15 days. Even then, he did not file report. When he returned from Nagpur, thereafter also he did not file report. He, however, submits that he did not file a false claim. He also pleaded ignorance as to why on discharge certificate (Ex. A/11), there is no mention of motor vehicle accident injury. But, on the other hand, on Ex.A/11 (A to A portion) it is written - History "Fall at home". He further admitted that after discharge from the hospital, he had given any application to police but he has not filed a copy of the same.

His son Devrao has stated in paragraph 5 of cross-examination that his father was walking behind him. The place where his father fell down, there was huge crowd. He did not ask his father as to how he fell down and he did not see the accident.

7. A.W.3 (Dr. Shantanu Sengupta) has supported the injury caused to claimant. In paragraph 4 of his cross-examination he submitted that when patient is admitted, history is written and in this case in the hospital record (Ex. A/11) "fall at home" is mentioned.

8. After hearing learned counsel for the appellant and perusing the oral and documentary evidence, this Court finds no reason as to why wrong entry regarding injury would be made by the hospital in Ex. A/11 (Discharge Summary) especially when the document was in the possession of claimant - retired police officer. If there is any error, before filing the claim petition that

error could have been got corrected. A.W.3 (Dr. Shantanu Sengupta) has not been challenged regarding the aforesaid entry "Fall at Home" made in the discharge record. If entry is wrong then applicant should have cross-examined his witness A.W.3 (Dr. Sengupta) but there is not a word in cross-examination regarding the history "fall at home". In Discharge Summary of claimant, Ex. A/11, date of admission is 9.6.2017 and date of discharge is 15.06.2017.

9. In this regard, learned Tribunal has referred to the judgment of Hon'ble Apex Court in **North West Karnataka Road Transport Corporation Versus Gaurabai, (2009)15 S.C.C. 165 in paragraphs 3 & 4**, which supports the decision of the learned Tribunal regarding mention of history in medical papers and their value.

10. Therefore, in the considered view of this Court the order of Tribunal is correct on facts and law and no interference can be made in the award and as such, this appeal is not liable to be admitted and accordingly it is **dismissed** at the stage of admission itself.

11. Since notice has not been issued to the respondents, they are at liberty to seek modification of this order, if occasion so arises.

Let a copy of this order be sent to the concerned Tribunal along with record of the case.

(AVANINDRA KUMAR SINGH)
JUDGE