Kunwarji Vs. Nisarkhan

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Court : Madhya Pradesh

Decided On : Mar-10-1989

Reported in : II(1989)ACC138; 1990ACJ71; [1991]72CompCas160(MP)

Judge : G.G. Sohani, Actg. C.J. and ;R.K. Verma, J.

Acts : Motor Vehicles Act, 1939 - Sections 95

Appeal No. : Miscellaneous Appeal No. 213 of 1981

Appellant : Kunwarji

Respondent : Nisarkhan

Advocate for Def. : M.G. Upadhyaya, Adv.

Advocate for Pet/Ap. : Sujan Jain, Adv.

Disposition : Appeal partly allowed

Judgement :

R.K. Verma, J.

1. This is an appeal by the claimant-injured against the award dated April 22, 1981, made by the Motor Accidents Claims Tribunal, Indorei in Claim Case No. 57 of 1978, whereby the learned Tribunal has awarded compensation amounting to Rs. 32,500 with interest at 6% per annum in respect of the injury sustained by the

claimant as a result of the motor accident caused due to rash and negligent driving of the truck be'ar-ing registration No. MPM-3231, driven by the driver, respondent No. 2.

2. The facts giving rise to this appeal, briefly stated, are as follows :

In the evening of September 20, 1977, while the appellant claimant was going on a motor cycle bearing registration No. MPN 7255 with his son riding on the pillion from his village Khajuriya to Hatod and was on the ' Fulkaradia turning of the road, the offending truck coming from the opposite direction and being driven by respondent No. 2, dashed against the motor cycle as a result of which the motor cycle and the claimant's son were thrown and the claimant himself sustained injuries on his face and right leg which resulted in disfigurement of his face and amputation of his right leg below the knee. On a claim petition having been filed before the Motor Accidents Claims Tribunal, Indore, by the appellant-claimant, the learned Tribunal, on appreciation of evidence adduced in the case found that the motor accident was caused due to rash and negligent driving of the truck by its driver respondent No. 2. Considering the question of compensation, the learned Tribunal has found that the appellant-claimant is an agriculturist aged about 35 years, who was earning about Rs. 30,000 per annum at the time of the accident and has held him entitled to compensation amounting to Rs. 32,500.

3. Being aggrieved by the inadequacy of compensation awarded by the learned Tribunal, the appellant-claimant has filed this appeal for enhancement of the amount of compensation.

4. No cross-appeal or cross-objection has been filed by the respondents, viz., the owner, the driver and the insurer in respect of theoffending vehicle. The finding of rash and negligent driving by respondent No. 2 being the cause of the accident resulting in the injuries to the appellant-claimant is, therefore, not disputed and the only question urged before us relates to the quantum of compensation.

5. Learned counsel for the appellant has submitted that the amount of compensation awarded by the learned Tribunal is quite meagre, having regard to the nature of injuries and resulting disability suffered by the appellant-claimant

whose right leg had to be amputated below the knee. Learned counsel has cited two comparable decisions in cases of injury resulting in amputation of the leg. The first decision cited by him is that of the High Court of Punjab and Haryana in Hardev Singh v. Sharnarthi Cooperative Transport Society Ltd. [1988] ACJ 182, where the injured claimant was an agriculturist aged 31 years whose right leg above the knee had to be amputated. The amount of compensation was enhanced by the High Court to Rs. 1,00,000. The other case is a decision of the High Court of Andhra Pradesh in Bhagawan Das v. Mohd. Arif [1987] ACJ 1052 where, for the amputation of the right leg below the knee causing permanent disability to the claimant-injured, who was aged 35 years, the amount of compensation awarded in appeal by the High Court amounted to Rs. 1,07,412. On the other hand, learned counsel for the respondents has cited a decision of this court in Mukhtiyar v. M. P. State Road Transport Coloration [1987] 2 ACC 413, wherein compensation was enhanced in appeal to Rs. 50,000 on the basis of the submission made on behalf of the injured-claimant who had suffered amputation of his leg above the knee.

6. In our opinion, the case of Hardev Singh [1988] ACJ 182 (P & H) is more or less similar to the instant case being a case of an injured agriculturist aged 31 years, but with this difference that, in that case, the amputation of the injured claimant's right leg was above the knee whereas, in the instant case, the amputation of the claimant's right leg is below the knee, which obviously makes a difference in the extent of permanent physical disability. In the circumstances, we think that a compensation of Rs. 75,000 will be a just and fair compensation to be awarded to the claimant-injured. The rate of interest at 6% per annum awarded by the learned Tribunal also deserves to be raised to 9% per annum payable from the date of filing of the claim petition, i.e., March 18, 1978, till realisation.

7. Learned counsel for the insurer-respondent No. 3 has contended that so far as respondent No. 3 is concerned, its limit of liability in respect of any claim or series of claims arising out of one event extends to Rs. 50,000 only as is evident from the policy on record in respect of the offending truck exhibited as 3-NA-1. Learned counsel submitted that theaccident occurred in the year 1977 when, even according to the provisions of Section 95(2)(a) of the Motor Vehicles Act, a policy of insurance was required to cover a liability in respect of one accident up to Rs.

50,000 only. Learned counsel for the appellant-claimant has, however, contended that since no plea by the insurance company that its liability is limited was taken in the written statement, the insurance company should be held liable for the entire amount that may be awarded. He has cited a decision of the High Court of Punjab and Haryana in Surinder Pal Singh v. Mohinder Kaur [1987] ACJ 127 and other similar decisions in support of his submission aforesaid. But, as has been held by this court in a Full Bench decision in United India Fire and General Insurance Company Ltd. v. Natvarlal [1988] MPLJ 676 ; [1990] 68 Comp Cas 558, an insurance company can be held liable to pay an amount in excess of the statutory limit under the Motor Vehicles Act if the policy covers that liability and the question as to whether an insurance company is or is not so liable, should not be decided on the abstract doctrine of burden of proof. In the instant case, the insurance policy has been filed by the insurer and, therefore, the liability of the insurer cannot be fixed beyond what has been covered in the policy, i.e., say not beyond an amount of Rs. 50,000.

8. Accordingly, this appeal is partly allowed with costs and the award of the learned Tribunal is modified inasmuch as, instead of Rs. 32,500 awarded as compensation by the learned Tribunal with interest at 6% per annum, the appellant claimant is held entitled to a compensation of Rs. 75,000 with interest at 9% per annum from the date of the claim petition till realisation. Out of the amount of Rs. 75,000 determined as compensation, an amount of Rs. 50,000 with interest shall be payable by the insurer-respondent No. 3 and the balance of Rs. 25,000 with interest shall be payable by respondents Nos. 1 and 2. Counsel's fee Rs. 500, if certified.