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Suresh Kumar Vs. Pradeep Kumar and ors.

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Court : Madhya Pradesh

Decided On : Jan-10-1984

Reported in : II(1984)ACC105

Judge : G.G. Sohani and ;R.K. Vijayavargiya, JJ.

Appellant : Suresh Kumar

Respondent : Pradeep Kumar and ors.

Judgement :

R.K. Vijayavargiya, J.

1. This order shall also dispose of Misc. Appeal No. 199 of 1981 (M.P. State Road Transport Corporation and Anr. v. Suresh Kumar and Ors.) as both these appeals are directed against the award dated 9-5-1981 passed by the 3rd Addl. Motor Accidents Claims Tribunal, Indore, in claim case No. 210 of 1979.

2. The facts giving rise to these appeals are as follows: Passenger No. MPN 7311 is owned by Pradeep Kumar son of Tejkaran. On the date of incident it was being driven by the non-applicant Babulal son of Banshilal in the course of his employment with the non-applicant No. 1. It was insured with the non-applicant No. 3 the United India Fire and General Insurance Co. Ltd. Passenger bus No. CPH 8338 is owned by the non-applicant No. 4 M. P. State Road Transport Corporation and on the date of the incident it was being driven by the non-

applicant No. 5 Patiram Sharma in the course of his employment with the non-applicant No. 4. The claimant was travelling in bus No. MPN 7311 from Indore to Ujjain on 18-6-79. When the bus reached near Sanwer bus No. CPH 8338 came from the opposite direction and dashed against bus No. MPN 7311. The claimant was injured is the accident. He sustained compound fractures of radius and ulna of his right hand and the was also fractured. The claimant filed an application Under Section 110-A of the Motor Vehicles Act claiming compensation for the injuries sustained by him in the accident against the non-applicants. According to him the accident was caused on account of the negligence of the drivers of both the buses in driving the buses in the course of their employment with the owners of the buses.

The non-applicants contested the claim.

3. The Tribunal held that the accident was caused on account of the negligence of the drivers of the both buses and therefore the non-applicants jointly and severally were liable to pay a sum of Rs. 21,454/- as compensation with interest at 6 per cent per annum from the date of application till payment. Aggrieved by the inadequacy of the amount award by the Tribunal as compensation the claimant has preferred appeal which is registered as Misc. Appeal No. 192/81. The non-applicant No. 4, Corporation, has also preferred appeal against the award of the Tribunal which is registered as Misc. Appeal No. 199 of 1981. Both the appeals were heard together.

4. The learned Counsel for the claimant contended that having regard to the gravity of the injuries sustained by the claimant and the premanent disability caused to him the amount awarded as compensation by the Tribunal is too inadequate and requires to be suitably enhanced. He also contended that the Tribunal was not justified in holding that the claimant has not proved that he paid a sum of Rs. 2,000/- as fees to Dr. Sahani who preformed the operations and treated the claimant.

5. The learned Counsel for the non-applicant No. 4 Corporation contended that the Tribunal committed an error in holding that the accident was caused on account of the negligence of the driver of the bus owned by the Corporation and that the

amount awarded by the Tribunal is excessive.

6. The first question that arises for consideration, therefore, is whether the Tribunal committed an error in holding that the driver of the bus owned by the Corporation was also negligent in driving the said bus.

7. The non-applicant No. 5, Patiram Sharma, the driver of the Corporation bus deposed that when he saw the private bus coming from the opposite direction and entering the culvert he stopped the bus on the other side of the culvert and that the driver of the private bus tried to over-take a bullock-cart and in the process dashed against his standing bus. This has not been found by the Tribunal as true. According to the Tribunal both the buses were in motion and crossed each other on the culvert and that while so crossing they came so close to each other that the bus owned by the Corporation came into contact with the right hand of the claimant causing injuries to him.

8. It was contended by the learned Counsel for the Corporation that the claimant was also negligent in keeping his hand out and therefore contributed to the accident. This contention has no force. The bus driver ought to have kept his bus at a safe distance and bad he done so the accident could have been avoided.

9. In our opinion on the materials placed on record the Tribunal did not commit any error in holding that the driver of the Corporation bus was also negligent and the accident was caused on account of the composite negli- gence of the drivers of both the buses. We see no reason to interfere with the said finding recorded by the Tribunal.

10. As regards the amount of compensation the Tribunal allowed a sum of Rs. 2,804/- as expenses for treatment, a sum of Rs. 500/- as amount spent by the claimant on special diet, a sum of Rs. 1,800/- on account of loss of salary for the period of six months during which the claimant was under treatment, a sum of Rs. 5,000/- as damages for pain and suffering and a sum of Rs. 11,350/- as pecuniary loss sustained by the claimant on account of the permanent disability caused to him.

11. The claimant had claimed that he had paid a sum of Rs. 2,500/- to Dr. Sahani who performed the operations and treated him. He examined Dr. Sahani who deposed that he received a sum of Rs. 2,500/- as fees from the claimant. The Tribunal allowed only Rs. 500/- as the fees of Dr. Sahani and disallowed a sum of Rs. 2,000/- on the ground that the bill given by Dr. Sahani to the claimant was produced at a late stage. In our opinion the Tribunal was not justified in disallowing the amount of Rs. 2,000/- in view of the testimony of Dr. Sahani who deposed that he received the said sum of Rs. 2,000/- from the claimant. There is no reason to disbelieve Dr. Sahani on that point. In our opinion the claimant is entitled to a further sum of Rs. 2,000/- as expenses for treatment in addition to the amount of Rs. 2,804/- awarded by the Tribunal.

12. Having considered the evidence on record we are of the opinion that the Tribunal did not commit any error in awarding a sum of Rs. 500/- as expenses on special diet a sum of Rs. 1,800/- on account of loss of salary during the period of six months when the claimant was under treatment and a sum of Rs. 5,000/- as damages for physical pain and suffering. We, therefore, see no reason to interfere with the award of compensation passed by the Tribunal under the aforesaid heads.

13. As regards general damages the claimant was 25 years of age on the date of the accident. He was working as a salesman in a private firm. Although he stated that he was earning Rs. 350/- per month, the Tribunal held that his emoluments were Rs. 300/- p.m. The Tribunal further held that the claimant had to be operated upon thrice and there was a compound fracture of his disability was 50%. The radius and ulna of his right hand and his right thumb was also fractured. According to Dr. Sahani the claimant was permanently disabled and his disability was 50%. The Tribunal held that the disability of the claimant was 40%. However, the Tribunal calculated the damages on the basis of 25% disability, and awarded a sum of Rs. 11,350/- as compensation on that basis.

14. In our opinion the compensation awarded by the Tribunal as general damages is rather inadequate. There was no reason to calculate damages under that head on the basis of 25% disability and not calculating the pecuniary loss to the

claimant on the basis of 40% permanent disability caused to him. The amount of compensation works out to about Rs. 17,700/- on that basis. In our opinion the claimant is entitled to receive that amount as general damages from the non applicants.

15. Thus, the claimant is entitled to receive as compensation a sum of Rs. 4,804/- say Rs. 4,800/- as expenses incurred by him in his treatment, a sum of Rs. 500/- as expenses for special diet, a sum of Rs. 1,800/- as loss of salary for the period of six months during which the claimant was under treatment, a sum of Rs. 5,000/- as damages for physical pain and suffering and a sum of Rs. 17,700/- as pecuniary loss sustained by him on account of the injuries caused to him in the accident total Rs. 30,000/- from the non-applicants.

16. As a result of the discussion aforesaid Misc. Appeal No. 192 of 1981 preferred by the claimant is partly allowed. The award passed by the Tribunal is modified. It is ordered that the claimant is entitled to receive a sum of Rs. 30,000/- (Thirty thousand) jointly and severally from the non-applicants with interest at 6% p.a. from the date of the application till payment. Misc. Appeal No. 199 of 1981 preferred by the non-applicant No. 4 M. P. State Road Transport Corporation is dismissed. In the circumstances the parties shall bear their own costs of these appeals.

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