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Court : Madhya Pradesh

Decided On : Sep-03-1992

Reported in : 1993ACJ856

Judge : V.S. Kokje and ;M.W. Deo, JJ.

Appeal No. : M.A. No. 114 of 1986

Appellant : Chandrapraba and anr.

Respondent : Madhya Pradesh State Road Trans. Corpn. and anr.

Advocate for Def. : Dhupar, Adv.

Advocate for Pet/Ap. : Kshirsagar, Adv.

Disposition : Appeal allowed

Judgement :

M.W. Deo, J.

1. Jyoti, a girl aged 6 years, was alleged to have been knocked down by a city bus bearing No. CPW 7006, owned by respondent No. 1 and driven by Madhukarrao, respondent No. 2, in the employment of respondent No. 1.

2. Briefly stated, the case of the claimant Jyoti through her guardian mother Chandrapraba was that on 13.5.1983 while Jyoti was walking along with her mother by the side of the road near Rajwada, Indore, the bus aforesaid was driven by driver Madhukarrao rashly and negligently with the result that Jyoti was knocked down by the front conductor side wheel of the bus and her legs were overrun by the wheel. Jyoti was taken to the hospital where she was admitted and operated. She was an indoor patient in M.Y. Hospital, Indore, from 13.5.1983 to 5.7.1983. Jyoti has suffered a permanent disability of 25 per cent with a stiff knee with permanent scars on both legs. Jyoti, therefore, claimed damages to the tune of Rs. 1,00,000/- including special damages for treatment and general damages due to pain and sufferings and loss of chance of marriage.

3. The respondents denied negligence on the part of driver Madhukarrao as also the facts relating to quantum.

4. The learned Tribunal held that the accident took place due to rash and negligent driving of the vehicle by Madhukarrao. The learned Tribunal awarded Rs. 500/- on account of expenditure on treatment and Rs. 20,000/- as general damages with interest of 10 per cent per annum from the date of application.

5. The appellants in this court contended that the quantum of compensation awarded by the Tribunal is inadequate and unjust. It is also submitted that the appellants should be granted a total compensation of Rs. 1,00,000/-.

6. The respondents have filed a cross-objection challenging the finding of rash and negligent driving as well as the quantum.

7. As regards the question of rash and negligent driving on the part of driver Madhukarrao, the evidence of Jyoti and her mother Chandrapraba has been corroborated by Shantabai, AW 3, who is an independent witness. This evidence to the effect that the bus was driven by the driver rashly and negligently and, therefore, hit Jyoti by the conductor side front wheel has been relied upon by the learned Tribunal with good reasons. It is to be seen that Madhukarrao, DW 1, admitted in his evidence before the Tribunal that he had admitted the fact of rash and negligent driving by him before the criminal court. This admission by

Madhukarrao puts the last nail in the coffin. This is not to say that the judgment of the criminal court is relevant. It is to be noted that it is only an admission of Madhukarrao on the fact of rash and negligent driving made in reply to the charge which is admissible and relevant. Consequently there is no merit in the cross-objection against the finding of rash and negligent driving on the part of Madhukarrao arrived at by the learned Tribunal and the same is confirmed.

8. As regards the quantum, it is to be seen that the appellants in the original claim petition at the end of para 3 have claimed Rs. 2,000/- on account of expenses on medical treatment. The learned Tribunal was not correct in refusing to allow this sum in para 12 of the award on the ground that all the bills have not been proved. It is to be borne in mind that the girl was admittedly an indoor patient from 13.5.1983 to 5.7.1983, a period of about three months/In these circumstances and the nature of treatment in which the girl had to undergo three operations, the learned Tribunal was wholly unjustified in not accepting the statement of Chandrapraba that Rs. 2,000/- were spent on expenses of treatment. We, therefore, modify the finding of the Tribunal and enhance the amount of compensation on account of expenses on treatment from Rs. 500/- to Rs. 2,000/- as claimed in the petition. The award stands enhanced by Rs. 1,500/- on this count.

9. That brings us to the second question of general damages. The learned Tribunal has taken into consideration the pain and sufferings as also the loss of prospects of marriage of Jyoti on account of the fact that she has suffered a permanent disability of a stiff knee on account of which she is now unable to bend forward, to squat or sit cross-legged. It is also to be seen that there is medical evidence of wasting of muscles of the thigh in addition to 3 permanent scars on the legs. [See evidence of Dr. Taneja and his assessment of permanent disability on the basis of Mac-Bride Table]. In the aforesaid circumstances we certainly feel that the amount of compensation awarded on account of general damages by considering both the factors, namely, pain and sufferings, loss of chance of marriage in future, deserves to be enhanced. There cannot be any arithmetical test for assessment of such damages. Facts of each case are bound to be different. Having regard to the state of society (a carpenter) to which Jyoti belongs,

the age of Jyoti and her environment, we feel that she deserves a compensation of Rs. 25,000/- on account of loss of marriage prospects as held in the case of Niveditta Arora v. Prem Singh 1986 ACJ 327 (P&H;), add to it Rs. 15,000/- on account of pain and sufferings and we arrive at a just and fair award of Rs. 40,000/-.

10. In the result the appeal is allowed. The award is enhanced from Rs. 500/- to Rs. 2,000/- on the ground of special damages of expenses of treatment and from Rs. 20,000/- to Rs. 40,000/- as general damages as stated above. Thus the total increase in the award is Rs. 21,500/-. The award shall carry interest at the rate of 12 per cent per annum from the date of application till payment. The appellants shall have costs from the respondent No. 1. Counsel's fee Rs. 1,000/-, if certified.

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