

Mansingh Vs. Surendra Kumar and anr.

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Court : Madhya Pradesh

Decided On : Mar-11-1989

Reported in : 1990ACJ620

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

Appeal No. : M.A. No. 234 of 1985

Appellant : Mansingh

Respondent : Surendra Kumar and anr.

Advocate for Def. : Neema, Adv.

Advocate for Pet/Ap. : R.N. Dave, Adv.

Judgement :

R.K. Verma, J.

1. This is an appeal by the claimant-injured against the award dated 31st July, 1985 made by the Third Additional Motor Accidents Claims Tribunal, Indore in Claim Case No. 15 of 1983 whereby the learned Tribunal has awarded compensation amounting to Rs. 38,339.70 with interest at the rate of 6 per cent per annum from the date of filing the claim petition till the date of realisation together with costs in favour of the appellant-claimant against the respondent Nos. 1 and 2, the insured and the insurer, in respect of the offending Matador bus

bearing registration No. MBE 1334 which was involved in the accident resulting in serious injuries sustained by the appellant-claimant.

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

On 15.1.1983 at about 6.20 a.m. the appellant-claimant was going on foot from his house towards Maharaja Shivajirao School along Subhash Marg and when he reached the gate of the said school near Chiman Bag chouraha, the offending bus being driven by the respondent No. 1 dashed against him and dragged him away to a distance as a result of which his both the legs were fractured and two of his teeth were uprooted and he has acquired a permanent disablement. The appellant was admitted in M.Y. Hospital, Indore for his treatment where he remained as indoor patient from 15.1.1983 to 10.2.1983 and even after discharge from the hospital, he continued to be under treatment for quite some time. On a claim petition having been filed by the appellant-claimant, the learned Tribunal, on appreciation of evidence adduced in the case, found that the motor accident resulting in the injuries sustained by the appellant-claimant occurred due to rash and negligent driving of the offending Matador bus by its driver, that the appellant was an indoor patient under treatment in M.Y. Hospital from 15.1.1983 to 10.2.1983 and that he was likely to continue treatment for six more months. The learned Tribunal further found that both the legs of the appellant were fractured and his two teeth were uprooted as a result of the accident and that he has suffered a permanent disablement.

3. In connection with the determination of compensation in respect of the injuries and the disabilities suffered by the appellant, the learned Tribunal has held that the appellant was aged about 41 years and was getting a salary of Rs. 848.65 per month at the time of accident and that although according to the testimony of Dr. Taneja, the appellant has acquired a permanent disability to the extent of 40 per cent it cannot be said that due to the said disability he will not be allowed to resume his duties and will be removed from service, as alleged by the appellant. The learned Tribunal has assessed the net loss of income suffered by the appellant because of his absence from duty as a result of the accident and prolonged treatment at Rs. 11,385/-and damages for pain and suffering and

permanent disability at Rs. 25,000/-. The learned Tribunal has also awarded Rs. 1,500/- on account of special diet, Rs. 154.70 towards medicines and Rs. 300/- as transport charges. Thus, a total amount of Rs. 38,339.70 by way of compensation to the appellant-claimant has been awarded in respect of his injuries.

4. The respondents have, on the other hand, filed a cross-objection, but since the cross-objection is barred by time and no application for condoning the delay appears to have been filed, it does not deserve to be entertained.

5. The learned Counsel for the appellant-claimant has submitted that apart from long suffering on account of fractures of both the legs and uprooting of two teeth of the appellant due to injuries sustained in the accident, the appellant has come to acquire a permanent disability to the extent of 40 per cent as has been stated by Dr. Taneja and accepted by the learned Tribunal. The amount of compensation of Rs. 25,000/- assessed by the Tribunal, in the circumstances, is said to be quite poor and inadequate.

6. Having heard learned Counsel and having considered the evidence and the award made by the learned Tribunal, we are of the opinion that the amount awarded is too meagre to be called a just and fair compensation, having regard to the extent of disability resulting from the injuries sustained by the appellant in the accident. The amount of compensation deserves to be enhanced adequately. We think that a total amount of Rs. 60,000/- instead of Rs. 38,339.70 as awarded by the learned Tribunal, would be just and proper compensation, which should be awarded to the appellant-claimant in respect of the injuries sustained by him. Accordingly, the appellant-claimant is held entitled to get from the respondents an amount of Rs. 60,000/- as compensation with interest at the rate of 9 per cent per annum instead of 6 per cent per annum, from the date of claim petition till realisation.

7. In the result, this appeal is partly allowed and the award made by the learned Tribunal is modified inasmuch as the appellant-claimant is held entitled to get compensation of Rs. 60,000/- with interest at the rate of 9 per cent per annum from the date of claim petition till the date of realisation instead of Rs. 38,339.70 with interest at the rate of 6 per cent per annum as awarded by the learned

Tribunal.

8. The cross-objection filed by the respondents is hereby dismissed.

There shall, however, be no order as to costs of this appeal and the cross-objection.

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