

Jaipalsingh Vs. Rayis and ors.

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Court : Madhya Pradesh

Decided On : Nov-10-2005

Reported in : I(2006)ACC132; 2006(1)MPHT341

Judge : Ashok Kumar Tiwari, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 163A and 173

Appeal No. : Misc. Appeal No. 449/2001

Appellant : Jaipalsingh

Respondent : Rayis and ors.

Advocate for Def. : Lokesh Mehta, Adv. for the Respondent No. 3

Advocate for Pet/Ap. : Rajendra Bapat, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

Ashok Kumar Tiwari, J.

1. This appeal, under Section 173 of Motor Vehicle Act, has been filed by the appellants/claimants for enhancement of the sum awarded to them vide award dated 3-2-2001, passed by the learned Member, First Motor Accident Claims

Tribunal, Kukshi District Dhar (M.P.) in Claim Case No. 20/99.

2. On 9-7-98 the appellant was returning back from his school on foot, near a culvert on Itawa road, Dewas, a truck bearing registration No. MP-13/E-0778, owned by the respondent No. 2, insured with the respondent No. 3 and driven rashly and negligently by the respondent No. 1 dashed against him. Due to the forceful impact the appellant sustained severe injuries in his legs and other parts of the body including fracture in his right leg. Huge amount of money had to be spent on his treatment, yet he has suffered permanent disablement in his leg. The appellant filed a claim petition claiming Rs. 4,60,000/- to be awarded as compensation for the loss caused to him due to the injuries. The learned Tribunal vide impugned award partly allowed the claim of the appellant and passed an award of Rs. 30,000/- along with the interest @ Rs. 12% p.a. and costs of the litigation. Feeling the amount insufficient the appellant preferred this appeal for enhancing the quantum of the award.

3. The occurrence of the accident, the involvement of truck No. MP-13/E-0778 in the accident, the negligence of the respondent No. 1, the driver of the truck and the liability of the insurance company are not disputed. The only question to be considered in this appeal is whether any more amount of money could be awarded to the appellant.

4. The learned Tribunal has held that the appellant has sustained injuries in the accident and suffered 16% permanent disablement. The learned Tribunal has assessed the income of the appellant at Rs. 15,000/- p.a. and after deducting 1/3rd of it from this amount applied the multiplier of 16 to the remainder and assessed 16% on the resultant figure to be the loss caused to the appellant due to the disablement which worked out at Rs. 25,600/-. This method of assessing the loss appears to be erroneous and does not stand to the logic. The appellant was aged about 18 years at the time of accident and was studying in school. It can not be said that he would have earned Rs. 15,000/- p.a. only for the whole life. As a matter of fact his income at the time of accident does not matter much in assessing the loss caused to him. Whatever might be his income at the time of accident he will have to suffer a constant and recurring financial loss as he will

earn little less than what he would have earned had the disablement was not caused to him and he will have to spend some more amount of money on himself to meet out the difficulties in his day to day work to be caused due to the disablement. His future prospects will also be affected adversely. The loss to be suffered by the appellant thus due to the reduction in his physical capacity, in the facts and circumstances of the case and keeping in view the social status of the appellant, could be assessed at Rs. 300/- p.m., i.e., Rs. 3,600/- p.a. This loss he will have to suffer for the rest of his life. Keeping in view his age at the time of accident the total loss to be suffered by him could be worked out by multiplying 3,600/- by 16, which is the multiplier to be applied in assessing the loss of dependency in death case according to the Second Schedule to Section 163A of the Motor Vehicles Act. Thus, the financial loss caused to the appellants comes to be $3,600 \times 16$ equivalent to Rupees 57,600/- and this much amount ought to have been allowed towards compensation for loss of income.

5. The learned Tribunal has awarded only Rs. 2,000/- towards physical pain and mental agony. Looking to the nature of injuries sustained by the appellant this amount appears to be on lower side. Atleast Rs. 5,000/- ought to have been awarded under the head of pain and suffering and mental agony caused to the appellant.

6. The learned Tribunal has allowed Rs. 2,400/- only towards the medical expenses incurred in the treatment. Any document evidencing the medical expenses has not been filed by the appellant. The learned Tribunal has awarded medical expenses on the estimate basis. Looking to the nature of the injuries it can be inferred that even more amount than what has been awarded towards medical expenses might have been incurred in the treatment of the appellant. In the facts and circumstances of the case even on the estimate basis Rs. 10,000/- ought to have been awarded towards medical expenses. This amount will be just and fair compensation towards the head of medical expenses incurred. Thus, on the basis of the above discussion it is evident that the appellant is entitled to get Rs. 72,600/-.

7. Consequently, this appeal is allowed to the extent indicated above. The impugned award is modified and the quantum is enhanced from Rs. 30,000/-to Rs. 72,600/-. The enhanced amount shall carry interest @ Rs. 6% p.a. while the remaining amount shall carry the interest at the rate awarded by the learned Tribunal. Respondents shall also beat costs of the appellant through out. Counsel fee Rs. 1,000/-, if certified. Respondents shall be jointly and severally liable for payment of the award money which shall be disbursed in accordance with the directions of the learned Tribunal given in the impugned award.

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