

Ramesh Chandra Vs. Ramesh Kumar and anr.

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Court : Madhya Pradesh

Decided On : Feb-10-1995

Reported in : 1996ACJ83

Judge : U.L. Bhat, C.J.

Appeal No. : M.A. Nos. 135 and 159 of 1984

Appellant : Ramesh Chandra

Respondent : Ramesh Kumar and anr.

Advocate for Def. : S.G. Mander, Adv.

Advocate for Pet/Ap. : Sanjay Patwa, Adv.

Disposition : Appeal allowed

Judgement :

U.L. Bhat, C.J.

1. The appellants herein were travelling in a stage carriage bus belonging to the M.P. State Road Trans. Corporation on 14.3.1983. The bus dashed against a tree on the left side of the road and as a result the appellants in the two appeals sustained injuries. They filed two separate claim petitions claiming a sum of Rs. 59,000/-and Rs. 1,65,000/- respectively as compensation on the allegation that the accident was as a result of rash and negligent driving by the driver. The claim was

resisted by the owner and driver of the vehicle. The Tribunal held that the accident was caused as a result of rash and negligent driving and awarded Rs. 3,500/- and Rs. 5,500/- respectively to the two claimants along with interest at 9 per cent and awarded costs quantifying advocate's fee at Rs. 30/- in each case. The claimants being aggrieved by the quantification have filed these appeals.

2. M.A. No. 135 of 1984 may be considered first. Exh. P-10 is the medical report with regard to the claimant prepared on the day of the accident. It shows that there was tenderness and swelling of the nose and bleeding from the nose. There was also swelling on the shoulder joint. The claimant was under the treatment of the Government doctor, P.W. 1. Exhs. P-4 to P-8 are prescriptions issued by P.W. 1. He issued a certificate, Exh. P-9, dated 16.7.1983. It shows that the claimant developed permanent disfigurement of face due to injury to the nose and this abnormality is also causing difficulty in normal physiological function of nose (breathing through nose). P.W. 1 deposed that the claimant received an injury on the nose which caused deformity of the nasal bridge, i.e., it became crooked, leading to difficulty in breathing and the patient had lost the power of smell. The claimant examined himself as P.W. 2. No doubt he tried to exaggerate his condition by stating that he had lost four teeth in the accident. This is not borne out by either of the certificates or by the evidence of P.W. 1. He deposed that he was working as a teacher and could not attend duty for five months for which he had to take leave and he was not given salary for over a month. He deposed that he spent Rs. 3,000/- for the treatment. On a consideration of all these circumstances the Tribunal fixed compensation of Rs. 3,500/-.

3. There is nothing to show that the evidence of P.W. 1 that there was deformity of the nose and difficulty in breathing caused by the accident is not correct. He has also sustained a minor injury on the shoulder. Necessarily, he must have spent some money for medical treatment. He had to take leave from his job. Since the injury was to the nose, he must have suffered agony at least for some period. In the light of the circumstances there can be no doubt that the compensation awarded is unreasonably low. Claimant is entitled to compensation for the injury itself, for the pain and suffering undergone by him, the disfiguration of the face, the expenses for medical treatment, etc. In the absence of better evidence one can

only arrive at a reasonable estimate which cannot be less than Rs. 25,000/- in this case.

4. The appellant in Misc. Appeal No. 159 of 1984 deposed to his injuries and disability. He was treated by P.W. 1 in the same hospital. Exh. P-5 to Exh. P-29 are the X-rays taken by the appellant, Exh. P-30 is the report issued with reference to the X-ray. It shows that there are fractures of the acromial and of the left clavicle and compressed fracture of the 12th vertebra. Exh. P-1 is a certificate issued by P.W. 1 stating that the appellant was admitted in the District Hospital for fracture of dorsal vertebrae bones and left clavicle bone. Exh. P-2 is another certificate showing that the appellant was under the treatment of P.W. 1 for fracture and that he might face problems during sexual intercourse and might have pain in the back while working. According to the appellant, he was working as a peon in the Government Treasury and after office hours making shoes and earning Rs. 450/- per month and Rs. 400/- per month respectively. In the face of this evidence the Tribunal awarded Rs. 4,000/- for pain and suffering and Rs. 1,500/- for loss of income for the period of 31/2 months when the appellant was under plaster. Having regard to the facts and circumstances of the case there can be no doubt that the amount awarded is unreasonably low.

5. The appellant had two serious fractures-one of the spinal vertebrae and the other of the left clavicle. He was under plaster for over 3 months. He must have suffered intense agony during this period and even subsequently. For some time he could not attend to his duties. The claim of the appellant is that he suffered permanent disablement, i.e., he could not work and his sexual life was adversely affected. The medical certificate does not indicate any permanent disability or disablement. This is a case where his physical efficiency must have been reduced to some extent on account of the injuries sustained by him. The Tribunal did not take this into account in quantifying the compensation. In the absence of better evidence it is not possible to fix the exact compensation payable under each head. Therefore, it is only proper to fix a reasonable sum as compensation. Having regard to the facts and circumstances of the case a sum of Rs. 50,000/- would be reasonable.

6. It is contended that the rate of interest awarded is too low. The same is increased to 12 per cent per annum.
7. Advocate's fee allowed by the Tribunal appears to be hopelessly inadequate. The same is raised to Rs. 250/- in each case.
8. The impugned award is modified by increasing the compensation awarded in the two cases to Rs. 25,000/- and Rs. 50,000/- respectively. The interest awarded is raised to 12 per cent per annum and Rs. 250/- is allowed as advocate's fee in each case.
9. The appeals are allowed to the extent indicated above, but in the circumstances without costs.