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Subhash Vs. Satinder Kaur and ors.

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Court : Madhya Pradesh

Decided On : May-13-2005

Reported in : II(2006)ACC196; 2006ACJ2192

Judge : A.M. Sapre and ;S.K. Seth, JJ.

Appeal No. : M.A. No. 2250 of 2004

Appellant : Subhash

Respondent : Satinder Kaur and ors.

Advocate for Def. : P.K. Gupta, Adv.

Advocate for Pet/Ap. : Archana Kher and ;Samir Verma, Advs.

Disposition : Appeal allowed

Judgement :

A.M. Sapre and S.K. Seth, JJ.

1. This appeal is by (rupees five thousand three hundred thirty the claimant seeking the enhancement of three) has been awarded by the Claims compensation awarded by the Sixteenth Tribunal for the personal injuries sustained Motor Accidents Claims Tribunal, Indore. by the appellant in a road accident occurred By the impugned award a sum of Rs. 5,333 on 8,9.2001.

2. Appellant was going in his auto-rickshaw bearing registration No. MP 09- KB 7376. While he was near Navlakha Bus Stand, respondent No. 2, driving truck bearing registration No. MP-KK 1312 came from the opposite direction and hit the autorickshaw; as a result, appellant sustained fracture in the right leg as well as head injuries. It was contended that the appellant was earning Rs. 3,500 (rupees three thousand five hundred) per month and thus, a claim for compensation to the tune of Rs. 7,00,000 (rupees seven lakh) was staked before the Claims Tribunal. The respondent Nos. 1 and 2 remained ex pane before the Claims Tribunal and only respondent No. 3 insurance company contested the matter. Appreciating the evidence learned Claims Tribunal came to the conclusion that accident occurred due to rash and negligent driving of the truck by respondent No. 2. It was also found that on the fateful day, truck belonged to respondent No. 1 and was insured with respondent No. 3. The learned Claims Tribunal also came to the conclusion that appellant has sustained simple injuries and thus awarded a sum of Rs. 5,333 on all heads. Being aggrieved by the said award, the appellant-claimant is in appeal.

3. We have heard learned Counsel for parties at length. Perused the record of the Claims Tribunal.

4. Learned Counsel for appellant submitted the finding of the learned Claims Tribunal that appellant had sustained simple injury is contrary to evidence available on record. Learned Counsel for respondent No. 3 submitted that in view of Exhs. P10 to P12, the appellant has not sustained any grievous injury because fracture sustained by him are united properly and, therefore, he had sustained only a simple injury.

5. After having heard learned Counsel for the parties at length and going through the record in our considered opinion this appeal deserves to be allowed. The learned Counsel focused our attention to various documents including certificates issued by Dr. S.V. Rege and Dr. P. Choudhary. From the Exh. 144 and Exh. 145, it is clear that the appellant remained as indoor patient in Suyash Hospital, Indore from 9.9.2001 to 14.9.2001 and in M.Y. Hospital, Indore from 27.3.2002 to 6.4.2002. It is also clear from the documents that appellant has sustained fracture

of femur shaft and patella in the right leg as well as right frontal bone. He was treated by Dr. Rege one of the renowned Neurosurgeons of Indore. For the injury in the leg Dr. P. Choudhary has issued a certificate Exh. 158 and according to this certificate, the appellant has lost his normal gait because of shortening of the right leg by 3.5 cm and he walks with limp. The appellant had sustained permanent physical impairment to the tune of 40 per cent in his lower right leg. Before the accident, appellant was working as driver of autorickshaw and because of permanent disability he is now unable to work as driver of the autorickshaw. This aspect was totally ignored by learned Claims Tribunal while assessing the damages. From the various medical bills, Exhs. P13 to P133 it is clear that appellant has incurred medical expenses to the tune of approximately Rs. 52,000 (rupees fifty-two thousand). The learned Claims Tribunal did not grant medical expenses on the ground that the name of doctor is not mentioned or the prescription is not there. This is no ground to disallow the medical bills. From the evidence available on record, it is clear that appellant had sustained not only head injury but also fracture in right leg and he remained as indoor patient in the Suyash Hospital and M.Y. Hospital, Indore.

6. We are of the considered opinion that the amount awarded by the Claims Tribunal is grossly inadequate looking to of Rs. 1,25,000 nature of injuries and prolonged treat. The enhanced ment which appellant underwent after the amount shall carry interest at the rate of 5 accident. We, therefore, allow this appeal per cent from the date of application till it and grant Rs. 52,000 towards the medical is actually paid. expenses. We also enhance the compensation for pain and suffering, loss of income. On the aforesaid heads, the appellant indicated hereinabove. The counsel's fee would be entitled to recover Rs. 73,000 Rs. 1,000 (rupees one thousand). (rupees seventy-three thousand). Thus, the appellant is entitled to recover from res- Appeal allowed. pondents jointly and severally a total sum (rupees one lakh twentyfive thousand) on all heads. The enhanced amount shall carry interest at the rate of 5 per cent from the date of application till it is actually paid.

7. The appeal is allowed to the extent indicated hereinabove. The counsel's fee Rs.1,000 (rupees one thousand).

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