

**Narendra Kumar Dohre Vs. Mukesh and ors.**

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**Court :** Madhya Pradesh

**Decided On :** Dec-21-2000

**Reported in :** II(2001)ACC18

**Judge :** R.B. Dixit, J.

**Appellant :** Narendra Kumar Dohre

**Respondent :** Mukesh and ors.

**Judgement :**

ORDER

**R.B. Dixit, J.**

1. The facts in brief shorn of details and necessary for the disposal of this appeal lie in narrow compass : Appellant/claimant was travelling in Bus No. MP07F 0553 as second driver of the vehicle and at the relevant time, this vehicle was driven by respondent No. 3 Suman Singh Tomar. Respondent No. 3 by rash and negligent driving, dashed the vehicle against a truck which caused grievous injuries to appellant. The learned Claims Tribunal by the impugned award, allowed compensation of Rs. 42,000/- against which, present appeal has been filed for enhancement of award to the extent of Rs. 95,000/-.

2. It has been contended by learned Counsel for the appellant that he completely lost the hearing power because of permanent disability caused due to damage of

right ear. However, the learned Tribunal erred in not appreciating medical evidence in right perspective. The learned Counsel for the respondents has contested the contention on the ground that in claim petition Under Section 166 of Motor Vehicles Act, what is pleaded in para 10 of the application, is that the appellant sustained injuries in both the hands and legs and also on head and chest. There is no mention of loss of hearing or any damage to the ear, for which, the compensation is claimed. I am of the opinion, that apart from the injuries mentioned in para 10 of the application, it has also been made clear that appellant had received injuries throughout the body, however, in order to ascertain the exact injuries suffered by appellant, it is necessary to go through the evidence on record.

3. Appellant Narendra Kumar Dohre (D.W.I), has stated that he had completely lost right ear in the incident. He remained hospitalized for five days at Gwalior and later on, he got himself admitted at Garg Nursing Home, at Gwalior where he had undergone an operation of the ear. He had to spend also Rs. 70 to 80,000/- on his treatment. However, no details or bills of treatment amounting to Rs. 70 or 80,000/- were produced before the Tribunal. He has only paid Rs. 3,000/- for the operation and the bills of Rs. 3 or 4,000/- were produced. The learned Trial Court has held that appellant has deliberately avoided treatment at the Government Hospital and got himself admitted in a private Nursing Home.

4. In Medical examination of the injuries (Ex. P/11), avulsion of right ear was found and the appellant was referred to E.N.T. specialist for further opinion. X-ray was also advised. In medical certificate of Dr. Suresh Chandra Bandil, Morena (Ex. P/31) dated 12.1.1997, issued after a year from the incident, it has been opined that the injuries which the appellant had suffered by reason of accident, involved, permanent loss of right external ear which leads to permanent disfiguration of his face. He is also suffering with whiplash injury cervical spine leading to cervical spondylosis and there is painful movement of cervical spine. However, it has been argued for the respondents that no doctor was examined in evidence to prove permanent disability on account of injuries mentioned in aforesaid medical certificate.

5. The learned Counsel for the respondents has submitted that the injury certificate is required to be submitted in form MPMVR 76 (COMP-B) as envisaged under Rule 220(3)(i) of Motor Vehicle Rules, 1994. Since aforesaid medical certificate (Ex. P/31) has not been submitted in accordance with the Rule 220 referred hereinabove and further since no doctor has been examined in respect of the aforesaid medical certificate, it is not proved that the injury has caused permanent disability to the appellant.

6. In the case of Ramdulare v. Divisional Manager, MPSRTC reported in 1999 (2) MPWN 82, medical certificates produced after about four years, were not relied upon for holding that the claimant had suffered permanent disability.

7. In Division Bench decision of this Court in the case of Jumman Khan v. Sunil Kumar reported in 1998 (2) MPWN 11, permanent disability was not proved by examining any doctor, it was held that permanent disability could neither be proved nor could be presumed in such a situation.

8. In another Division Bench decision of this Court, in the case of Lalita Bai v. Amin Khan reported in 2000 (2) TAC 506, also, claimant neither proved suffering of permanent disability nor examined doctor who treated him. It was held that the finding of Tribunal cannot be treated to be erroneous.

9. The learned Counsel for the appellant relied upon a decision of Orissa High Court in the case of Miss Suchitra Das v. Biswanath Sahu and Anr. reported in 2000 (2) TAC 401, wherein a 9 years injured girl sustained fracture of occipital bone and ear bone, causing 90% of hearing power, was allowed compensation up to two lacs.

10. In a decision of Rajasthan High Court in the case of Jayshree v. Nathumal and Ors. reported in 2000 (2) TAC 520, injured girl aged about 14 years suffered permanent disability including disfiguration of head and face to the extent of 21.9%, was allowed compensation of Rs. 1,00,000/-. However, I am of the opinion that in the present case, the appellant had failed to prove permanent disability by producing medical evidence. In the circumstances, ratio of decisions in case of Jumman Khan and Lalita Bai (supra), stands squarely attracted in the facts and

circumstances of the present case. The amount of compensation of Rs. 42,000/- is, therefore, as assessed by the learned Tribunal, needs no enhancement in facts and circumstances of this case and evidence as brought on record.

Consequently, this appeal fails and is dismissed.

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