

Mahesh Kumar Vs. Vidhya Vati and anr.

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Court : Madhya Pradesh

Decided On : Aug-23-1996

Reported in : 1997ACJ1070

Judge : R.D. Vyas, J.

Appeal No. : M.A. No. 127 of 1992

Appellant : Mahesh Kumar

Respondent : Vidhya Vati and anr.

Advocate for Pet/Ap. : Mr. Patwa

Disposition : Appeal allowed

Judgement :

R.D. Vyas, J.

1. This appeal is directed against the judgment and award in Claim Case No. 18 of 1985 passed on 12.12.1991 by the Motor Accidents Claims Tribunal, Ratlam, whereby an award of Rs. 5,500/- was given for the injuries sustained by the appellant in the nature of fracture of his right hand and humerus bone, injuries on the face, right knee, back etc. He was hospitalised for about 12 days between 6.2.1985 and 18.2.1985 and was plastered. He could not work for considerably long time. Looking to the evidence etc. the lower court came to the conclusion that

Rs. 5,500/- would be justifiable amount.

2. The fact that the accident took place between the moped No. MBU 3010 and truck No. MMS 566 is not disputable and, therefore, not disputed. The respondent No. 2, who also filed cross-objections has objected only on the ground that according to the evidence before the court, it has not issued the policy referred to by the applicant in his application.

3. Mr. Patwa appearing for the appellant argued that looking to the injuries which are proved, the amount of the award is much on the lower side. He said looking to the recent judgments of this Court including a Division Bench judgment in Khashti Devi v. Amar Nath, 1994 ACJ 873 (MP), the court has to take into consideration the development in law and the trend shown by Parliament. He argued that the law at present is that for the permanent disability, no fault liability also has to be at least Rs. 25,000/-. He said apart from the injuries, the loss of leave, the expenses on the treatment etc, and the other sufferings of the appellant have not been taken into account and, therefore, he would be entitled to the amount he has claimed, which was Rs. 40,500/-.

4. Mr. Surjeet Singh appealing for the other side argued that there is no liability of the respondent No. 2. He also argued that even if this Court were to be considering that the policy of insurance, which subsequently by amendment has brought in, the insurance company could not be held liable then the lower court was not justified in granting the award as it has done. He argued that the loss to the appellant is amply compensated by the award by the lower court.

5. Looking to the law as it prevails by the judgments delivered by this Court time and again for a fracture Rs. 25,000/- now cannot be too much on the higher side whereas Rs. 5,500/- granted by the Claims Tribunal is too much on the lower side. Looking to the injuries to a person of the appellant's standard, Rs. 25,000/- according to me, could be said to be just compensation, therefore, the Tribunal's award deserves to be modified to Rs. 25,000/-.

6. So far as the insurance company is concerned, the evidence on behalf of the respondent No. 2 company was of an employee of the Ratlam Branch, who has

not shown the correspondence between the Ratlam Branch of the respondent No. 2 and the Bombay Branch. In view of the certificate granted by the R.T.O. that the offending vehicle was insured with the respondent No. 2 cannot be brushed aside and the lower court is not found at fault to accept that evidence on behalf of the appellant. Therefore, I do not see any substance in the cross-objections, they are accordingly dismissed. In the aforesaid view of the matter, the appeal is allowed. The award of the Tribunal is modified to Rs. 25,000/- instead of Rs. 5,500/- with the same rate of interest, i.e., 12 per cent per annum.

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