

Hukum Singh Vs. Narayan Singh and ors.

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Court : Madhya Pradesh

Decided On : Feb-07-2001

Reported in : 2002ACJ2109

Judge : R.D. Vyas and ;Shambhoo Singh, JJ.

Appeal No. : M.A. No. 467 of 1997

Appellant : Hukum Singh

Respondent : Narayan Singh and ors.

Advocate for Def. : S.S. Swami, Adv.

Advocate for Pet/Ap. : G.K. Neema, Adv.

Judgement :

Shambhoo Singh, J.

1. This appeal is directed by the claimant against the award dated 31.1.1997 passed by IV Addl. Motor Accidents Claims Tribunal, Dewas, in Claim Case No. 229 of 1993 whereby he was awarded compensation of Rs. 1,25,000 for the injuries sustained by him in the accident.

2. The case of the claimant was that on 25.5.1993, he was going to Dewas from his village Napakhedi on his cycle. When he reached near Bane Singh's field while

going on kacha road (patri), respondent No. 1 came from behind driving passenger bus No. MP 13-0 2828 belonging to respondent No. 2 and insured with respondent No. 3 in a rash and negligent manner and dashed against him as a result of which he sustained injuries on his spinal cord, hip and other parts of the body. He was admitted in M.Y. Hospital, Indore and was discharged on 7.6.1993. He was employee in S. Kumar's Ltd. and was insured under Employees' State Insurance Act. He took treatment in insurance hospital. Due to injuries in spinal cord his lower part of the body became senseless. He suffered 100 per cent permanent disability. The claimant filed claim case seeking compensation of Rs. 18,48,210. The respondent Nos. 1 and 2 remained absent and were proceeded ex parte. Respondent No. 3 resisted the claim and averred, inter alia, that the accident occurred due to negligence of the claimant himself and pleaded that the respondent No. 1 had no driving licence. The Claims Tribunal on appreciation of evidence held that the accident occurred due to rash and negligent driving of the bus by the respondent No. 1 and awarded compensation of Rs. 1,25,000 and Rs. 2,700 for medical treatment. The claimant being aggrieved of the compensation amount, filed this appeal for enhancement.

3. The fact that the accident occurred due to rash and negligent driving of the bus has not been disputed before us. Now the question that arises for consideration is whether the amount of compensation awarded by the Tribunal deserves to be enhanced. The version of AW 1 Hukum Singh, AW 2 Hari Prasad and AW 4 is that on 25.5.1993 the offending bus dashed against the claimant as a result of which he sustained injuries on his back. His lower limbs have become senseless, he cannot walk, he has lost sensation of urine and stool. He cannot do his daily routine work without the help of someone. He deposed that firstly he was treated in M.Y. Hospital, Indore and thereafter at Dewas by Dr. Kothari. Dr. R.D. Mundra, Assistant Surgeon, District Hospital, Dewas, examined the claimant on 25.5.1993 and found injuries on his body. The discharge card of M.Y. Hospital, Indore, Exh. P-36 and discharge certificate of E.S.I.S. General Hospital, Ujjain, Exh. P-37, support the version of the appellant. There was fracture of spinal cord at the level of L-2. Dr. Vikram Mehta, PW 3, examined the appellant and opined that the cord injury led to paraplegia with loss of sensation of defecation and micturition. He could not do his daily routine work himself. Dr. Mehta assessed his disability at

100 per cent vide his certificate, Exh. P-45. Under such circumstances, the learned Tribunal rightly held that the appellant suffered 100 per cent permanent working disability.

4. It has also come in the evidence of Hukum Singh that he was working in S. Kumar's concern on the salary of Rs. 969 per month. His version is supported by Exh. P-38, the salary certificate issued by S. Kumar's. The Tribunal accepted this evidence. As the appellant was serving in S. Kumar's and he was covered under E.S.I. Scheme and was paid Rs. 840 per month by the Insurance Corporation due to these injuries. The Tribunal deducted this amount from the pay of the appellant which was Rs. 969 and held that the loss caused to the appellant was Rs. 120 per month. Mr. Neema, the learned counsel for the appellant, argued that the Tribunal committed error in deducting the amount of Rs. 840 paid by the Insurance Corporation. A Full Bench of this court in case of Kashiram Mathur v. Rajendra Singh 1983 ACJ 152 (MP) held that if the claimant was paid by insurance company under a contract for which he had paid premium, that amount is not deductible from the damages payable, as this amount was payable on the basis of contribution made by the appellant employee and, therefore, it cannot be deducted. Benefit of the premium paid by the claimant cannot be given to the tortfeasor. It is, thus, clear that the Tribunal committed an error in deducting Rs. 840 from Rs. 969. The appellant was earning Rs. 969 per month. It is rounded up to Rs. 970 and Rs. 11,640 yearly. Due to the injuries caused to the appellant in the accident he became permanently disabled and sustained 100 per cent loss of earning capacity. He was aged about 33 years at the time of accident. In view of this, multiplier of 17 is selected. By multiplying it with the multiplicand, the amount of future loss of income would come to (Rs. 11,640 x 17) Rs. 1,97,880. The appellant deposed that his treatment is continuing, he has to take four injections per day. He did not state the amount of money required for future treatment but looking to the nature of the injury, we allow Rs. 25,000 for the future treatment. The Tribunal has rightly awarded Rs. 2,700 for medical treatment and Rs. 1,000 for transportation.

5. Mr. Neema relied upon a Division Bench decision of this court in New India Assurance Co. Ltd. v. Pradip Kumar 2002 ACJ 2016 (MP) and prayed that Rs.

1,00,000 be granted towards pain and suffering and loss of amenities of life. On the other hand, Mr. S.S. Swami, the learned counsel for the respondent, contended that the amount of Rs. 1,25,000 is more than sufficient. As stated above, the appellant suffered 100 per cent permanent disability which led to paraplegia with loss of defecation and micturition, he cannot walk and cannot do his routine daily work, he has lost the sensation of urine and stool. We award Rs. 50,000 for loss of amenities of life and pain and suffering. Thus, the appellant is entitled to a sum of (Rs. 2,700 + Rs. 1,000 + Rs. 25,000 + Rs. 50,000 + Rs. 1,97,880) = Rs. 2,76,580 which is rounded up to Rs. 2,77,000.

6. It was faintly argued by Mr. Swami that the Tribunal had no jurisdiction in the matter in view of Section 53 of the E.S.I. Act. This point was not raised in the written statement by the respondent insurance company and it cannot be allowed to raise this point in appeal, even otherwise the contention deserves to be rejected in view of decisions of this court in *Raj Kumari Nigam v. Ashok* 1998 ACJ 961 (MP) and *Madhya Pradesh State Road Trans. Corporation v. Praveer Kumar Bhatnagar* 1994 ACJ 579 (MP). The injuries suffered by the appellant were not employment injuries.

7. In the result, the appeal is partly allowed and the impugned award is modified and it is directed that the respondents shall pay Rs. 2,77,000 to the appellant with interest at the rate of 12 per cent per annum from the date of filing of claim application till realisation (after adjusting the amount already deposited). Out of the enhanced amount of compensation Rs. 1,00,000 with accrued interest shall be deposited in maximum interest bearing scheme of nationalised bank. There shall be no order as to costs.