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Court : Madhya Pradesh

Decided On : Apr-21-2001

Reported in : 2003ACJ709

Judge : Bhawani Singh, C.J. and ;A.M. Sapre, J.

Appeal No. : M.A. No. 1060 of 1999

Appellant : Praveen Kumar

Respondent : Javed and ors.

Advocate for Def. : Pradeep Gupta, Adv.

Advocate for Pet/Ap. : R.N. Dave, Adv.

Disposition : Appeal allowed

Judgement :

Bhawani Singh, C.J.

1. This appeal is directed against the award of Motor Accidents Claims Tribunal, Indore in Claim Case No. 83 of 1999 dated 21.9.1999.

2. Accident took place on 8.6.1995 at about 1.45 (noon) at Palasia Square, Indore when mini bus bearing registration No. MP 04-A 7827 hit the claimant, who was going on his scooter, from behind. The claimant, suffered injuries to pelvic bone

and tibia-fibula fracture of right leg. Besides, his urethra was also fractured. Claimant was treated at Chotiram Hospital and Suyesh Hospital, Indore. It is stated that the treatment was serious and appellant was treated for a year by the doctors from time to time. One of the effects of the injuries was that he has been rendered impotent. His movements have been affected and life has become miserable and without pleasures. Allegation is that the accident was committed by respondent No. 2 rashly and negligently, otherwise it would not have taken place. This bus is owned by respondent No. 1 and insured with the New India Assurance Co. Ltd., Indore. Owner and driver did not appear to contest the case, therefore, the Tribunal proceeded exparte. Defence of New India Assurance Co. Ltd. is that claimant was himself responsible for the accident and the mini bus driver was not in possession of valid driving licence. The Claims Tribunal found that accident took place as alleged and it was a result of rash and negligent driving by driver of minibus resulting in serious injuries to the claimant. It also found that the bus was owned by respondent No. 1 with respondent No. 2 as its driver. Consequently, award of Rs. 1,50,000 has been passed to be paid jointly and severally by the owner and driver of the vehicle with ultimate liability of the insurance company with which it was insured. The claimant has serious grievance against this award, therefore, it has been challenged through this appeal.

3. Mr. R.N. Dave, learned Counsel for the appellant contends that Claims Tribunal has not awarded just compensation to the claimant despite having appreciated the seriousness of damage caused to the claimant. Paltry amount of Rs. 1,50,000 has been awarded, out of which Rs. 50,000 pertained to medical operation suggested by the doctor to minimise the impotency caused to the appellant by this accident. With respect to disability, Rs. 50,000 are awarded which is absolutely insufficient for the permanent disabilities suffered by the injured-claimant, But to submit about Rs. 15,000 awarded towards pain and suffering, which only the appellant could realise during all this period. With a view to understand and appreciate the matter, learned Counsel took us through the statement of witnesses recorded in this case. Mr. Pradeep Gupta, learned Counsel for the New India Assurance Co. Ltd. submitted that nature of injuries, advised by doctors, can sustain the compensation awarded in this case, therefore, further enhancement is not justified. Further statement of Mr. Pradeep Gupta is that claimant has realised medical

reimbursement from the medical insurance cover from the company. The claimant has not suffered business loss since it is admitted by him in his statement that he is doing business. With reference to medical evidence, submission of Mr. Pradeep Gupta is that Dr. Abhay Manchandani has not treated the claimant nor he has supplied any certificate of 22 per cent bone disability. With a view to appreciate the submissions, we refer to the material parts of evidence given by the doctors in this case. Dr. Thatte, PW 6, Urologist, has not only examined the claimant but also treated him. He has stated about the injury suffered by the claimant and his version is supported by Dr. Girish Yavatikar, PW 5, another Orthopaedic Surgeon, who treated him under the supervision of Dr. Nanaria. It is explained by Dr. Thatte that his statement of 25 per cent disability pertains to the overall disability of the body of claimant but disability which pertains to impotency is hundred per cent. Dr. Abhay Manchandani's certificate fixes disability at 22 per cent with respect to bone injuries. His statement is supported by Dr. Yavatikar, PW 5, who treated the appellant. On referring to the statements of doctors who examined and treated the appellant, we may record that appellant was admitted in hospital on five occasions; namely, from 8.6.1995 to 15.6.1995, 1.7.95 to 4.7.1995, 4.10.1995 to 7.10.1995, 14.7.1995 to 15.7.1995 and 29.3.1996 to 1.4.1996, for a total period of 22 days during which he was subjected to operations. Unfortunately, for a year the appellant had to suffer treatment and carry urine pipe since his urethra had been fractured in this accident.

4. After having stated about the incident, state of injuries and treatment sought by the appellant from time to time, we advert to the question of compensation payable in this case. From the record it emerges that the appellant was employed part-time accountant with two firms of Indore; namely, M/s Vinodchand Jagannath (Rs. 3,300/Exh. P-12) and M/s Vimal Kumar Anil Kumar (Rs. 3,000/Exh. P-13). The claimant is an agriculturist also. He claims that out of agriculture he was earning Rs. 50,000 annually. He remained without work for 6 to 7 months and could not attend agriculture operations for a year. With this background, we propose to award compensation as follows:

(1) Disability (100 per cent impotency and 22 per cent permanent disability) = Rs. 1,50,000(2) Pain and suffering = Rs. 50,000(3) Loss of income from service for 6

months and agriculture for one year = Rs. 50,000(4) Medical expenses (future treatment) = Rs. 50,000----------Total Rs. 3,00,000----------

The claimant shall also be entitled to interest at the rate of nine per cent from the date of application till payment which may be made within two months. The amount, if any paid, be deducted from the amount awarded by this judgment.

Costs on parties.

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