

Ramesh Vs. Mohd. Sahid and ors.

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Court : Madhya Pradesh

Decided On : Sep-26-2007

Reported in : 2008ACJ1678

Judge : N.K. Mody, J.

Appellant : Ramesh

Respondent : Mohd. Sahid and ors.

Disposition : Appeal allowed

Judgement :

N.K. Mody, J.

1. This is an appeal filed by the claimant under Section 173 of the Motor Vehicles Act against an award dated 13.12.2006 passed by Second Additional M.A.C.T. (Fast Track), Jhabua in Claim Case No. 121 of 2006. By the impugned award, the Claims Tribunal has awarded a total sum of Rs. 2,22,353 with interest to the claimant for the injuries sustained by appellant. According to claimant, the compensation awarded is on lower side and hence need to be enhanced. It is for the enhancement in the compensation awarded by the Claims Tribunal, the claimant has filed this appeal. So the question that arises for consideration is whether any case for enhancement in compensation awarded by the Tribunal on facts/evidence adduced is made out in the compensation awarded and if so, to

what extent?

2. It is not necessary to narrate the entire facts in detail, such as how the accident occurred, who was negligent in driving the offending vehicle, who is liable for paying compensation, etc. It is for the reason that, firstly, all these findings are recorded in favour of the claimants by the Tribunal. Secondly, none of these findings though recorded in claimant's favour are under challenge at the instance of any of the respondents such as owner/driver or insurance company either by way of cross-appeal or cross-objection. In this view of the matter, there is no justification to burden the judgment by detailing facts on all these issues.

3. The learned Counsel for the appellant submits that appellant was aged 30 years and was labourer by profession at the time of accident. Appellant sustained fracture of femur bone in right leg. Appellant was hospitalised at District Hospital, Jhabua, where the appellant was hospitalised from 19.7.2003 to 13.8.2003. Thereafter, the appellant was shifted to Milan Orthopaedic Hospital, there he was admitted thrice. Thereafter, the appellant was referred to Ahmedabad, where he was admitted from 14.8.2003 to 22.8.2003. The appellant was operated, nailing also took place. Thereafter again the appellant was hospitalised at Ahmedabad in the same hospital from 27.8.2003 to 9.9.2003 and operation took place on 28.8.2003. Again appellant was hospitalised from 20.2.2004 to 24.2.2004 at Ahmedabad, where plates were removed. It is submitted that learned Tribunal has awarded a sum of Rs. 2,22,353, break-up of which is as under:

Permanent disability, special diet, pain and suffering Rs. 2,00,000
Medical expenses Rs. 22,353

4. Learned Counsel submits that permanent disability was assessed by the learned Tribunal to the extent of 60 per cent, while it was a case of 100 per cent disability. The learned Counsel further submits that because of frequent operations there was wasting of leg and shortening by 5'. In the facts and circumstances the amount awarded by the learned Tribunal is on the lower side. Reliance was placed on a decision of Hon'ble Supreme Court in the matter of Shashendra Lahiri v. UNICEF : (1997)11SCC446 , wherein in a case of shortening of leg by 3', Hon'ble Supreme Court has awarded a sum of Rs. 4,58,000.

5. Further reliance was placed on a decision of Hon'ble Supreme Court in the matter of Swatantra Kumar v. Qamar Ali : AIR 1999 SC1500 , wherein in a case of shortening of leg by 1 3/4' the Hon'ble Supreme Court further awarded a sum of Rs. 1,00,000 under the heads of pain, shock and suffering and future economic loss over and above the compensation awarded by the High Court.

6. Learned Counsel for respondent No. 3 submits that the appellant has come from a backward area of District Jhabua. The case of Shashendra Lahiri 1998 ACJ 859 (SC), cited by the learned Counsel for the appellant is not at all applicable in the present facts and circumstances of the case as in that case injured was aged 17 years and was a brilliant student. In the facts and circumstances the amount awarded by the learned Tribunal is just and proper.

7. I have gone through the evidence adduced by the claimant. After taking into consideration all the evidence on record this Court is of the view that on account of injuries sustained by the appellant, as appellant has suffered a lot and was hospitalised from the date of accident, i.e., July 2003 to February 2004. Appellant was brought to Ahmedabad, on three occasions. It is true that there is no proof of definite income of the appellant, however, in the interest of justice income ought to have been taken at the rate of Rs. 2,000 p.m. Appellant ought to have been held entitled for 60 per cent of the amount of income. In my opinion it will be proper to enhance the compensation. Appellant is entitled for the following amount:

Permanent disability	Rs. 2,50,000	Medical expenses	Rs. 25,000	Pain and suffering	Rs. 50,000	Transportation expenses	Rs. 25,000	Loss of income for the period when appellant was under treatment	Rs. 25,000	Expenses incurred on attendants	Rs. 10,000	Special diet	Rs. 10,000	Future treatment	Rs. 10,000	-----	Total	Rs. 4,05,000	-----
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8. Thus the appellant shall be entitled for a total sum of Rs. 4,05,000 instead of Rs. 2,22,353. The enhanced amount of Rs. 1,82,647 shall carry interest at the rate of 7.5 per cent per annum. The enhanced amount shall be deposited by the learned Tribunal in F.D.R. in a nationalised bank in the name of appellant in such a manner so that it should earn highest rate of interest which shall be payable to appellant on monthly basis. Principal amount shall be released by learned Tribunal

in instalments looking to the needs of the appellant. With the aforesaid modifications the appeal stands disposed of. No order as to costs.

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