

Sunderbai Vs. Rustam and ors.

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Court : Madhya Pradesh

Decided On : Jan-28-2004

Reported in : I(2005)ACC180; 2004(4)MPLJ4

Judge : P.C. Agrawal, J.

Appellant : Sunderbai

Respondent : Rustam and ors.

Judgement :

P.C. Agrawal, J.

1. Appellant is a married woman, labourer by profession. On 16th January, 1999, she was travelling in tempo M.P. No. 14-G-0039. Appellant was thrown out of the tempo due to negligent and rash driving by the tempo driver. The Tribunal had held the tempo driver guilty of negligence. It held the tempo owner and Insurance Company as well liable to pay compensation. On these points there has been no controversy between parties in the appeal.

2. Dispute is confined to the quantum of compensation only. As per M.L.C. Report, Ex. P-8, appellant had suffered a lacerated wound on her right cheek bleeding from teeth, defused swelling with irregularity in left arm, lacerated wound on fore arm and multiple abrasion on right fore arm. As per Ex. P-9 she has a fracture of shoulder and midst halt of left humerus. However, on right and left jaw, no bony

injury was seen. Vide X-ray report Ex. P-10, transverse communicated fracture of shaft of humerus mid 1/3 with wide separation of fracture ends was noticeable. In support, X-ray plate-Exp. 11 had also been there. Sunderbai (A.W. 1) had deposed that she had suffered grievous injury on her left hand. The Tribunal had also observed that her left arm had separated below her shoulder. An injury was apparently there on the other hand also. She had submitted bills and vouchers for purchase of medicines, Exs. P-15 to Ex. P-22 totalling to only Rs. 1,250/-. As per discharge ticket of District Hospital, Mandsaur, appellant had remained admitted between 16h January, 1999 and 24th January, 1999, i.e., for 9 days.

3. Appellant has submitted an application under Order XLI Rule 27 of the Civil Procedure Code, I.A. No. 3121/2001, and had submitted discharge ticket, bills and vouchers for purchase of medicine and disability certificate from Dr. Alok Mehta. Such record pertains to the treatment after the award. Same is taken on record as the Advocate for Insurance Company has no objection to their inclusion. As per discharge ticket from District Hospital, Mandsaur, appellant remained admitted between 31st July, 2000 and 15th August, 2000 for a period of 16 days. She had purchased medicines for Rs. 3,468.50 paise. All these bills and vouchers are neither forged nor fake and had to be believed. Though the appellant had not produced any doctor to prove her disability, yet the medical record coupled with the observation of the Tribunal when she appeared before the Tribunal for her deposition is sufficient to show that even after more than a year of the accident her left arm was suspending separated from the left shoulder with injury on the other arm also. Disability Certificate of Dr. Alok Mehta has shown such disability of permanent nature to the extent of 36%. X-ray plate has been filed in support thereof. Certainly it is a case of permanent disability and permanent loss of earning capacity and permanent diminution in enjoyment of normal amenities of life to the extent of about 36%.

4. The Tribunal below has awarded only Rs. 1,250/- as cost of medicine, Rs. 2,700/- for loss of earning, Rs. 5,000/- for mental and physical pain and suffering, Rs. 1,000/- for special diet, totalling to Rs. 9,950/- which in my considered opinion, in the facts and circumstances of the case, has been on the lower side.

5. On evidence on record, in my considered opinion, appellant is entitled to Rs. 5,000/- as medical expenses. She is entitled to Rs. 10,000/- for mental and physical pain and suffering, looking to the nature of injuries and period of treatment. Appellant had deposed that she used to get Rs. 35/- per day as wages. Under the Second Schedule of Motor Vehicles Act, 1988, income of even non-earning persons has to be assumed to Rs. 15,000/- per annum. 36% of which would come to Rs. 5,400/- per year, As it is a case of permanent disability with complete loss of earning capacity for a woman in the age group of 50 years, multiplier of 11 could be applied and on this count the appellant is entitled to in all Rs. 59,400/- for loss of earning capacity. A compensation is awarded on the multiplier basis, no separate amount is awarded for loss of enjoyment of amenities of life. Besides that the appellant is entitled to Rs. 4,000/- more as cost of attendant, travelling expenses, special diet. Thus an enhancement of Rs. 68,450/- with interest ' at the rate of 9% per annum since the date of claim is allowed to the appellant. Such amount shall be payable besides the amount awarded by the Tribunal earlier.

Appeal is allowed to that extent, partly.