

Pooja Vs. Ramesh Kumar and anr.

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Court : Madhya Pradesh

Decided On : Sep-05-2007

Reported in : 2008ACJ2158

Judge : N.K. Mody, J.

Appellant : Pooja

Respondent : Ramesh Kumar and anr.

Advocate for Def. : Mr. S.V. Dandwate

Advocate for Pet/Ap. : Mr. Hemant Vaishnav

Judgement :

N.K. Mody, J.

1. Mr. Hemant Vaishnav, counsel for appellant. Mr. S.V. Dandwate, counsel for the respondent No. 2. Heard on merits. This is an appeal filed by the claimant under Section 173 of the Motor Vehicles Act, 1988 against an award dated 27.1.2006 passed by Nineteenth M.A.C.T., Indore in Claim Case No. 80 of 2005. By the impugned award, the Claims Tribunal has awarded a sum of Rs. 1,96,965 to the claimant by way of compensation for the injury which the appellant sustained in an accident. According to the claimant, i.e., appellant herein, the compensation awarded is on lower side and hence, need to be enhanced. 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 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 claimant by the learned Tribunal. Secondly, none of these findings though recorded in claimants' 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, it is not necessary to burden the judgment by detailing facts on all these issues.

3. As observed supra, it is an injury case. Learned Counsel for appellant submits that appellant who is a minor girl aged 8 years, sustained injuries in her left leg, as a result her leg was amputated above knee. The appellant was hospitalised from 28.8.2004 to 13.9.2004. Appellant was a student of class III at the time of accident. Learned Counsel for the appellant submits that looking to the injuries and permanent disability which has been assessed by the doctors as 90 per cent and by learned Tribunal as 70 per cent the amount awarded is on lower side. Break-up of the awarded amount is as under:

Permanent disability Rs. 1,57,000
Special diet Rs. 2,000
Pain and suffering Rs. 5,000
Medical expenses Rs. 4,485
Hospital expenses Rs. 13,480
Loss of marriage prospects Rs. 15,000

4. Learned Counsel for the appellant placing reliance on a decision in the matter of Fakkirappa v. Yallawwa , wherein permanent disability was assessed as 60-65 per cent, the Hon'ble Division Bench of Karnataka High Court has awarded a sum of Rs. 5,85,000, submits that in the facts and circumstances, the amount awarded by learned Tribunal is on lower side.

5. Learned Counsel for the respondent No. 2 submits that appellant is a girl and amount awarded is just and proper.

6. After taking into consideration the fact that appellant was aged 6 years at the time of the accident and left leg of the appellant has been amputated above knee and the appellant has to live her whole life without leg, this Court is of the view that amount awarded by the learned Tribunal in all the heads is inadequate. The doctor has stated that appellant can walk with the support of artificial limb which is required to be replaced every year till the appellant attains the age of majority. In the facts and circumstances, the appellant is entitled for the following amount:

Amputation of leg aboveknee Rs. 2,00,000
Loss of marriageprospects Rs. 50,000
Loss of amenities andhappiness Rs. 1,00,000
Future medical expensesto replace the artificia limb Rs. 1,00,000
Loss of expectationof life Rs. 50,000
Medical expenses Rs. 50,000
Pain and suffering Rs. 25,000
Expenses incurred on attendants Rs. 10,000-----
Total Rs. 5,85,000-----

7. Thus, the appellant shall be entitled for a total sum of Rs. 5,85,000 instead of Rs. 1,96,965. The enhanced amount of Rs. 3,88,035 shall carry interest at the rate of 7.5 per cent from the date of application. The enhanced amount shall be deposited in F.D.R. in a nationalised bank, whose management is ready to give an undertaking to the learned M.A.C.T. in writing to the effect that the management of the bank shall keep a complete watch on overall developments including education of the appellant. Appellant shall be entitled for interest on monthly basis. Appellant shall also submit yearly report to the concerned bank about her educational performance. So far as replacement of artificial limb is concerned, upon submitting bills, appellant shall be entitled to get the amount disbursed on that account. The amount shall be deposited in such a manner so that it should get the highest rate of interest.

8. With the aforesaid modification, the appeal stands disposed of.