

Bherulal Vs. Usman and ors.

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Court : Madhya Pradesh

Decided On : Jun-21-2005

Reported in : 3(2005)ACC829

Judge : Ashok Kumar Tiwari and; Deepak Verma, JJ.

Appellant : Bherulal

Respondent : Usman and ors.

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

Advocate for Pet/Ap. : Mr. Sanjay Patwa

Judgement :

Ashok Kumar Tiwari, J.

Mr. Sanjay Patwa, learned Counsel for the appellant.

None appears for respondent Nos. 1 and 2.

1. Mr. S.V. Dandvate, learned Counsel for respondent No. 3-United India Insurance Co. Ltd.

2. Appellant, having been awarded a sum of Rs. 1,90,050/-, in M.V. Case No. 29/2000, decided by Additional Motor Accident Claims Tribunal, Mandsaur, on 22.8.2000, has filed this appeal under Section 173 of the Motor Vehicles Act, for

enhancement.

3. It has not been disputed before us that appellant, had sustained bodily injury on 24.9.1998 while he was travelling in an Auto, bearing Registration No. RJ09 532, driven by respondent No. 1, owned by respondent No. 2 and insured with respondent No. 3. All the occupants of the auto had sustained bodily injuries, but only three of them preferred to file claim petitions. Other two have also been awarded compensation, but have preferred to file no appeal.

4. According to appellant, he was working as a labourer and was earning Rs. 100/- per day. However, the Tribunal has assessed income of appellant at Rs. 50/- per day and multiplier of 10 has been adopted. Learned Counsel for appellant submitted that looking to the nature of injury sustained by appellant and the age of the appellant at which the accident had taken place, the amount awarded is on lower side and deserves to be enhanced. We find substance in the argument advanced by learned Counsel for appellant.

5. As per evidence of Dr. RK. Upadhyay, an Orthopaedic Surgeon, appellant Bherulal has suffered permanent disability in his lower limb to the extent of 80%. In the accident he had suffered fracture of D-11 Vertebrae which ultimately caused paraplegia. Learned Claims Tribunal has also recorded a finding in para 19 that appellant was not able to stand on his feet in his Court for giving evidence and his evidence was recorded while he was lying on the floor. This is sufficient proof to show that lower limb of appellant has suffered permanent disability to the extent of 80%. In fact, he has lost all sensation in the lower part of his body. As a result of this, his earning capacity has also been lost completely i.e., to the extent of 100%. On the other hand, he would be required permanent caring by some one. He was aged 40 years at the time of accident.

6. Looking to the aforesaid facts and features and the evidence available on record, we are of the opinion that appellant must have been earning Rs. 75/- per day. Even if he had taken few days off, his earning would be at least Rs. 24,000/- per annum. Since it is a case of 100% loss of earning capacity, according to us, multiplier of 16 would be just and proper. Thus, $\text{Rs. } 24,000/- \times 16 = \text{Rs. } 3,84,000/-$. From the record it is also made out that appellant had taken treatment for a long

period. It is desirable to add a further sum of Rs. 36,000/- towards various other heads such as medical expenses, diet, pain and suffering, transportation, etc. Total amount of compensation would come to Rs. 4,20,000/-. This appeal is allowed to the extent mentioned hereinabove. Difference amount would carry interest @ 6% p.a. from the date of application till it is actually paid. Respondents to bear costs of litigation throughout. Counsel's fee Rs. 1,000/-, if certified.

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