

Ramesh Mavi Vs. Managing Director, M.P.S.R.T.C. and 2 ors.

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Court : Madhya Pradesh

Decided On : Apr-03-2001

Reported in : II(2002)ACC69

Judge : R.D. Vyas and; Shambhoo Singh, JJ.

Appellant : Ramesh Mavi

Respondent : Managing Director, M.P.S.R.T.C. and 2 ors.

Advocate for Def. : Mr. Kemkar

Advocate for Pet/Ap. : Mr. Samvatsar

Judgement :

Shambhoo Singh, J.

1. This appeal is directed by the claimant against the award dated 18.2.1997 passed by the First Additional Motor Accident Claims Tribunal, Mandsaur, in Claim Case No. 91/1995.

2. The claimant filed Claim Case No. 91/1995 averring that on 16.8.1994 he was going from Indore to Naraingarh, where he was posted as Civil Judge, Class II, travelling in Bus No. M.S.K. 8092 owned by the respondent Nos. 1 and 2 and driven by the respondent No. 3. On Mhow-Neemuch Road near village Nipaniya, the respondent No. 3 drove this bus in rash and negligent manner as a result of

which it dashed against a truck which was parked on the left part of the road as a result of which several passengers including the claimant sustained injuries. His tibia, fibula of the right leg and femur, neck of the femur bone and patella of the left leg were fractured. He was admitted in District Hospital, Mandsaur, his family members came from Indore and Jhabua to Mandsaur. He was shifted to T. Choitram Hospital. He was 5 times operated, nailing and plating was done. After some time nails and plates were removed and again fresh nailing and plating was done. Bone drafting was also done, left patella was removed. He suffered 60% permanent disability in both legs. He was on bed rest for about 10 months. He, therefore, filed claim application seeking compensation of Rs. 15,11,000/-. The respondents resisted the claim application and stated that the accident occurred due to rash and negligent driving of the truck, therefore, the owner, driver and Insurance Company of the truck were necessary parties. The learned Tribunal held that the accident occurred due to rash and negligent driving of the bus by the non-applicant No. 3. The truck was stationed on the road and was not responsible for this accident and, therefore, its owner, driver and Insurance Company were not necessary parties. The Tribunal further held that the appellant suffered 60% permanent disability and awarded compensation as under:

Rs. 50,000.00 For physical and mental pain and suffering and loss of amenities of life.

Rs. 66,000.00 For medical treatment.

Rs. 1,100.00 Ambulance Fare.

Rs. 5,000.00 For family members' lodging and boarding at Mandsaur and Indore.

Rs. 5,000.00. For transportation expenses.

Rs. 30,000.00 For loss of encashment of leave.

Rs. 5,000.00 For Physiotherapist.

Rs. 1,62,100.00

3. Mr. Samvatsar, learned Counsel for the appellant submitted that in view of the permanent disability which was 60% suffered by the appellant and expenditure made by him in his treatment, the amount of compensation awarded is on lower side. No amount for future treatment has been awarded while treatment is still going on. He argued that the Tribunal committed error in not allowing any amount in the head of special diet and for loss of pay of his wife. He also contended that the appellant spent more than Rupees one lac in his treatment but only Rs. 66,000/- have been allowed. He, therefore, prays for enhancement of the same. On the other hand Mr. Kemkar, learned Counsel for respondent supported the impugned award.

4. We considered the arguments advanced by learned Counsel for both sides and perused the record. The finding that the accident occurred due to rash and negligent driving of the bus and permanent disability suffered by the appellant has not been challenged before and rightly so in view of the overwhelming evidence including evidence of Dr. G.C. Jain (C.W. 1), Dr. K.C. Shrimal (C.W. 2), and Dr. K.S. Rathor (C.W. 4) and record of the treatment taken at Mandsaur and T. Choitram Hospital, Indore.

5. The appellant has claimed Rs. 1,00,000/- for his treatment. He deposed that he had to spend more than Rs. 1,00,000/- for his treatment. The learned Tribunal considered his statement and also the cash memos of the medicines purchased by him from Ex. P/5 to Ex. P/65 the total of which comes to Rs. 66,000/- and this amount has been allowed by the Tribunal. The Tribunal did not find any bill or cash memos for Rs. 44,000/-, therefore, the Tribunal committed no error in not granting this amount. The appellant claimed Rs. 1,00,000/- for mental and physical pain and for loss of amenities of life and the Tribunal awarded Rs. 50,000/-. In our opinion this amount does not appear to be inadequate in view of the injuries sustained by the appellant. The appellant claimed Rs. 25,000/- for the expenses

for his family members and his relations for coming to Indore and stay there. The Tribunal awarded Rs. 5,000/-, this amount also cannot be said to be on lower side, in absence of any material on record.

The Tribunal did not award any amount for special diet. The appellant remained hospitalized for considerable period. About 12 bottles of blood was given. He was confined to bed for about 9 months. He was operated more than five times, nailing and plating was done twice, under such circumstances he must have been required to take special meals, milk, fruits etc. and we, therefore, award Rs. 10,000/- in this head.

6. The appellant has submitted Certificate Ex. P/66, issued by the District and Sessions Judge, Mandsaur, according to which he remained on leave for about nine months and 13 days. His pay was Rs. 6,000/- per month including 250 rupees library allowance and Rs. 300/- vehicle allowance. On deducting this amount his monthly earning comes to Rs. 5,450/- per month. This loss comes to $(Rs. 5,450/- \times 9) = Rs. 49,050/-$ but the Tribunal awarded only Rs. 30,000/-. We enhance this amount to Rs. 49,000/-. It has also come in the evidence of the appellant that his wife was serving as a teacher in Jhabua, she remained on leave for six months to serve him for this, he claimed Rs. 20,000/-. The Tribunal disbelieved the evidence of the appellant on the ground that no leave certificate or pay certificate was produced. The statement, made by appellant in this regard was not challenged in cross-examination. The appellant was confined to bed for 9 months, he had suffered 60% permanent disability, he underwent five operations; under such circumstances, it was natural for his wife to have to come to serve him. Her pay was Rs. 3,000/- p.m. We, therefore, award Rs. 12,000/- in this regard. The appellant also claimed Rs. 15,000/- for engaging servant. He did not state as to whom he engaged and what amount of money was paid by him. As his wife had come to serve him, there appeared no need for engaging any servant. We, therefore, hold that the learned Tribunal committed no error in not awarding any amount for the leave taken by his wife. The Tribunal did not award any amount for loss of future income. The appellant is a Civil Judge and on account of the disability suffered by him his capacity to work as a Judge was not affected. He did not state that he was not in a position to discharge his duties as Judge.

7. The appellant also stated that he is still undergoing treatment. In view of the injuries suffered by him he needed treatment in future also. It has not been stated as to what amount of money will be required. However, we award Rs. 5,000/- only. Thus, the amount awarded by us comes to Rs. 46,000/-. This amount is in addition to the amount granted by the Tribunal.

8. In the result, we allow the appeal of the appellant in part and award Rs. 46,000/- in addition to the compensation already awarded by the Tribunal. The respondents shall pay Rs. 1,62,100/- already awarded by the Tribunal and Rs. 46,000/-, as enhanced by us, in all Rs. 2,08,100/-, with interest at the rate of 12% per annum from the date of filing of the claim application after deducting the amount already deposited with proportionate interest. No order as to costs.

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