

Dinesh Vs. Rajendra and 2 ors.

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Court : Madhya Pradesh

Decided On : Feb-03-2003

Reported in : III(2003)ACC430

Judge : A.K. Gohil, J.

Appellant : Dinesh

Respondent : Rajendra and 2 ors.

Advocate for Def. : Mr. V.R. Saraf

Advocate for Pet/Ap. : Mr. Sarwar Khan

Judgement :

ORDER

A.K. Gohil, J.

1. This appeal is directed under Section 173 of the Motor Vehicles Act for enhancement of compensation against the Award dated 8th September, 1997 passed in Claim Case No. 145/1997 by the Third Additional Motor Accident Claims Tribunal, Dhar.

2. The brief facts of the case are that on 3.4.1995 appellant Dinesh was working as a Hammal on Tata Truck No. MP-11-A/4147. The said truck was going from Dhamnod to Sehore. The said truck was owned by respondent No. 1 Rajendra s/o

Omprakash Patidar and being driven by respondent No. 2 Manoj @ Gullu s/o Onkarlal Deshwali and was insured with Respondent No. 3 United India Insurance Company. The said truck was driven by respondent No. 2 rashly and negligently and hit the another truck bearing registration number MBD-8530, which was standing on the left side of the road near Borwali Chowki, Sonkutch, District Dewas. As a result of this accident, appellant received fracture in both the legs and also received injuries in head and his 6 teeth were also broken and also received fracture of jaw. Jagdish, driver of Truck No. MBD-8530 immediately lodged the report to the police station. Appellant Dinesh was also taken to Sonkutch Hospital thereafter to Government Hospital, Dewas and thereafter he was referred to M.Y. Hospital, Indore where he remained hospitalised for 3-4 days. He was also hospitalised in Dental Hospital for 4-5 days. The matter was also referred to the Police Station Sonkutch (Dewas). The appellant filed claim petition for compensation. The Claims Tribunal after recording the evidence, recorded a finding about rash and negligent driving of the truck by its driver and it was also found proved that in the accident appellant received various injuries. The Tribunal has also found that the appellant was drawing salary of Rs. 900.00 per month and after consideration the evidence on record, awarded a sum of Rs. 30,500.00 as compensation. Being aggrieved by the said Award, the appellant has filed this appeal for enhancement of compensation.

3. I have heard Mr. Sarwar Khan, learned Counsel for appellant; Mr. V.R. Saraf, learned Counsel for respondent No. 3/Insurance Company, and perused the record. No one appeared on behalf of respondent Nos. 1 and 2.

4. Before the Tribunal the appellant/claimant examined himself as PW-3; also examined Dallu, who was a co-Hammal as PW-2, and also produced various documents. The appellant also examined Dr. Manish Shrof, as P.W. 1 who was not a treating doctor; and Dr. Satish Shukla, as P.W. 2 who was Professor of Surgery in M.Y. Hospital who has certified that the appellant remained in M.Y. Hospital from 3.4.1995 to 9.4.1995 and received fracture of Maxilla Bone and he has also stated that the appellant was referred to Dental College as per discharge certificate. The appellant has not examined anybody from Dental College where he remained hospitalised for 3-4 days. Dr. Manish has also confirmed the

statement about the fracture of Maxilla Bone. Both the doctors have not stated anything about the fracture in the legs. Dr. Manish was not a treating doctor, he had only examined the appellant after two years i.e. on 11.7.1997. Ex. P/2 is the discharge certificate from M.Y. Hospital. The appellant has also produced Ex. P/27 which is the discharge card of Dental College. Ex. P/28 is the M.L.C. report. From the M.L.C. report it is clear that there was a fracture in the Maxilla Bone of Jaw and his 2 teeth were broken.

5. The Tribunal has awarded a sum of Rs. 25,000.00 towards the permanent disablement looking to the age of the appellant which was around 20 years at the time of accident and looking to his monthly salary which was around Rs. 900.00. The Tribunal has also awarded a sum of Rs. 2,000.00 towards pain and suffering; Rs. 1,800.00 towards two months' salary; and Rs. 1,150.00 towards medical expenses on the basis of the medical bills from Exs. P/3 to P/17. The Tribunal further awarded a sum of Rs. 550.00 as compensation towards travelling expenses and thus has awarded a total compensation of Rs. 30,500.00.

6. After perusal of the medical evidence as well as the treatment papers on record, I find that the Tribunal has rightly awarded a compensation of Rs. 25,000.00 towards the permanent disablement to the appellant. P.W. 2 Dr. Satish Shukla has not stated anything about the permanent disablement but P.W. 1 Dr. Manish Shroff has stated in his Certificate, Ex. P/1, that the appellant has suffered total disability to the extent of 38% because of the facial disfigurement. It is true that the Tribunal has not awarded a proper compensation to the appellant on account of his pain and suffering. Therefore, this amount from Rs. 2,000.00 is enhanced to Rs. 5,000.00. The Tribunal has not further awarded a proper compensation in the head of loss of work. Looking to the injuries suffered by the appellant and fracture of Maxilla Bone, it can be safely presumed that he must have not worked for a period of six months. Therefore, this amount, in the head of loss of wages, is also enhanced from Rs. 1,800.00 to Rs. 5,400.00. The appellant has stated that he spent around Rs. 30 to 35 thousand on his treatment and remained hospitalised in M.Y. Hospital, from 3.4.1995 to 9.4.1995 for around 6 days and from 26.4.1995 to 29.4.1995 in the Dental Hospital for around 4 days. Thus his total admission in the hospital was around 10 days. Therefore, looking to the nature of the injuries, the

Tribunal has not properly awarded the compensation in the head of amount spent in treatment. Therefore, this amount, in the head of treatment, is also enhanced from Rs. 1,150.00 to Rs. 15,000.00. (Looking to the injuries it can be safely held that the appellant must have spent Rs. 15,000.00 on his treatment while remained hospitalised including loss of teeth). The Tribunal has awarded only Rs. 550.00 towards diet and also on travelling expenses. This amount is also on lower side and the same is also enhanced from Rs. 550.00 to Rs. 5,000.00. Therefore, the total amount of compensation is enhanced to Rs. 55,400.00 instead of Rs. 30,500.00.

7. In the result this appeal is allowed and the amount of compensation is enhanced from 30,500.00 to Rs. 55,400.00. This enhanced amount shall carry interest @ 9% p.a. from the date of claim petition i.e. 10.11.1995 till the date of its payment. The Insurance Company is directed to pay the said amount within two months after deducting the amount already paid. Counsel's fee Rs. 500.00, if certified. Record be returned.

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