

Ramchandra Vs. Pappuram and ors.

Ramchandra Vs. Pappuram and ors.

SooperKanoon Citation : sooperkanoon.com/513302

Court : Madhya Pradesh

Decided On : Apr-18-2006

Reported in : 2007ACJ2233

Judge : S.K. Kulshrestha and ; Ashok Kumar Tiwari, JJ.

Appellant : Ramchandra

Respondent : Pappuram and ors.

Judgement :

S.K. Kulshrestha and Ashok Kumar Tiwari, JJ.

1. This appeal by the claimant is directed against the award dated 5.7.2003 of the Third Additional Motor Accidents Claims Tribunal, Dhar in Claim Case No. 523 of 2002 by which the Tribunal has restricted the compensation to the appellant under Section 166 of the Motor Vehicles Act, to a sum of Rs. 4,04,000 and the interest thereon. The appellant was a paid driver of Tempo Trax bearing registration No. MP 11-2574 of the ownership of Ashwini Sharma, AW 3. It is alleged by the appellant that while driving said vehicle on 8.4.2001 he was returning from Sanwaria and was going towards village Simlavada, truck bearing registration No. RJ 15-G 2775, came at an alarming speed from the opposite direction and although he brought his vehicle to the extreme left of the road, on account of the excessive speed of truck, the respondent Pappuram son of Shambhuram, driver of truck, could not control it with the result there was a collision between truck and

Tempo Trax resulting in severe injuries to the appellant and the other occupants of the vehicle. The appellant sustained compound fractures in both his hands, legs and face. He was immediately rushed to Indore and admitted to Suyash Hospital, where he was hospitalised till 29.5.2001 and during this period he was operated upon thrice but still his bones did not properly unite and (here was oozing of the pus from the injuries. In the said accident, he had also lost 14 teeth and as a result of the accident his body has reduced to a state that it became impossible for him to attend to his normal routine and he needed a constant attendant to carry him from place to place even for his daily routine. In the light of the injuries sustained by him and the loss suffered and foreseeable, the appellant had claimed Rs. 24,17,000 as compensation.

2. The driver and owner, respondent Nos. 1 and 2, despite service of the notice, did not appear with the result the matter proceeded ex parte against them. Insurance company, the respondent No. 3, however, contested the case. It took the plea that the driver of the vehicle did not possess an effective and valid driving licence at the time of the accident and it being a patent breach of the conditions of the policy, insurance company was relieved of its obligation to compensate for the harm caused in the accident. It was also stated that the insurance company of the other vehicle, namely, Tempo Trax, had not been im-pleaded with the result the case suffered from non-joinder of the necessary parties. Under these premises, it was urged that the insurance company was not liable.

3. The Tribunal framed seven issues. It found that the accident was the result of rashness and negligence of the driver of the truck with the result the injuries were caused to the appellant as alleged. It also held that the owner and insurance company of Tempo Trax were not necessary parties and that the insurance company failed to prove that the driver of truck did not have a valid licence. It was further observed that insurance company failed to prove that the said truck was not insured with the said company. On these findings, the Tribunal held the respondents liable, severally and collectively and directed the payment of compensation in the sum of Rs. 4,04,000 and interest thereon at 9 per cent per annum from the date of application. Aggrieved by the inadequacy of the amount, the appellant has filed the present appeal for enhancement of the compensation.

4. We have heard the learned Counsel for the parties and perused the record.

5. There is no dispute that the accident occurred as alleged in which the appellant sustained the injuries. While the learned Counsel for the appellant claims that the compensation as demanded should have been awarded in the facts and circumstances of the case, the learned Counsel for the insurance company maintains that the court has already been quite liberal while awarding compensation to the appellant and there is no scope for any further enhancement.

6. Before advertng to the contention of the learned Counsel for the parties, we may refer to the broad features of the case as emerging from the testimony of the witnesses examined by the claimant. The claimant has examined himself as AW 1. Appellant has deposed that the incident took place on 8.4.2001 when the oncoming truck bearing the registration No. RJ 15-G 2775 collided with his vehicle. The truck was coming at an excessive speed and on account of rashness and negligence of the driver, it lost control and the accident occurred. He has stated that he got entangled in the jeep and sustained injuries on his head, hands, legs, face, ribs, shoulders, thighs and various other parts of the body. After a short while he became unconscious and he was taken to the Government Hospital from where he was transferred to Suyash Hospital. He had sustained fractures in both his legs, thighs and backbone. He had also sustained fracture of the orbit of his eye. His mandible bone was broken and he had lost 14 teeth. His collar bone was fractured and so also his right hand. He was hospitalised till 8.7.2001. He has submitted bills with regard to the treatment given and other details. His testimony is corroborated by the testimony of one Dr. Ashish Soni, AW 4. Dr. Ashish Soni has deposed that on 8.4.2001, the appellant Ramchandra had sustained injuries in an accident and he was brought to Suyash Hospital. He was a serious case of injury. He had multiple fractures of face. His mandible and maxilla were also broken. He had lost a large number of teeth. In the bones of the left leg he had sustained compound fracture. There was also compound fracture of radius and ulna. There was also fracture of the hip bone. His hand was operated upon on 16.5.2001 and face was operated upon on 25.4.2001. He was shifted to Bhandari Hospital where he remained hospitalised till 1.7.2001.

7. We may also note that the Tribunal has taken due note of the fact that in his right leg there was shortening of 5 cm and that it had become thin. In the right leg there was permanent disability of 20 per cent. The movement at the hip level was restricted causing 20 per cent permanent disability. The movement of knee was also restricted causing 5 per cent permanent disability. The movement of ankle and the other muscles associated therewith had become restricted causing 12 per cent permanent disability, the movement of right elbow was restricted and there was 11 per cent permanent disability. There was also disability of 6 per cent in the right elbow. Thus, the Tribunal came to the conclusion that with the 57 per cent disability in the right leg and 17 per cent in the right hand, it was a case of 74 per cent disability. The disability certificate is Exh. P153.

8. On the question of the income of the appellant, apart from the statement of the appellant, the appellant has examined his employer Ashwini Kumar, AW 3, who has deposed that Ramchandra was being paid Rs. 4,000 per month as salary and Rs. 40 per day as allowance. Certificate to that effect, Exh. P160, has also been brought on record.

9. In the context of the above evidence when the matter is considered, we find that the Claims Tribunal has awarded a sum of Rs. 1,45,000 for medical expenses to the appellant. The said amount is based on the actual expenses of Rs. 1,40,848 incurred and adding to the said amount certain sundry expenses, a sum of Rs. 1,45,000 has been awarded. We find that the amount awarded by the Tribunal under the said classified head is quite reasonable. Loss of income during the period the appellant was under treatment has been assessed at Rs. 5,000. Learned Counsel for appellant submits that this has been assessed on the assumption that the income of the appellant could at the most be Rs. 1,500 per month. We have already referred to the testimony of the appellant as also of his witness Ashwini Kumar, AW 3. The testimony has remained uncontroverted. Considering the disability of the appellant and the said testimony, we are of the view that it would be proper to assess the salary of the appellant at Rs. 3,000 for the purpose of assessing the loss of income. Thus, the loss comes to Rs. 6,000 for the period he was hospitalised. The Tribunal has awarded Rs. 10,000 for the attendant. Amount appears to be reasonable. The Tribunal has awarded a sum of

Rs. 10,000 towards pain and suffering. We have already referred to the data above to show that not only that the appellant had sustained multiple fractures almost in all parts of his body and had been hospitalised for considerable length of period, he must have undergone extreme pain and suffering during this period. A sum of Rs. 10,000, in the facts and circumstances of the case, appears paltry. We propose to enhance it to Rs. 25,000.

10. Now comes the crucial question as to what should be the amount of compensation towards the future loss of income of the appellant. Tribunal has considered the monthly loss at Rs. 1,500 and capitalising it by 13, awarded a sum of Rs. 2,34,000. We find that monthly loss would, in the factual matrix obtained in this case, be 2/3rd of his income of Rs. 3,000. Thus, the loss being Rs. 2,000 per month, it comes to Rs. 24,000 per annum. The Tribunal has selected a multiplier of 13 with which we agree. Multiplied by 13, the amount would come to Rs. 3,12,000. In conclusion, therefore, appellant would be entitled to receive from the respondents, severally and collectively, a sum of Rs. 1,45,000 for medical expenses; Rs. 6,000 for loss of income; Rs. 10,000 for the attendant; Rs. 25,000 for pain and suffering and Rs. 3,12,000 as compensation for future loss of income, thus, a total sum of Rs. 4,98,000 (rupees four lakh and ninety-eight thousand only). Accordingly, the amount awarded by the Tribunal is enhanced to Rs. 4,98,000. The enhanced amount shall bear interest at the rate of 6 per cent per annum from the date of the application. The other conditions of the award shall remain unaltered.