

**Deepak Kumar Vs. Labh Singh and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/513350](http://sooperkanoon.com/513350)

**Court :** Madhya Pradesh

**Decided On :** Apr-07-2006

**Reported in :** II(2007)ACC420

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

**Appellant :** Deepak Kumar

**Respondent :** Labh Singh and ors.

**Judgement :**

**S.K. Kulshrestha, J.**

1. By this appeal under Section 173 of the Motor Vehicles Act, the appellant seeks enhancement of the compensation awarded by the 1st Member, Motor Accident Claims Tribunal, Indore in Claim Case No. 4/2003.

2. On 13th April, 2003 while the appellant was driving a Truck Chassis, the respondent No. 2 Harbans Singh, driving a Truck bearing Registration No. HR 37-6502 at an alarming speed, collided with the said Chassis resulting in severe injuries to the appellant. The appellant sustained injuries in both his legs, in patella, on calves as also a fracture in his left leg. He was badly bruised around his waist and in his hands. He had to be subjected to extensive treatment and according to the appellant, he had to pay about 1,50,000 on medical expenses but still he sustained permanent disablement. The accident was reported at P.S. Vijay

Nagar, District Ajmer, where a case was registered. It was stated that the said vehicle was insured with the respondent No. 3 Insurance Company.

3. The driver and the owner of the truck remained ex parte nor did they file any written statement. The Insurance Company (respondent No. 3) however, traversed the averments of the appellant and stated that since no information was given by the insured about the accident and that there was no adherence to the conditions of the policy. Insurance Company was absolved of its liability under the policy. It also attempted to wriggle out of its obligation on the plea that the driver of the vehicle did not have a valid and effective driving licence and since the owner of the vehicle which was being driven by the appellant had not been joined as a party, the Insurance Company could not be saddled with any liability.

4. The Tribunal framed three issues and came to the conclusion that the appellant, in the accident in question, sustained the said disablement and for that the appellant was entitled to recover from the respondents, severally and collectively, a sum of Rs. 52,880. Accordingly, it awarded the said amount with interest @ 6% from the date of the application. It is against the inadequacy of the award that the appellant has approached this Court in appeal. Earned Counsel for the appellant has submitted that in view of the long hospitalisation of the appellant, the nature of the injury resulting in disablement in both the legs rendering the appellant unfit for the job of the truck driver and the other sufferings to the appellant, the amount of compensation is grossly inadequate. The learned Counsel for the Insurance Company, however, maintains that for the injuries suffered in the legs, the amount awarded is more than sufficient in the facts and circumstances of the case.

5. The only question that arises for our consideration in the present appeal is as to whether the appellant has been awarded just compensation.

6. Before adverting to the compensation, we may refer to the evidence brought on record by the appellant with regard to the nature of the injuries and the treatment that it entailed. It cannot be disputed that the appellant remained hospitalised at Ajmer from 13th April, 2003 to 17th April, 2003 and, thereafter, in the MYH from 18th April, 2003 to 23rd May, 2003. Hospitalisation of the appellant as a result of the injuries thus continued for a period extending beyond a month and a half. The

x-ray reports placed on record clearly indicate the fracture that he sustained. According to Dr. Section Rajan of the Orthopaedic Department of MYH, who had issued the disability certificate, the patient was complaining of pain while walking and that he could not squat on the floor. His right leg had become short by 1.5 cm. and the mobility in his right leg had reduced. On this basis he had certified that there was disability of 20% and 10% in his right and left legs. This duly proved certificate Ext. P/86 has not been controverted by any evidence. He has, however, admitted that there could be a margin of about 2% on either side.

7. The Tribunal considered the claim with regard to the medical expenditure and the vouchers submitted by the appellant. Though it was stated that he has spent a substantial amount, the total of the vouchers submitted by him was Rs. 20,377 and accordingly this amount was allowed on the medical expenditure. The evidence of the appellant that he was earning Rs. 5,000 as truck driver had remained un-rebutted with the result a sum of Rs. 7,500 was awarded towards the loss of income during the period the appellant remained confined to bed. For pain and suffering, the appellant was awarded Rs. 3,000 while for disablement, a sum of Rs. 20,000. Thus, a sum of Rs. 52,880 has been awarded.

8. Considering the long hospitalisation and the pain and sufferings which it entailed, we are of the view, that insofar as the permanent disablement is concerned, it deserves to be enhanced by a sum of Rs. 10,000 and so also the pain and suffering. In addition, for further treatment the appellant deserves to be awarded a sum of Rs. 5,000. Accordingly, we find that the appellant is entitled to Rs. 25,000 in addition to the amount awarded by the Tribunal.

9. Accordingly, this appeal is partly allowed. The amount of award of Rs. 52,880 is enhanced to Rs. 77,880. The said amount shall bear interest @ 6% per annum from the date of the application. The enhanced amount shall be kept in the fixed deposit for a period of three years in any of the nationalised Banks and after its maturity, the appellant shall be free to withdraw the same. There shall be no order as to costs.