

Mukesh Kumar Sharma Vs. Ramdutt and ors.

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Court : Madhya Pradesh

Decided On : Jan-05-2006

Reported in : II(2007)ACC351

Judge : P.K. Jaiswal, J.

Appellant : Mukesh Kumar Sharma

Respondent : Ramdutt and ors.

Judgement :

P.K. Jaiswal, J.

1. This appeal is filed by the claimant for enhancement of compensation. Appellant in an accident suffered injury and his right foot was amputated. In this appeal other findings are not under challenge, only question is about the quantum of compensation.

2. As regards the nature of injuries, Dr. S.N. Tripathi (AW 4) has deposed that h when the appellant was admitted in the hospital his right foot was amputated below the knee. He was in shock. Dr. B.P. Purohit (AW 2) and Dr. N.L. Sharma (AW 3) have deposed that the right foot of the appellant below the knee was amputated.

3. Counsel for the appellant submitted that if the right foot was amputated from below the knee, loss of earning capacity will be around 100% because appellant is

a driver and now he cannot work as a driver. However, in this case amputation of a right foot is from knee and below the knee. Therefore, as per Part II of Workmen's Compensation Act, loss of earning capacity will be reduced. Injured claimed that he was earning Rs. 3,900 by working as a driver and on the date of accident he was driving the offending vehicle bearing registration No. MP-07-G-0729, whereas in the cross-examination he very specifically admitted that he was sitting in the said vehicle as a second driver and the vehicle was driven by driver Ramdutt. The accident has taken place on 15th August, 1998 and on 17th August, 1998 by Ext. P-8 owner of the offending vehicle lodged an F.I.R. at Police Station, Chhata and in the said FIR he very specifically stated that appellant Mukesh Kumar Sharma was working as conductor and he was sitting in the vehicle in the capacity of conductor. Thus, the contention of the appellant that he was working as a driver cannot be accepted. He has not filed any documentary evidence nor examined anyone like the owner of the vehicle or the first driver Ramdutt who was driving the vehicle that appellant is working as driver. In view of the above the Claims Tribunal has not committed any error in holding that at the time of accident the appellant is working as a conductor. The evidence of the appellant in respect of his income is not reliable and he has exaggerated the income by saying that he was earning Rs. 3,900 per d month. Considering the fact that the appellant was working as a conductor, it can safely be presumed that salary of the conductor is around Rs. 2,000 per month. Therefore, income of the injured is determined to Rs. 24,000 per year. His earning capacity is reduced to 50% and loss of income is determined to Rs. 12,000 per year. Injured was around 32 years of age at the time of accident, hence proper multiplier will be 17. On application of multiplier of 17, compensation is determined at Rs. 2,04,000. Over and above this amount, claimant will also be entitled for medical bills or the vouchers filed at Ext. P-6 to Ext. P-18 amounting to Rs. 20,000 and he is also entitled for Rs. 2,000 towards pain and suffering on account of grievous injuries. Due to the accident he could not work for a period of six months and as such he is entitled for Rs. 10,000 towards loss of income. Total compensation is determined at Rs. 2,36,000 (Rupees two lacs thirty six thousand only). Claimant will also be entitled for interest at the rate of 6% per annum on the enhanced amount of compensation from the date of filing of this appeal.

In the result, the appeal is allowed in part without any order as to costs.

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