
(2010) 05 MP CK 0016
In the Madhya Pradesh High Court
Case No : M.A. No. 141 of 2009

Bablu	Vs	APPELLANT
Siyaram and Others		RESPONDENT

Date of Decision : 19-05-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2011) ACJ 1138

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : B.D. Verma, for the Appellant; A.K. Ahirwar and Kamal Rochlani, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Mody, J.—Being aggrieved by the award dated 28.10.2008 passed by Third M.A.C.T., Morena in Claim Case No. 156 of 2007 whereby the claim petition filed by Appellant was allowed and in a case of amputation, compensation of Rs. 1,67,500 was awarded, the present appeal has been filed.

2. Short facts of the case are that the Appellant who was aged 12 years at the time of incident filed a claim application alleging that on 20.5.2006 at about 9 a.m. Appellant met with an accident with tractor bearing registration No. MP 06-JA 1361 which was owned by Respondent No. 1, driven by Respondent No. 2 and insured with Respondent No. 3. It was alleged that due to accident right leg of the Appellant was severed from the body on the spot. It was alleged that the Appellant was brought to Government Hospital, Morena. Upon the complaint case was registered at Crime No. 68/06 for an offence alleged to have been committed under Sections 279, 338 of Indian Penal Code. It was alleged that since the offending tractor was insured with Respondent No. 3, therefore, Respondents are liable for payment of compensation. It was prayed that compensation be awarded. The claim petition was contested by the Respondent No. 3 on various grounds. After framing the issues and recording evidence, claim

petition filed by the Appellant was allowed and compensation of Rs. 1,67,500 was awarded, the break-up of which is as under:

Towards permanent disability Rs. 1,12,500

Towards medical expenses Rs. 20,000

Towards special diet and transport expenses Rs. 10,000

Towards pain and suffering Rs. 25,000

3. Being aggrieved by the inadequacy of the amount awarded by the learned Tribunal, present appeal has been filed.

4. Learned Counsel for the Appellant argued at length and submits that in a case of amputation of leg, amount awarded by the learned Tribunal is grossly inadequate. It is submitted that the Appellant was aged 12 years at the time of accident. It is submitted that as per medical evidence permanent disability was up to the extent of 70 percent which has wrongly been taken into consideration as 50 per cent. It is submitted that for assessing permanent disability the income of the Appellant was assessed at the rate of Rs. 15,000 per year on notional basis, which is not correct. It is submitted that accident took place in the year 2006, therefore, income of the Appellant ought to have been assessed at least at Rs. 4,000 per month. Learned Counsel further submits that on other heads also amount awarded by the learned Tribunal is on lower side.

5. Learned Counsel for Respondent No. 3 submits that the learned Tribunal committed error in holding Respondent No. 3 liable for payment of compensation. It is submitted that thresher was being operated by the offending tractor at the relevant time when the incident took place, which was not insured with Respondent No. 3. It is submitted that the tractor was being used in a field, which was not a public place, therefore, there was no justification on the part of Appellant to remain there. So far as the amount of compensation is concerned, learned Counsel submits that the amount awarded by the learned Tribunal is on the higher side. It is submitted that in the facts and circumstances of the case, appeal filed by the Appellant be dismissed and cross-objections filed by the Respondent No. 3 be allowed and the impugned award whereby Respondent No. 3 was held liable for payment of compensation be set aside.

6. From perusal of the record it is evident that the Appellant has submitted the photographs which are marked as Exh. P57 to Exh. P60, which shows that right leg of the Appellant has been amputated below knee, while in the left leg also the Appellant sustained grievous injuries and surgery has taken place in left leg as well. Appellant himself came in witness-box as PW 1 and stated that in what circumstance accident took place. In the statement of PW 1 there is observation of the learned Tribunal which reads as under : (Omitted as in vernacular)

7. In the matter of United India Insurance Co. Ltd. Vs. Rajendra and others, wherein right hand of the claimant came in contact with blade and was cut in

pieces, this Court held that the Tribunal was justified in fastening liability on the insurance company. It was further held that tractor and thresher were fitted with each other and were put to use for cutting soyabean. It was also held that loss of right hand amounts to permanent loss of 100 per cent. In the decision of United India Insurance Co. Ltd. v. Anandi Devi 2010 ACJ 1002 (MP), wherein accident occurred because of thresher which was attached to a tractor and was threshing wheat, it was held that tractor was used for agricultural purpose and insurance company is liable. In the matter of Suresh Bacha Pujari Vs. Bandu S. Chougala and Others, , wherein in a case of amputation of leg, Karnataka High Court has awarded a sum of Rs. 4,20,000 by enhancing the award from Rs. 1,10,000. In the matter of Pravat Chandra Maity Vs. Oriental Insurance Co. Ltd. and Others, , wherein the injured was aged 50 years suffered permanent disability of 84 per cent in case of amputation of right arm above elbow and the injured was Central Government employee, who was neither removed from service nor his salary was reduced, Divisional Bench of Calcutta High Court held that permanent disability would reduce the capability of discharging his job and he may not get promotion in future and he will not be able to seek any better employment anywhere and awarded a sum of Rs. 5,74,375. In the matter of Aasan Vs. Ram Babu Sen and Others, , wherein Division Bench of this Court held that in a case where injured was aged 32 years whose left leg was amputated above knee and two fingers of right foot were amputated awarded a sum of Rs. 4,26,800. In the matter of Anoop Kumar Vs. Janrel Singh and Others, wherein this Court in a case of amputation of left leg above knee awarded a sum of Rs. 5,00,000.

8. As per medical certificate permanent disability was to the extent of 70 per cent. From perusal of the record it is evident that keeping in view the age of Appellant, income of the Appellant is assessed as Rs. 15,000 per year on notional basis is on lower side. So far as loss of permanent disability is concerned, the income of the Appellant ought to have been assessed at the rate of Rs. 3,000 per month. Since the Appellant also sustained injuries in his left leg, therefore, permanent disability ought to have been assessed at the rate of 60 per cent. On number of heads no amount has been awarded by learned Tribunal. Similarly amount awarded on number of heads is on lower side. In view of this, Appellant is entitled for the following amount:

Towards permanent disability Rs. 3,25,000

Towards medical expenses Rs. 25,000

Towards special diet Rs. 10,000

Towards transport expenses Rs. 10,000

Towards expenses incurred on attendants Rs. 25,000

Towards loss of expectation of life and frustration Rs. 25,000

Towards future treatment Rs. 25,000

Towards artificial leg Rs. 25,000

Towards loss of marital aspect Rs. 25,000

Total Rs. 4,95,000

9. In other words, in view of this, the Appellant is held entitled for a total sum of Rs. 4,95,000 by way of compensation for the injuries sustained by the Appellant in the accident. The enhanced amount of Rs. 3,27,500 shall carry interest at the rate of 8 per cent per annum. The amount awarded shall be deposited by the insurance company with the learned Tribunal and the learned Tribunal is directed to invest 80 per cent of the said amount in long-term fixed deposit in the name of the Appellant in the nearest nationalised bank, in the area where the Appellant is residing, with the condition that the bank will not permit any loan or advance. Interest on the said amount shall be credited on monthly basis in S.B. account of Appellant, which shall be opened by the Appellant under the guardianship of his father, from where the Appellant can withdraw the amount as per his needs. However, on an application by the Appellant this condition could be modified by the learned Tribunal in exceptional circumstances such as educational and marital needs of Appellant, if made out by the Appellant.

10. With the aforesaid observations, cross-objections filed by Respondent No. 3 stands dismissed and appeal stands disposed of.

C.C. as per rules.