

(1996) 09 MP CK 0087
In the Madhya Pradesh High Court
Case No : M.A. No. 197 of 1995

Basant Rai Saxena

APPELLANT

Vs

Madhya Pradesh State Road Trans. Corpn. and Another

RESPONDENT

Date of Decision : 25-09-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 142

Citation : (1997) ACJ 1236

Hon'ble Judges : A.S. Tripathi, J

Bench : Single Bench

Advocate : N.D. Singhal, for the Appellant; A.K. Shrivastava, for the Respondent

Final Decision : Allowed

Judgement

A.S. Tripathi, J.—This appeal is preferred against the judgment and award dated 13.2.1995 passed by the Motor Accidents Claims Tribunal, Shivpuri, whereby the appellant/claimant was awarded Rs. 5,000 as compensation for the injuries sustained, with interest at the rate of 12 per cent per annum from the date of application.

2. This appeal is filed for enhancement of the award. The same was contested by the respondents that no enhancement is required.

3. The undisputed facts are that on 21.2.1988, the appellant was travelling in the respondents' bus No. MPQ 1456 from Guna to Shivpuri. The bus had met with an accident, in which the appellant was injured. Appellant claimed Rs. 25,000/- as damages for the injuries caused, Rs. 4,000 as expenses upon medicines etc., Rs. 4,000 for loss of earned leave and Rs. 5,000/- for mental agony etc., totalling Rs. 43,000/-.

4. The Tribunal has considered these points after framing the issues and came to the conclusion that the bus was being driven rashly and negligently, on account of which the injuries were caused to the appellant. The Tribunal further held that no permanent disability was caused to the appellant. He was entitled to recover

the costs of medicines, etc., at Rs. 4,000/- and Rs. 1,000/- for mental agony, totalling Rs. 5,000/-.

5. In this appeal, I have heard learned Counsel for the appellant/claimant Mr. N.D. Singhal and counsel for respondents/ M.P.S.R.T.C. Mr. A.K. Shrivastava and perused the record.

6. The first point raised in this appeal was that the appellant had sustained a fracture of his right ulna bone, as proved by the medical report and the statements of the appellant himself and Dr. Y.S. Agrawal. No evidence was led in rebuttal. It is proved on record that the right ulna bone was fractured in the accident, rash and negligent driving of the driver of the bus was also proved on record and the findings recorded by the Tribunal on this point are justified.

7. Now the question arose as to whether the fracture of ulna bone amounted to permanent disability. The Tribunal held that although the right hand of the appellant remained in plaster for six weeks due to fracture of right ulna bone, but later on the ulna bone repaired and, therefore, it did not amount to permanent disability. Learned counsel for the appellant pointed out that it was a case of permanent disability and, therefore, the compensation could not have been less than Rs. 25,000/-.

8. Permanent disability is defined in Section 142 of the Motor Vehicles Act, 1988, which is quoted below:

142. Permanent disablement.-For the purpose of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in Sub-section (1) of Section 140 if such person has suffered by reason of the accident, any injury or injuries involving:

(a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or

(b) destruction or permanent impairing of the powers of any member or joint; or

(c) permanent disfiguration of the head or face.

9. Learned counsel for the appellant relied on the case of Mahendra Prasad Mishra Vs. Mohd. Sabbir and Another, , in which brother Dharmadhikari, J. after examining the clauses of Section 142 of the Motor Vehicles Act and the meaning of the word "privation" defined in Shorter Oxford English Dictionary, came to the conclusion that the fracture of bone amounts to privation of member or joint, and comes within the definition of permanent disablement as provided in Section 142 of the Motor Vehicles Act.

10. On the other hand, learned Counsel for the respondents placed reliance on the case of Suresh Babu Nath Vs. Hargovind Batham and Others, , in which brother T.S. Doabia, J. held that mere fracture does not amount to permanent disablement, unless abnormality is proved on record. Brother Doabia, J. found in that case that there was no evidence for permanent disability, therefore, there

could be no presumption merely on the basis of fracture. But in the case of Mahendra Prasad Mishra Vs. Mohd. Sabbir and Another, , brother D.M. Dharmadhikari, J. clearly held that mere fracture of bone amounts to privation of member or joint, and therefore, in such cases, permanent disablement as defined in Section 142 of the Motor Vehicles Act has to be accepted.

11. In this particular case, appellant had stated that he was on leave for 39 days after the injuries caused. He also stated that on account of this fracture of ulna bone, his hand has become weak and even pain starts during rainy season. Dr. Y.S. Agrawal has stated that right ulna bone of the appellant was fractured and he had proved the report Exh. P/8. The Tribunal had based its finding simply on the observation of the doctor that this fracture could be repaired after proper treatment.

12. The fracture of right ulna bone, even after repairs certainly makes the right hand weak. The appellant was in Government service. He had to remain on leave for 39 days. Even after repairs of ulna bone, he is feeling weakness in his hand and in such a case, when there is no evidence in rebuttal from the side of the respondents, it is clearly established on record that when the hand becomes weak due to fracture of ulna bone, it amounts to permanent impairing of powers of member or joint as defined in Clause (b) of Section 142 of the Motor Vehicles Act. Therefore, I agree with the findings of brother Dharmadhikari, J. in the case of Mahendra Prasad Mishra Vs. Mohd. Sabbir and Another, and hold that it was a case of permanent disablement, as defined in Section 142 of the Motor Vehicles Act and proper compensation for the same should have been allowed.

13. Learned counsel for the appellant relied on the case of Madhya Pradesh State Road Transport Corporation v. Shyam Sunder Malviya 1987 (I) MPWN 221; Vijendrasingh v. Mujjafar Hussain 1989 (II) MPWN 178; and Sabal Singh Vs. Madhya Pradesh State Road Trans. Corpn. and Others, , wherein general damages have been assessed in such cases and also loss of salary has been assessed. In this particular case, the Tribunal had found that there was no loss of salary to the appellant as he was granted leave for the purpose. Therefore, loss of salary could not be allowed to the appellant, which has been rightly held by the Tribunal.

14. But so far as general damages are concerned, it has been held in the cases referred to above that general damages should be Rs. 25,000/- in the case of permanent privation of member or joint. Therefore, without entering into the costs and expenses etc., general damages in such a case, in my opinion, should be Rs. 25,000/- for the injuries caused, Rs. 4,000/- for medical expenses and Rs. 1,000/- for mental agony, which is just and proper. The Tribunal had already assessed medical expenses at Rs. 4,000/- and mental agony at Rs. 1,000/- which is just and proper. No compensation was allowed by the Tribunal for the injuries caused, which amounted to permanent disablement, and as such, since permanent disablement is held above, the compensation of Rs. 25,000/- will be just and proper. Therefore, in all, the appellant is entitled to a compensation of

Rs. 30,000/- with interest at the rate of 12 per cent per annum.

15. This appeal is allowed. The judgment and award of the Tribunal is modified to the extent that the appellant/claimant is entitled to recover Rs. 30,000/- as compensation from the respondents with interest at the rate of 12 per cent per annum from the date of application, i.e., 8.2.1988 till the date of payment. Costs of this appeal are also allowed to be paid to the appellant.