(2007) 02 MP CK 0081

In the Madhya Pradesh High Court

Brundavan Sharma — APPELLANT

Vs

Charanjit Nagpal and Others — RESPONDENT

Date of Decision : 13-02-2007

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2008) ACJ 673

Hon'ble Judges : Rajendra Menon, J;A.K. Gohil, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Abhay Gohil and Rajendra Menon, JJ.—This is claimant''s appeal u/s 173 of the Motor Vehicles Act, 1988, for enhancement of the compensation awarded by the First Motor Accidents Claims Tribunal, Morena in Claim Case No. 173 of 1997.

2. Brief facts of the case are that on 11.7.1997 at about 8.30 in the morning at village Banmore on A.B. Road appellant was waiting for a bus to go to Gwalior. At the same time offending tractor No. STA-F 20383 which was being driven rashly and negligently came and dashed the appellant. As a result of this accident, the appellant sustained fracture in backbone and severe injuries on other parts of the body. In this case, there is no dispute about the accident or about the findings recorded by Motor Accidents Claims Tribunal. There is also no dispute about the accident caused by the offending vehicle which was a tractor. The Tribunal has awarded total compensation of Rs. 97,000 for the injuries sustained by the appellant in the accident.

3. We have heard learned Counsel for the parties. The only question involved in this appeal is about the payment of compensation to be awarded to the appellant.

4. Mrs. Meena Singhal, learned Counsel for the appellant submitted that Tribunal has considered the notional income of the appellant at Rs. 15,000 per annum which cannot be in a case when a person is an earning member and in such cases income should be considered more than the notional income and in that

way the Tribunal has committed mistake in not considering the professional income of the appellant. The appellant was engaged in the business of selling cattle but that cannot be said to be a regular business and it may be considered as a seasonal business. However, as the appellant was an earning member on the basis of oral evidence, we consider the income of the appellant as Rs. 2,000 per month and Rs. 24,000 per year.

5. So far as the question of disability is concerned, looking to the injuries sustained by the appellant on the basis of medical evidence of doctor and his disability certificate, Exh. Pl, Tribunal has considered the disability at 60 per cent, in the absence of any contrary evidence and considering this fact that there is no appeal against the aforesaid finding, we hold that the disability of the appellant is at 60 per cent and on the basis of the aforesaid disability, an amount of Rs. 14,400 can be considered as loss of yearly income to the appellant. The Tribunal has assessed the age of the appellant as 42 years and the multiplier of ''10'' has been adopted which has been assailed vehemently in this appeal. Looking to the age of the appellant, the application of multiplier of ''10'' cannot be held as correct, for the age group of 40 to 45 as per the Second Schedule to the Motor Vehicles Act, 1988, the proper multiplier is of ''15'' which should be applied. Thus, we enhance the multiplier from ''10'' to ''15'' and on application of the multiplier of ''15'' on the yearly loss of Rs. 14,400 x 15, the total compensation for 60 per cent disability will come to Rs. 2,16,000. So far as the claim for the amount spent on treatment is concerned, the claimant has produced the bills for a sum of Rs. 15,000, but the Tribunal has awarded total compensation in the head of treatment and special diet as Rs. 12,000. We allow a sum of Rs. 15,000 in the head of treatment and Rs. 5,000 for the special diet. The Tribunal has awarded Rs. 5,000 for loss of income for a period of 4 months which we find it to be proper. We award a sum of Rs. 5,000 as compensation in the head of pain and suffering and also allow further sum of Rs. 20,000 towards future treatment.

6. Thus, we award total compensation of Rs. 2,66,000. We enhance the compensation from Rs. 97,000 to Rs. 2,66,000 (rupees two lakh sixty-six thousand). The enhanced amount of compensation shall be paid by the insurance company and the enhanced amount shall carry interest at the rate of 8 per cent per annum from the date of filing of this appeal. Enhanced amount of compensation would be deposited in the name of the appellant in a nationalised bank for a period of five years and he will be only entitled monthly interest thereon. Counsel''s fee Rs. 500.

7. This appeal is allowed as indicated above.

