
(1999) 04 MP CK 0005
In the Madhya Pradesh High Court
Case No : M.A. No. 228 of 1999

Gopal Krishna Pandey

APPELLANT

Vs

Rama Nand Singh and Others

RESPONDENT

Date of Decision : 23-04-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 142
Penal Code, 1860 (IPC) — Section 320

Citation : (2000) ACJ 1107

Hon'ble Judges : Sreesh Chandra Pandey, J

Bench : Single Bench

Advocate : Subodh Kathar, for the Appellant; Shailesh Mishra, for the Respondent

Final Decision : Allowed

Judgement

S.C. Pandey, J.—Counsel for the parties heard. This is an appeal against the interim award dated 15.1.1999, passed by XIIth Additional Motor Accidents Claims Tribunal, Jabalpur (henceforth "the Claims Tribunal"), in Claim Case No. 44 of 1998.

2. The appellant filed a claim on the foundation of the allegations that on 24.12.1997 the appellant suffered injuries in an accident caused by truck No. CPJ 5953. It was claimed that the appellant suffered permanent disability of his right foot and suffered injuries on the left knee. The X-ray taken in the Medical College Hospital showed that he suffered fracture of fibula bone. Thereafter, in a private hospital it was found that instead of one fracture there were two fractures.

3. The Claims Tribunal found that the injuries suffered by the appellant may be of grievous nature within the meaning of Section 320 of the Indian Penal Code but they were not covered by Section 142 of Motor Vehicles Act, 1988. The finding was that the fracture of fibula bone could not be said to be a permanent disablement as defined u/s 142 of the Motor Vehicles Act, 1988 and, therefore, it rejected the application u/s 140 of the aforesaid Act, filed by the appellant.

4. Having heard the learned counsel for the parties, this court is of the opinion that the view taken by the Claims Tribunal cannot be sustained in view of the language of Section 142 of the Motor Vehicles Act, 1988. The learned Judge presiding over the Claims Tribunal has gone into unnecessary discussion regarding the procedure for operation when there is fracture relating to fibula bone. Merely because no operation is called for, the fracture in fibula bone, according to the Claims Tribunal, cannot amount to a permanent disability. The treatment provided at a particular time would not determine the nature of disablement which can only be determined as per language of Section 142 of the Motor Vehicles Act, 1988 and not otherwise. Similarly, the use of fibula when a portion of radius bone is destroyed, shall also not determine the utility of fibula bone in body of a person. The Claims Tribunal fails to ask the real question. The real question is whether there was permanent destruction or permanent impairing of the powers of any member or joint within the meaning of Clause (b) of Section 142. It is true that every fracture cannot be deemed to be a permanent disablement but fracture of a bone which is actively involved in movement definitely causes privation of a joint. The permanent destruction or permanent impairing of the powers of a joint in the right ankle of the appellant is likely to cause the appellant difficulty of movement and the fact that the fracture of fibula is not operable is likely to enhance the disability rather than reduce it. Under such circumstances this court comes to a conclusion that this particular kind of fracture causing the breach in fibula bone would amount to permanent disablement.

5. The result of the aforesaid discussion is that this appeal succeeds and is allowed. The impugned order dated 15.1.1999 passed by the Claims Tribunal is hereby set aside. The appellant is granted Rs. 25,000 (Rupees twenty-five thousand) by way of interim award, against the respondent Nos. 1, 2 and 3, jointly and severally. The respondent No. 3, National Insurance Co. Ltd., Jabalpur, is directed to pay the appellant Rs. 25,000 (Rupees twenty-five thousand) within a period of 45 days from today, towards the interim compensation as indicated above.