

(1993) 04 MP CK 0002
In the Madhya Pradesh High Court

Kalu and Mangilal

APPELLANT

Vs

Shri Naveenchandra and Others

RESPONDENT

Date of Decision : 06-04-1993

Acts Referred:

Citation : (1994) 2 ACC 157

Hon'ble Judges : V.S. Kokje, J;R.D. Shukla, J

Bench : Division Bench

Judgement

R.D. Shukla, J.—The appeal is directed against the Judgment & Award dated 24.1.1985 of Motor Vehicle Accident Claims Tribunal Shajapur, passed in claim case No. 3/82, whereby the claimant-appellant has been awarded a compensation of Rs. 20,040/- in all for the injuries sustained by him, in a motor accident on 25.12.1981 near the bridge of die Tiller river.

2. This is not in dispute that the motor vehicle truck No. CPE 8937 was owned by respondent No. 1 and on the date of accident it was driven by respondent No. 2 driver and further it was insured with respondent No. 3. On the date of the incident claimant and one Lalu were going on a bicycle. The truck referred above came with high speed and dashed against the cycle. The legs of me claimant was crushed and it has to be amputated subsequently. The report of the incident was made, the claimant was admitted in hospital. In order to save his life die leg has to be amputated. The appellant thereafter filed a claim for compensation of Rs. 1,25,000/- with following break out;

Rs. 40,000/- --For permanent disability because of the amputation of the leg.

Rs. 15,000/- --For pain and suffering.

Rs. 55,000/- --Compensation for future disability.

Rs. 5,000/- --Expenses for treatment.

3. The respondents denied the claim and pleaded that the truck was running with

a slow speed. The claimant was sitting on die iron rod of the bicycle on me front side. The cyclist could not maintain the balance and thereafter they fell down and the claimant came beneath the wheel.

4. After hearing die Tribunal has held that the vehicle was being driven rashly and negligently. The claimant was aged 20 years and was earning nearly Rs. 7/- per day. The leg of the claimant had to be amputated. This has caused permanent disability and thus has awarded amount of as referred to above. This appeal has been filed for enhancement of the same.

5. The contention of me learned Counsel for the appellant is that the earning capacity of me claimant has been estimated in the lower side; Multiplier of 9 has also been wrongly applied and that the rate of interest is also on die lower side.

As against it, learned Counsel for the respondents has submitted mat the loss was only 40% and not 70%, as claimed and that it was the earning capacity on the date of accident that has to be seen.

6. The finding with respect to rash and negligent driving of the vehicle by the respondent No. 2 (owned by respondent No. 1) has become final and there is no challenge against him. The learned Tribunal has found the age of claimant to be 20 years at the time of accident. Similarly, the finding with respect to permanent disability and amputation of leg below the knee has also not been challenged seriously. Now, therefore, the only point that is to be decided is as to what was the income of the injured at the time of accident and what is the just compensation for die same.

7. The learned Tribunal has found his income to be Rs. 7/- per day, as he was an ordinary unskilled labour on the date of accident i.e. 25.12.1981.

8. PW 5 Dr. B.S. Patidar has stated that he has treated claimant Kalu alias Mangilal and has further stated that his leg had to be amputated. He has nowhere stated the extent of disability.

9. Learned Counsel in para 21 of his judgment has observed that the minimum wages on the relevant date of accident was Rs. 7/- per day and thereby he was assessed income of the claimant as Rs. 210/- per month. Learned Tribunal has further assessed the loss of Rs. 4/- per day. This calls for no interference. Thus, the claimant has sustained a loss of Rs. 120/- p.m. That come to loss of Rs. 1500/- per year.

10. Learned Tribunal has applied a multiplier of 9 for arriving at, to the figure of final award. In our opinion that does not appear to be correct. The injured was aged about 20 years. He was expected to live at least up to 65 years. He could very well work as labour upto the date age of 60. Thus, he will have to suffer the continuous loss for a period of 40 years. In such a situation taking consideration of the future rise in the prices, increase in the income because of the experience and the possibility of his being a skilled labour the multiplier of 20 ought to have been applied. Thus, the loss is assessed to Rs. 30,000/-in all.

11. Learned Counsel for the appellant has referred to a case reported in ACJ page 254, Prerna v. MPSRTC and submitted that in that case multiplier of 24 was applied. That was a case of death and the age of the widow was about 21 years. That is not the case here. The claimant can undertake the work where much of physical exertion is not required.

12. Learned Counsel thereafter referred to a case reported in Ramesh Chandra Vs. Randhir Singh and Others, has submitted that a higher compensation be awarded to the young man who has lost his earning capacity. That was a case of tempo driver and their lordships of the Supreme Court awarded Rs. 55,000/- as general damages. But, in our opinion the claimant was an unskilled labour and therefore an amount of Rs. 30,000/- for permanent disability would be sufficient.

13. The injured must have been hospitalised and taken treatment. He must have suffered pain and agony. No evidence as to the medical expenses has been proved, but taking the case from practical view the expenses for medical treatment to the tune of Rs. 1,000/- ought to have been awarded. Similarly, the claimant is entitled for, pain and suffering. We estimate that amount to be Rs. 5,000/-. Thus, that claimant is entitled for an extra amount of Rs. 6,000/- as general damages for pain and suffering and for medical expenses. If this amount of 36,000/- awarded as damage for loss of earning capacity is kept in fixed deposit in a Nationalised Bank, that will fetch an interest of Rs. 300/- p.m. Thus, the same will take care of the rising prices as well. The loss on the date of accident has been estimated to be Rs. 120/- p.m. and now this amount will fetch an interest as referred above, keeping capital in tact.

In view of the enhancement having been done in the compensation we do not deem it fit to award an interest of 12%. In our opinion the interest of 9% will be sufficient to meet the ends of justice. Thus, the claimant shall further be entitled for an interest @ 9% p.a. from the date of application till the realisation of the same.

14. As a result, the appeal partly succeeds. The amount of compensation awarded is enhanced to Rs. 36,000/- in all. The claimant-appellant shall further be entitled to an interest @ 9% p.a. from the date of application till realisation of the same Counsel fee Rs. 1,000/-. The same shall be paid by the respondents.