

(1999) 10 MP CK 0021
In the Madhya Pradesh High Court
Case No : M.A. No. 1645 of 1998

Krishna Sahu

APPELLANT

Vs

Munna Lal and Others

RESPONDENT

Date of Decision : 05-10-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 142

Citation : (2001) ACJ 1783

Hon'ble Judges : Sreesh Chandra Pandey, J

Bench : Single Bench

Advocate : P.K. Jain, for the Appellant; K.K. Gupta, S.K. Jain and Sunil Kherdikar, for the Respondent

Final Decision : Allowed

Judgement

S.G. Pandey, J.—This is an appeal against the order dated 25.9.1998 passed by the Claims Tribunal in Claim Case No. 163 of 1997, whereby the Claims Tribunal has declined to grant interim compensation to the appellant on the ground that the appellant has not suffered any permanent disablement within the meaning of Section 142 of the Motor Vehicles Act, 1988. The injury report of the appellant shows that she suffered an injury in the pelvic region. However, the injury in the pelvic region is of no consequence as it has been found to be curable but the X-ray report shows that there was a fracture of metacarpal bone of the little finger of the appellant. The refusal of the Claims Tribunal to grant interim compensation was on the ground that the injury may be grievous for the Penal Code it cannot be said to be permanent in nature within the meaning of Section 142 of the Motor Vehicles Act, 1988.

2. In the opinion of this court, the nature of injury has to be judged from the report of the doctor. In order to find out whether this is a permanent disablement, the court must look into the definition of permanent disablement given u/s 142 of the Motor Vehicles Act, 1988. Clause (b) of Section 142 uses the words destruction of:

- (i) any member or joint, or
- (ii) permanent impairing of the powers of any member or joint.

The second part of clause (b) to Section 142 has to be considered in a case, when the member or joint is fractured. It cannot be disputed that the little finger is important member of the hand and permanent impairment of its power would amount to a disability. It has been argued that merely because the appellant has suffered a fracture of metacarpal bone of little finger, it cannot be said that she shall lose the powers of the little finger. In the opinion of this court, it is very difficult to say that when a person has lost the powers of his member because this fact can be judged only when that member is put to use. However, the fracture of metacarpal bone of the little finger after reduction of the fracture is likely to result in impairment of powers of the little finger. The fact remains that under the natural circumstances, there may be many uses of little finger and if in a particular case or skill little finger is required to be utilized, the fracture may come in the way. It can, therefore, be inferred that the fracture of little finger is a permanent disability. The inference drawn of proved facts is that the appellant cannot use the fractured finger in the same way as she used to do before the accident and this loss to her hand would amount to permanent disablement. Accordingly, the impugned order dated 25.9.1998 is hereby set aside.

3. According to decision rendered today in connected M.A. No. 1644 of 1998 which was followed in M.A. No. 643 of 1998 and M.A. No. 1643 of 1998, this court is of the view that respondent Nos. 3 to 4 are jointly and severally responsible to pay the appellant amount of Rs. 25,000 in all. This amount of Rs. 25,000 shall be equally shared by respondent Nos. 3 and 4 for the reasons given in M.A. No. 1644 of 1998. The amount deposited by the respondent Nos. 3 and 4 shall be permitted to be withdrawn by the appellant within two months after making deposit of the amount by them. The respondent Nos. 3 and 4 are directed to deposit the amount within two months from the date of receipt of certified copy of this order. It shall be withdrawn by the appellant within two months after making deposit of the amount by the respondent Nos. 3 and 4.

4. Consequently, this appeal is allowed.