

(1996) 01 MP CK 0008
In the Madhya Pradesh High Court
Case No : M.A. No. 8 of 1991

Mamta Bai

APPELLANT

Vs

Charanjit and Others

RESPONDENT

Date of Decision : 09-01-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 142, 166, 173

Citation : (1996) ACJ 872

Hon'ble Judges : Sreesh Chandra Pandey, J

Bench : Single Bench

Advocate : Ashok Lalwani, for the Appellant;

Final Decision : Allowed

Judgement

S.C. Pandey, J.—This is an appeal u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") against the order dated 14.11.1990 passed in Motor Accident Claim Case No. 109 of 1989 by Additional Motor Accidents Claims Tribunal, Katni, whereby the Claims Tribunal refused to grant interim award to the appellant.

2. The appellant has filed a petition u/s 166 of the Act along with an application u/s 140 of the same Act claiming that she has suffered permanent disability as a result of motor accident.

3. It is claimed by the appellant that she has suffered injuries as a result of the accident caused by respondent No. 2. The respondent No. 1 is the truck owner and respondent No. 3 is the insurance company. In their reply to application u/s 140 of the Act, it is not disputed specifically by the respondents that no permanent disability was caused to the appellant. The appellant had produced the certificate of Dr. D.K. Swarnkar which shows that the appellant was suffering from pain over her sacrum and upper half of the left thigh. She was suffering from permanent weakness. At this stage, no X-ray report was produced. However, it is clear from the certificate that appellant had suffered permanent

weakness.

4. Section 142 of the Act defines permanent disablement as follows:

Permanent disablement.-For the purposes 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.

The appellant has suffered permanent disability on the facts on record which the Claims Tribunal has wrongly held that mainly because there was no fracture recorded by the doctor, she did not suffer from permanent disability. Clause (b) of Section 142 of the Act relates to destruction or permanent impairing of the powers of any member or joint. The doctor's certificate clearly shows that there is a stiffness in the joint resulting in permanent weakness. In view of this fact, I am of the opinion that the injury to the appellant is covered by Clause (b) of Section 142 of the Act.

5. As a result of the above finding, this appeal succeeds and is allowed. The appellant shall be entitled to receive Rs. 12,000/- as per Section 140 of the Act by way of interim award. In case by the time this appeal is decided, if the Claims Tribunal has already passed a final award then this award will be deemed to have been merged in the final award and, therefore, the question of awarding Rs. 12,000/- separately to the appellant would not arise. No costs.