
(2007) 02 MP CK 0046
In the Madhya Pradesh High Court

Nandkishore

APPELLANT

Vs

Suresh Kumar Vijayvargiya and Others

RESPONDENT

Date of Decision : 14-02-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 173

Citation : (2007) 2 MPHT 353 : (2007) 2 MPLJ 150

Hon'ble Judges : W.A. Shah, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

W.A. Shah, J.

This is an appeal by the claimant/appellant. This appeal u/s 173 of the Motor Vehicles Act ("Act" hereafter) arises out of Award dated 29-07-2005 passed by learned First Motor Accident Claims Tribunal, Shajapur in Claim Case No. 11/05 whereby the claimant/appellant has in all been awarded Rs. 1,92,688.00 along with 6% yearly interest and costs as compensation consequent to 60% permanent disablement as a result of vehicular road accident. The claimant/appellant has submitted that the amount as awarded by the learned Tribunal is on a lower side, hence this appeal for its enhancement.

The claimant/appellant got injured in a road transport accident and he submitted a claim petition before the learned Motor Accident Claims Tribunal u/s 163A of the Act. He therein alleged that he was rendered permanently disabled as a result of accidental injuries under reference. The injuries referred was a fracture in his right leg and another fracture in his right hand. He also submitted that he was a Mason by profession and was earning Rs. 100-125 per day. He further submitted that due to the accident he had to incur different expenses and in all he claimed a compensation of Rs. 6.00 lacs.

At the conclusion of the inquiry, the learned Tribunal found that the claimant/appellant as a result of the injuries under reference due to accident in question

turned permanently disabled to the extent of 60%. The Tribunal also found that the claim of the appellant that he was a Mason earning Rs. 100-125 per day was not established by evidence. The Tribunal treated him to be a non-earning member and under the provisions of IIInd Schedule of the Act applying the notional income, calculated the loss of income due to the accident to the extent of Rs. 1,44,000.00 and added to that Rs. 5,000.00 as compensation for pain and suffering and Rs. 5,000.00 as transport charges and Rs. 38,188-00 as medical reimbursement. Accordingly, the Tribunal reached up to a total figure of Rs. 1,92,688.00 as compensation payable along with 6% interest and costs. The Tribunal directed the same to be paid jointly and severally by the concerned Respondents who are respectively owner, driver and Insurer of the offending vehicle. According to the learned Counsel for the appellant, the learned Tribunal fell in error when it did not accept the evidence of the claimant/ appellant relating to his being a Mason earning Rs. 100-125 per day. He, therefore, argued that the appeal deserves admission as the income of the appellant has got to be considered as claimed by the claimant.

The learned Counsel further submitted that the learned Tribunal ought not to have calculated the pecuniary loss consequent to the disablement with reference to notional income. He also referred to a reported decision of this Court vide 2005 (II) MPWN 117 Mangilal v. Sheikh Rafiq and Anr. unreported decision of this Bench dated 22-11-2006 in Misc. Appeal No. 1606 of 2006 Smt. Prakash Kunwar and 5 Ors. v. Usman Khan and 2 Ors. Right now it is to be mentioned that both these decisions proceed on the finding that a person earning his livelihood by labour gets work for 20 days on an average in a month and his daily income at the rate of Rupee one hundred per day reaching to Rs. 2,000.00 per month is most reasonable. In the case at hand, the learned Tribunal on appreciation of evidence found that the claimant/appellant failed to establish that he was a Mason and that as a Mason he was earning Rs. 100-125 per day. To prove the fact that he was a Mason who was earning at the above rate, the claimant/appellant examined himself only as AW. 1. He did not examine any of the person who ever utilized his labour as a Mason. He did not even examine any person who could have ever seen him receiving his wage as a Mason or could have seen him giving his labour as a Mason. Therefore, the learned Tribunal rightly concluded that on evidence the required fact was not established.

In view of the above matter, the case law relied upon by the learned Counsel for the appellant does not help him as that is distinguishable on facts. The approach of the learned Tribunal under criticism of the learned Counsel for the appellant is not against the record. It is governed by sound legal principles as to appreciation of evidence. There is no caprice on the part of the learned Tribunal. The amount as determined by the Tribunal as compensation for pecuniary loss consequent to the injuries in question is just and reasonable and the total amount of Award is reasonable, adequate and proper. Therefore, this appeal for enhancement has no force and it is dismissed in limine.