

(1990) 03 MP CK 0011
In the Madhya Pradesh High Court

New India Assurance Company Limited and Another	APPELLANT
Vs	
Ram Swaroop Katare and Another	RESPONDENT

Date of Decision : 14-03-1990

Acts Referred:

Citation : (1991) 2 ACC 560

Hon'ble Judges : R.C. Lahoti, J

Bench : Single Bench

Judgement

R.C. Lahoti, J

1. The insurer and the owner have joined in filing an appeal against an award made by the Motor Accidents Claims Tribunal. A few relevant facts, not open to challenge at this stage and also not seriously challenged by the appellants, are that the injured claimant, respondent No. 1, was employed as clerk in the Central Workshop of M.P. State Road Transport Corporation at Gwalior and was drawing a salary of Rs. 327.22 in the month of June, 1980. On 26.6.1980 at about 6.45 p.m. he was riding pillion on a cycle ridden by Harimohan. At that time, a tempo driven by the respondent No. 2, owned by the appellant No. 2 and insured by the appellant No. 1 caused an accident resulting in the right leg of the respondent No. 1 being not only injured but also fractured. He was treated and plastered on the leg at J.A. Hospital, Gwalior on 27.6.1980. Until 13.7.1980, he remained indoors. The plaster was removed on 27.8.1980, but the leg had to be replastered for a period of another three months. Thus, he remained indoors for a period of 17 days. For a period of about five months he could not follow his normal pursuits. He had to remain on leave from 27.6.1980 to 28.2.1981. The ultimate consequence of the accident has been that the right leg has been reduced by 3/4 inch, the working efficiency of the claimant has been reduced; and he develops pain at the site of the injury with every change in the weather.

2. The Tribunal held that the claimant was entitled to an award of Rs. 33,968/- in all with interest at the rate of 9 per cent per annum from the date of the application till realisation. Costs were also allowed to the claimant with counsel's

fee assessed at Rs. 2,000/-. The break up of the awarded amount has been Rs. 20,000/- by way of general damages including loss of future prospects, Rs. 10,000/- for mental pain and suffering; Rs. 2,968/- for loss of salary during the period of leave, Rs. 1,000/- on account of special diet and medicines during the period of treatment.

3. The learned Counsel for the appellants has challenged the award firstly on the ground that at the time of the accident the injured was riding pillion on cycle with his legs on the right and that act of the claimant was by itself negligent and hence either the appellants should have been exonerated or the liability should have been reduced proportionately with "the contributory negligence of the claimant/respondent. In the opinion of this court, there is no substance in the submission. It is common knowledge that on the Indian roads people of ten ride pillion on the cycle and one hardly cares whether he sits with his legs on the left or on the right side of the cycle. The driver of a vehicle on road is supposed to know this habit of cycle riders and having noticed the persons riding a cycle he has to take suitable precautions so as to avoid dashing against the cyclist. In any case, the claimant/respondent cannot be held to be negligent absolutely or as having contributed towards negligence merely because of his riding the pillion with legs on the right

4. The next question to be examined is the propriety of the quantum of compensation as fixed by the Tribunal. The relevant facts affecting the quantum have been noticed hereinabove and they are not controverted. It is well settled that while fixing the quantum of compensation the court has to go by a guesswork to some extent. Aid can be taken from decided cases so as to find out the trend of judicial opinion in fixing the quantum in similarly situated cases. It is also true that a compensation has to be a compensation; an effort at placing the sufferer monetarily in the same situation in which he would have been if the misfortune had not occurred but luxury has to be avoided and the care has to be taken to see that the misfortune does not become an occasion for windfall from misery. As held by a Division Bench of this court in *Vinod Kumar Shrivastava v. Ved Mitra Vohra* 1970 ACJ 189 (MP).

While assessing damages for personal injuries caused in accident, the following rules are to be taken into consideration;

(1) The amount of compensation awarded must be reasonable and must be assessed with moderation; (2) regard must be had to awards made in comparable cases; and (3) the sums awarded should to a considerable extent be conventional. It is only by adherence to these self-imposed rules that the courts can decide like cases in like manner and bring about a measure of predictability of their awards.

5. The learned Counsel for both the parties have cited a host of authorities to their respective aid. First the cases cited by the learned Counsel for the appellants have to be noticed. They are all decisions of M.P. High Court in *Biswha*

Nath Gupta v. Munna 1972 ACJ 27 (MP) the injured had suffered a marked deformity and substantial disability of the left leg. The Division Bench noticed in para 12 of the report several earlier decided cases and reduced the quantum of compensation from Rs. 20,000/- to Rs. 6,000/- observing that the High Court could interfere with quantum of damages if the award made by the Claims Tribunal was inordinately high. In Sonaram Vs. Jaiprakash and Others, a student of 9th class had suffered deformity and lifelong weakness of the left leg. An award of Rs. 4,000/- was held to be moderate and adequate. In Dr. Ravi Agrawal Vs. M.P. Rajya Parivahan Nigam, Bhopal and Another, a surgeon had suffered grievous injuries on his right hand, left thumb and left patella resulting in permanent disability and impairing his professional skill. In the opinion of the Division Bench, a Compensation of Rs. 10,000/- was considered to be adequate.

6. Out of the authorities relied on by the learned Counsel for the claimant/respondent Chander Kumar Pahwa v. State of Haryana 1985 ACJ 500 (P & H) and Om Prakash Bhatia v. Jagir Singh 1989 ACJ 68 (P&H) : II (1988) ACC 59 are cases of amputation and hence distinguishable. Jagjeet Singh v. Vidhya Dhan 1989 ACJ 334 (Rajasthan) : (1988) ACC 569 was a case of hospitalisation for more than six months of an injured aged 27 years drawing Rs. 700/- per month. He was awarded Rs. 25,000/- for disability and Rs. 6,000/- for pain and suffering. State of Orissa v. Prafulla Kumar Satpathy 1989 ACJ 384 (Orissa) : (1988) ACC 41 was a case of a young bachelor drawing Rs. 760/- per month having suffered 60 percent disability of the right leg and having undergone several operations. The Tribunal's award for a compensation of Rs. 1,05,200/- was upheld. These cases are also distinguishable.

7. Now, a few cases from our High Court and relied on by the learned Counsel for the claimant-respondent may be noticed. Madhiya v. Rameshchandra (1987) 1 MPWN 223 : 11 (1987) ACC 504 was the case of a labourer aged 28 years earning Rs. 3/- a day who having been permanently disabled on account of amputation of his leg had become unfit for working as a labourer. The Division Bench awarded an amount of Rs. 30,000/- instead of Rs. 13,500/- awarded by the Tribunal. Mangilal v. Pramod 1988 ACJ 307 : (1988) ACC 306 was the case of a driver rendered unfit to work as such on account of injuries sustained in the leg. He was aged 40 years at the time of the accident and overall compensation of Rs. 5,000/- including medical expenses was held to be just. In M.P.S.R.T.C. v. Shyam Kishore 1988 ACJ 658 : (1987) ACC 26 the injured was a District Judge, handicapped in the movements on account of injuries to both the legs and third rib. The award of Rs. 25,000/- as general damages was upheld in appeal. In Lachiyabai v. Darshansingh Punjabi 1988 ACJ 920 : (1989) ACC 160, an amount of Rs. 30,000/- as lumpsum compensation was assessed by the Division Bench including compensation for pain and suffering where a lady labourer was rendered almost crippled not able even to stand and walk, on account of the accident.

8. Giving an anxious consideration to the comparable cases cited by both the

parties, specially those decided by this court, I am of the opinion that the amount of compensation awarded as general damages and as compensation for mental pain and suffering by the Tribunal appears to be inordinately high and deserves to be reduced to Rs. 15,000/- and Rs. 5,000/- respectively. That would be just and adequate. The award on the heads of loss of salary (Rs. 2,968/-) and as compensation for reimbursement for expenses incurred on special diet and medicines (Rs. 1,000/-) are upheld. The claimant/respondent No. 1 is held to be entitled to an amount of Rs. 23,968/- in all. The claimant is a clerk and nothing has been brought on record to show that on account of injury sustained in the leg his working efficiency for clerical job has been reduced. Also, the direction of the Tribunal to tax the counsel's fee at Rs. 2,000/- deserves to be set aside which should have been taxed as per scale.

9. The appeal is partly allowed. In supersession of the award of the Tribunal, it is directed that the claimant respondent No. 1 shall be entitled to a compensation of Rs. 23,968/- with interest at the rate of 12 per cent per annum (in place of 9 per cent per annum as ordered by the Tribunal) from the date of the application till realisation. The claimant/ respondent No. 1 shall also be entitled to his costs before the Tribunal but the counsel's fee shall be included in the costs as per scale. Costs in this court shall be borne by the parties as incurred. Counsel's fee as per schedule, if certified.