

(2005) 11 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 303 of 2002

Pala Ram	Vs	APPELLANT
Punjab Roadways and Another		RESPONDENT

Date of Decision : 24-11-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 173(2)

Citation : (2007) ACJ 983 : (2006) 1 ShimLC 214

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Advocate : M.L. Brakta, for the Appellant; Ashwani Sharma, for the Respondent

Final Decision : Allowed

Judgement

Deepak Gupta, J.—This appeal by the claimant has been filed against the award of the learned Motor Accident Claims Tribunal-I, Kangra at Dharamshala in MAC Petition No. 54-G/II/1998 decided on 1.3.2001 whereby the claimant has been awarded only Rs. 7,000/- as compensation and, therefore, this appeal.

2. First of all I shall deal with the preliminary objection raised by learned Counsel for the respondent that the appeal is not maintainable as the amount awarded is less than Rs. 10,000/-.

Section 173(2) of the Motor Vehicles Act reads as follows :

173. Appeals :

(1) ...

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees.

3. Mr. Sharma, relies upon this section to submit that the disputed amount being less than Rs. 10,000/- the appeal is not maintainable. Reliance is also placed on the judgment of this Court in *Mittar Singh and Ors. v. Ashish Kumar and Ors.*

1998 (2) SLC 7, and the judgment of Karnataka High Court in Ramaiah Setty v. Prakash 1991 (1) TAG 478.

4. In my opinion the argument raised is totally misconceived and ill-founded. The words used in Section 173(2) are that the amount in dispute in appeal is less than Rs. 10,000/-. In the present case the claimant in his claim petition had claimed compensation of Rs. 80,000/-. He has been awarded Rs. 7,000/-. He now in appeal claims compensation as claimed by him in the claim petition. Therefore, the dispute is with regard, to Rs. 73,000/- and not Rs. 7,000/-. The judgments relied upon by Mr. Sharma are not at all relevant for the decision of this case since in both those cases the appeals were filed by the owners of the vehicles and the award was less than the stipulated amount. When a driver, owner or Insurance Company files an appeal then obviously if the award is less than Rs. 10,000/- the dispute is with regard to an amount less than Rs. 10,000/-. However, when a claimant comes up in appeal for enhancement he is claiming the amount claimed by him in the claim petition and if that amount is more-than Rs. 10,000/- the appeal will be maintainable. The disputed amount in an appeal filed by the claimant is the enhancement claimed in the appeal or in case where the claim petition has been dismissed the total amount claimed in the claim petition. It is not the amount awarded which will determine whether the appeal is maintainable u/s 173(2) or not. It is the amount which is in dispute in the appeal which will determine whether the appeal is maintainable. Therefore, in my opinion this objection has no basis and is accordingly rejected.

5. Coming to the facts of the present case it stands proved on record that the claimant was aged about 80 years. In the accident he suffered fracture of the femur. He remained admitted in hospital from 25.6.1998 to 9.7.1998. The discharge summary has been proved-by the doctor as Ext. PW-3/A. It has also been proved on record that the claimant has suffered permanent disability to the extent of 10%. The Tribunal has awarded him only Rs. 7,000/-. In fact in a case of permanent disability the Tribunal could not have awarded less than Rs. 25,000/- which was the amount payable to the claimant as no fault liability u/s 140. No doubt the claimant is aged 80 years and therefore there will be no loss of income to him on account of disability. However, he definitely has to be compensated for the period he remained in hospital, the expenses for medicines and attendant charges and also for pain and suffering and loss of amenities and future discomfort. Since the claimant is old man it is not necessary to determine the compensation under various heads.

Keeping the entire evidence in view and the fact that the claimant remained admitted in hospital for about 15 days and even on discharge had to wear a brace and suffered permanent disability of 10% it would be just and reasonable to award Rs. 40,000/- to him. The claimant shall also be entitled to interest on this amount @ 9% p.a. w.e.f. the filing of the claim petition i.e. 26.8.1998 till deposit of the amount.

6. In view of the above discussion, the appeal is allowed and the compensation is

enhanced from Rs. 7,000/- to Rs. 40,000/- alongwith interest as aforesaid. No costs.