
(1997) 04 MP CK 0053
In the Madhya Pradesh High Court
Case No : M.A. No. 201 of 1992

Raghvendra Singh Chouhan and Others	APPELLANT
Vs	
Rambabu Singh and Others	RESPONDENT

Date of Decision : 09-04-1997

Acts Referred:

Citation : (1998) ACJ 978

Hon'ble Judges : Shacheendra Dwivedi, J;A.S. Tripathi, J

Bench : Division Bench

Advocate : S.P.P. Shrivastava, for the Appellant; B.N. Malhotra, for the Respondent

Judgement

Shacheendra Dwivedi, J.—The appellants have approached this Court for the enhancement of the amount of compensation and have also challenged the impugned award in this appeal since the learned Tribunal had not fixed any liability for the payment of compensation on respondent No. 3, i.e., National Insurance Co. Ltd.

2. Appellant-claimant No. 1 is the injured and appellant Nos. 2 and 3 are his father and mother. On 17.8.1987, appellant had boarded the bus registration No. CPG 4557 from Umri for coming to Bhind. The bus was owned by respondent No. 1 and was driven by respondent No. 2. It over-turned near Akoda Octroi Post, due to the rash and negligent driving of respondent No. 2. The said bus was insured with respondent No. 3. In the incident, appellant No. 1, who was aged about 14 years at the relevant time, suffered grievous injuries including the fractures of the right hand and of the right leg. The leg had to be amputated below the knee.

3. The learned Tribunal on the appreciation of the evidence found that the accident was due to the rash and negligent driving of the driver, respondent No. 2 and due to the accident, appellant No. 1 had suffered permanent disablement.

4. With the above findings, the learned Tribunal held that the claimants were

entitled to the compensation of Rs. 32,500. It included the compensation for permanent disablement, pain and suffering, reduction in capacity of earning, loss of pleasures of life, the loss of earnings due to disability and also the expenses incurred on the medicines in taking the treatment. The learned Tribunal adjusted the amount of Rs. 7,500/- of interim award towards no fault liability in the amount of compensation of Rs. 32,500/-.

5. The learned Tribunal also found that since the driver of the vehicle had no licence, no liability could be fastened on the insurance company and therefore, directed that balance amount of compensation of Rs. 25,000/- shall be recoverable from respondent Nos. 1 and 2 jointly and severally. The claimants were also held entitled to receive interest on Rs. 25,000/- at the rate of 12 per cent per annum, from the date of claim petition and would also get the costs of the litigation.

6. The learned Counsel Mr. S.P.P. Shrivastava appearing for the appellants has contended that the learned Tribunal fell in error in law and facts, in improperly assessing the amount of compensation. The learned Tribunal did not apply mind to the fact that the appellant No. 1 was permanently disabled due to the injuries suffered in the incident and will have to pass his total life in that condition. Mr. Shrivastava has also submitted that the legislature, in view of life-long suffering due to disability, has amended the law and has made provision for Rs. 25,000/-, as an amount of no fault liability, when such injury is received by the claimant.

7. Even if the appellant was to pass his future life as an unskilled labour, he could be taken to earn Rs. 30/- per day. Leaving the margin of few days in a month, when one may not get the employment, his average income could be taken as Rs. 20/- per day and the average annual income could safely be held to be Rs. 7,200/- per year. Now with the disabled body if the appellant does some hand-work, he may earn Rs. 10/- per day, thereby he would suffer the loss of Rs. 10/- per day, and the annual average loss of Rs. 3,600/- per annum. In the circumstances, by applying the multiplier of 15, thus loss of income could be assessed at Rs. 54,000/-. Taking into account the expectancy of his life and on the consideration of his pain and suffering and the life-long disablement, the appellant would further deserve Rs. 15,000 on that count. Towards the expenses incurred on the treatment and medicines, the amount can safely be taken as Rs. 5,000/-. On the above calculation, the appellant deserves the amount of compensation of Rs. 74,000/-.

8. Now adverting to the liability of the insurance company for the payment of compensation, it is well settled that when insurance company takes defence of non-existence of licence, it has to prove that the driver had no driving licence and that being the breach of the conditions of agreement of insurance, the company was not liable to pay any compensation. But in the instant case, the insurance company has led no evidence to prove that the driver respondent No. 2 had no driving licence. If on a question put by the insurance company, a witness of the claimants had stated that the driver had no licence, it could not be

taken to be proved that the driver was not holding any driving licence, more so when the insurance company made no effort in that regard. The learned Tribunal, therefore, erred in holding that no liability could be fastened on the insurance company for the payment of compensation.

9. It is submitted by Mr. Malhotra, the counsel for the insurance company that the liability of insurance company was limited to the tune of Rs. 15,000/-. It cannot be disputed that under the old Act, the liability of the insurance company was limited. The insurance company has also filed the policy of insurance on record, wherein the condition was specific that the liability of insurance company would only be up to the tune of Rs. 15,000/-. It is also submitted by Mr. Malhotra that the premium was also charged at such rate by the company from the insured.

10. We, therefore, fix the liability on the insurance company for payment of the amount of Rs. 15,000/- as compensation to the claimants with interest at the rate of 12 per cent per annum thereon, from the date of application. The liability for the payment of the remaining amount of compensation with interest at the above rate shall be of the respondent Nos. 1 and 2 jointly and severally. The appellants shall also be entitled to recover the costs of this appeal from insurance company, as other respondents had not appeared in this appeal, which we quantify at Rs. 1,000/-.