
(1997) 07 MP CK 0026
In the Madhya Pradesh High Court
Case No : M.A. No. 537 of 1995

Saeed-Uz-Zama

APPELLANT

Vs

Athar Ayub and Another

RESPONDENT

Date of Decision : 01-07-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (1998) ACJ 689

Hon'ble Judges : S.K. Dubey, J;Rajeev Gupta, J

Bench : Division Bench

Advocate : Jay Lakshmi Iyer, for the Appellant; N.S. Ruprah, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.—This is an appeal u/s 173 of the Motor Vehicles Act, 1988 (for short "the Act") against the award dated 31.1.1995, passed in M.C.C. No. 72 of 1994 by VIth Additional Motor Accidents Claims Tribunal, Bhopal.

2. Facts giving rise to this appeal are thus: the appellant met with an accident on 7.6.1993 while he was travelling in a jeep No. MP-04-J-359 which was driven by respondent No. 1 and insured with respondent No. 2. The said jeep collided with the truck which, according to the appellant and the first information report, Exh. P-1, the truck was coming from the opposite direction, both vehicles collided, the jeep toppled down, wherein the appellant received multiple injuries in his left leg. He was admitted in Gandhi Medical College and associated Hamidia Hospital, Bhopal on 7.6.1993 where ultimately his left leg was amputated below the knee. He was discharged on 29.7.1993. Discharge certificate is Exh. P- 2. The appellant claimed compensation for the injuries suffered in the motor accident from the owner and insurer of the jeep. As the particulars of the driver, owner and insurer of the truck were not known they were not impleaded as parties. Respondent No. 1, the owner of the jeep, was driving the jeep at the relevant time, remained ex parte. Respondent No. 2 contested the claim.

3. The appellant and other occupants of the jeep admitted the correctness of the adduced first information report wherein it was stated that there was a collision between the truck and the jeep. It was stated that as soon as the jeep reached near the bridge of the river, from the opposite direction, that is, from the side of Berasia, a truck came which dashed the jeep. The Claims Tribunal dismissed the application for compensation as no negligence was proved of the jeep driver.

4. Having heard Ms. Jay Lakshmi Iyer, learned Counsel for the appellant and Mr. N.S. Ruprah for respondent No. 2 and on going through the record of the case, we are of the opinion that this appeal deserves to be allowed.

5. It is well settled that when an accident occurs between the two offending vehicles, the driver of such motor vehicles should appear before the court and state the manner in which the accident occurred because they had the first hand information and knowledge about the accident. In the case, the driver of the jeep did not even appear as witness. The respondent No. 2 also did not lead any evidence to rebut the evidence on issue of negligence. From the evidence on record, it is evident that both vehicles collided and the jeep toppled down. There is no evidence on record that the respondent No. 1 after he saw the truck coming from opposite direction, took any steps like a prudent man to avert the accident. The circumstances speak for itself and it can safely be assumed that both the drivers were equally responsible for the accident.

6. Coming to compensation, it is settled that while fixing amount of compensation payable to a victim of accident, damages have to be assessed separately as pecuniary damages and non-pecuniary damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant; (i) medical attendance (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include: (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life. [See R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, .

7. In the present case, so far as the pecuniary damages are concerned, the appellant was treated in the Government hospital. He has adduced evidence of the medical expenses incurred to the extent of Rs. 6,633.75. He remained as an indoor patient for 53 days as is evident from Exh. P-2. He must have spent some amount towards special diet. It would be proper to fix the amount at Rs. 3,000/-. The appellant has also claimed expenses incurred in keeping an attendant on

monthly pay of Rs. 1,000/-. The statement of appellant remained unrebutted. Thus the appellant would be entitled in all to Rs. 11,633.75 towards the expenses incurred by him during the period of treatment. The appellant was an electric contractor. His yearly income was in between Rs. 40,000/- to Rs. 50,000/-. He could not work for about two months. Therefore, the appellant suffered the loss for two months. Therefore, it would be appropriate to award Rs. 7,000 for loss of earning. Thus under the head of pecuniary damages, the appellant would be entitled to Rs. 18,633.75.

8. As to general damages, appellant's leg below the knee has been amputated. The appellant remained under treatment for about 54 days. He suffered pain, and suffering. Because of amputation of his left leg, he had to suffer for the whole life. Therefore, for the permanent disability, taking into account the comparable case of Jai Bhagwan Vs. Laxman Singh and Others, , wherein left leg above knee was amputated due to motor accident caused on 2.1.1981, we are of the view that in the circumstances of the case and the fact that due to amputation the appellant will not be able to walk, run or sit and will feel discomfort, disappointment and frustration throughout life, an amount of Rs. 85,000 would be appropriate to award as compensation under non-pecuniary damages. Thus appellant would be entitled to Rs. 1,03,633 making it in round figure Rs. 1,03,650/-with interest at the rate of 12 per cent per annum from the date of application from the tortfeasors jointly or severally as it is a case of composite negligence.

9. However, as the owner, driver and insurer of the truck have not been made the party, in the circumstances, it would be appropriate to specify the amount which shall be payable by the insurer and owner of the jeep. Therefore, we direct the respondent Nos. 1 and 2 to deposit 50 per cent of the amount, that is, Rs. 51,825/-with its accrued interest at the rate of 12 per cent per annum from the date of application till payment. Respondent No. 3 as an insurer shall deposit the amount within a period of two months from the date of supply of certified copy.

10. In the result, the appeal is allowed with costs. The award of the Tribunal is set aside which shall stand substituted as indicated hereinabove. Counsel's fee Rs. 1,000/-, if pre-certified.