

(1990) 12 MP CK 0005
In the Madhya Pradesh High Court

Sajju Pathak Alias Manmohan Lal Pathak	APPELLANT
Vs	
Shanku Alias Shankerlal and Others	RESPONDENT

Date of Decision : 01-12-1990

Acts Referred:

Citation : (1992) 2 ACC 301

Hon'ble Judges : D.M. Dharmadhikari, J

Bench : Single Bench

Judgement

D.M. Dharmadhikari, J.—The appellant, aged about 30 years, who claims to be by occupation an electrician, suffered injuries in motor accident on 6/7/1981 for which Claims Tribunal, Damoh, by order dated 2nd of January, 1986 granted him a total compensation in the sum of Rs. 3,500/- with interest at the rate of Rs. 6 per cent per annum. The appellant has approached this Court for enhancement of the said compensation and the claim in appeal is valued at Rs. 40,000/-.

2. The tribunal by the impugned award under the appeal reached a finding that the appellant failed to prove that he suffered any grievous injury i.e. fracture of his left femure bone as alleged by him. According to the tribunal, he did not produce any papers of the hospital to show the period for which he was confined. In the hospital and the actual medical expenses that he had to incur. On the above finding that Tribunal granted a sum of Rs. 1,500/ as general damages and Rs. 500/- as special damages for approximate medical expenses.

3. Learned Counsel, appearing for the appellant/claimant, made an attempt to show from the record of the tribunal that the appellant had sustained fracture of femure bone and had to remain in plaster for a considerable long period of time. I have looked into the record and 1, find that the doctor at Damon had merely suspected fracture of the left femure bone and had advised for X-ray. If the X-ray was taken and a fracture of the femure bone was found with attending medical treatment for the same, the medical papers including the X-ray plate of the hospital would have been the best evidence. The appellant, therefore, cannot be believed in the absence" of any evidence in that regard that he had sustained

injury of fracture of femure bone.

4. Learned Counsel for the appellant then submitted that the appellant was an electrician and apart from the period for which he was bed ridden he suffered future loss of income as he lost opportunities to undertake contracts of electrification during the period. The counsel, therefore, claim that towards loss of income the tribunal should have awarded at least Rs. 10,000/-. I have gone through the relevant part of the evidence led by the claimant and I find that there is absolute lack of evidence on the head of loss of income. The tribunal estimated his monthly income Rs. 500/- per month and as he suffered for three months due to injury a sum of Rs. 1,500/- was granted which according to me is just and proper. No evidence was led by the claimant what was his future loss of income. The claimant was engaged in a private trade. No definite finding could be reached what he would have earned by the contracts which he lost due to the accident.

5. It was next contended that award for medical expenses of Rs. 500/- is also too low keeping in view the fact that the appellant was hospitalised for three months in the hospital with plaster on his leg. In support of his higher claim for medical expenses in the sum of Rs. 3000/- the appellant has not produced any papers to show how much he spent for hospital charges or towards fee of the consultants. As has come in the evidence the appellant was admitted to Govt. hospital and it may be that he was not required to pay for the hospital charges. The tribunal, therefore, committed no error in granting only Rs. 500/- as medical expenses which the appellant might to have incurred out of his own pocket. So far as general damages in the sum of Rs. 1500/- are concerned, the counsel for the appellant cannot claim any higher damages as there is no proof that the appellant suffered injury of fracture of femure bone. The appellant only suffered simple injury which has left no deformity or loss of future income. The general damages of Rs. 1500/- awarded for simple injuries are, therefore, just and proper.

6. Lastly, the counsel for the appellant, submitted that the Tribunal should have awarded interest at the rate of Rs. 12 per cent and not only 6 per cent as was granted. It is true that in some cases interest at the rate of Rs. 12 per cent has also been granted by the courts but grant of six per cent cannot be said to be any error on the part of the Tribunal so as to justify interference in appeal.

7. The counsel for the respondents pressed his cross-objection filed in the case. It was stated that Jugal Kishore, respondent No. 2, was neither a partner of the Bus Service Company which was running the Bus involved in the accident nor he was owning the Bus jointly with the respondent No. 3. The tribunal, has found liable only respondent No. 1,3, and 4 for payment of compensation. From the operative part of the award in Para. 201, find that only the respondents No. 1,3 and 4 have been jointly and severally held liable for payment of compensation awarded. There is no award made against the respondent No. 2, Jugal Kishore. The cross-objection, therefore, is without any foundation and hence, rejected.

8. Consequently, the appeal fails and is hereby dismissed but without any order as to costs.