

(1995) 03 MP CK 0014
In the Madhya Pradesh High Court
Case No : M.A. No. 57 of 1995

Sangita

APPELLANT

Vs

Narendra Singh and Others

RESPONDENT

Date of Decision : 07-03-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 140, 173

Citation : (1997) ACJ 861

Hon'ble Judges : A.S. Tripathi, J

Bench : Single Bench

Advocate : S.S. Bansal, for the Appellant; Lokendra Gupta, for the Respondent

Final Decision : Allowed

Judgement

A.S. Tripathi, J.—This appeal has been preferred against the order dated 23.11.1991 passed by the presiding Judge of Motor Accidents Claims Tribunal, Bhind.

2. By the impugned order the Tribunal had refused to grant interim compensation u/s 140 of the Motor Vehicles Act, 1988 on the ground that no permanent disability was proved by the petitioner.

3. This petition was earlier presented as writ petition under Article 227 of the Constitution of India. The question arose as to whether an appeal will lie against the impugned order or only a writ petition could be preferred. On this point when the matter was heard by the Division Bench, there was a difference of opinion between the two Judges of this Court hearing the writ petition. Brother R.C. Lahoti, J. had expressed the opinion that an appeal will lie against the impugned order u/s 115 of the CPC and the writ petition was not maintainable and the same was dismissed. Brother, KM. Pandey, J. had differed and held in the same order dated 27.6.1992 that no appeal will lie against the impugned order and only a writ petition against the impugned order will lie.

4. The Bench had requested for constituting a larger Bench to decide this controversy which was occurring in several cases. Then the matter was referred to the five Judges Bench presided over by the hon"ble Chief Justice. Several civil revisions on the same point were heard and decided by the Special Bench on 29.9.94.

5. Hon"ble Mr. U.L. Bhat, Chief Justice, while delivering the judgment held that an appeal will lie against such impugned orders u/s 173 of the Motor Vehicles Act and it was directed that the writ petition under Article 227 of the Constitution be converted into an appeal and be heard on merits.

6. That is how this writ petition was converted into an appeal and was placed for hearing before this Court.

7. Heard Mr. Bansal, learned Counsel for the appellant and Mr. Lokendra Gupta, learned Counsel for the respondents; and examined the record.

8. The only question involved in this appeal was as to whether the Tribunal was justified in rejecting the claim for interim compensation u/s 140 of the Motor Vehicles Act on the ground that there was no permanent disability to the appellant on account of the accident alleged.

9. According to the appellant and the claim put before the Tribunal, she had met with an accident with the tractor of the opposite party Nos. 1 and 2. She had sustained fracture of tibia bone and that had resulted in her permanent disability. The medical certificates Annexures P-3 and P-4 are on record of the paper book.

10. On perusal of medical certificates, Annexures P-3 and P-4, it is revealed that the appellant was hospitalised for several days for treatment and she had sustained fracture of tibia bone. Although on account of medical treatment for a long time the tibia bone is said to have joined yet the appellant claims that the same has resulted in her permanent disability. The petitioner was a young girl of only 17 years at the time of the accident and was studying in the college. She was unmarried at that time. In these circumstances the appellant claims that the fracture of tibia bone had made her permanently disabled so far as her future life is concerned. Since she was unmarried girl, certainly it has resulted in her permanent disability. Her future life either in the house of her parents or in the house of her prospective husband has become miserable.

11. The provisions of Section 140 of the Act are very clear. It provides for an interim compensation which is fixed at Rs. 12,000/- in case permanent disablement has resulted of the person involved. The section itself provided that the negligence or any other factor is not to be proved by the petitioner in the proceeding for claim of interim compensation. This has to be presumed that the accident has resulted on account of the negligence on the part of the driver and interim compensation, so fixed, has to be paid once it is found that permanent disablement has resulted out of the accident.

12. The provisions of Section 140 are quoted below:

140. Liability to pay compensation in certain cases on the principle of no fault.-

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be a fixed sum of twenty-five thousand rupees and the amount of compensation payable under that subsection in respect of the permanent disablement of any person shall be a fixed sum of twelve thousand rupees.

(3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

13. Sub-section (2) of Section 140 clearly provides that in respect of permanent disablement of any person a sum of Rs. 12,000/- has to be paid as interim compensation.

14. Other details and technicalities of the case may be set up and evidence led and also be decided by the Tribunal after evidence when the actual claim petition is taken up for decision.

15. So far as this petition for interim compensation is concerned, once it is found to be permanent disablement of the petitioner, an amount of Rs. 12,000/- has to be paid as the interim compensation.

16. Learned counsel for the appellant relied on the case of Narendra Singh Vs. Oriental Fire and General Insurance Co. Ltd., Delhi and Others, . In this very case, the Rajasthan High Court had specifically held that fracture of the tibia bone results in permanent disablement. That was a case of grown up person and in this case the person involved was a young girl of 17 years and was unmarried. In these circumstances, as indicated earlier, the fracture of tibia bone has certainly resulted in permanent disablement of a young girl who was yet to be married.

17. Therefore, the finding of the Tribunal that the fracture of tibia bone was not a permanent disablement, as required u/s 140 of the Motor Vehicles Act, is not

justified on record and the same is set aside.

18. The appeal is allowed. It is directed that the opponents respondent Nos. 1 and 2 shall pay Rs. 12,000/- (Rupees twelve thousand) to the appellant as an interim compensation as provided u/s 140, Clause (2) of the Motor Vehicles Act, within a period of two months. If the amount is not paid within two months, it shall fetch an interest of 12 per cent per annum from the date of the order of the Tribunal under appeal.