
(2009) 09 MP CK 0004
In the Madhya Pradesh High Court

United India Insurance Co. Ltd.	Vs	APPELLANT
Neha and Others		RESPONDENT

Date of Decision : 09-09-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2010) ACJ 2037

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Shrivastava, J.—This appeal has been filed by the insurance company u/s 173 of Motor Vehicles Act, challenging the award dated 24.6.2003, passed by the Motor Accidents Claims Tribunal.

2. Facts in nutshell are that on 19.6.1999, the respondent No. 1 was travelling in the bus No. MP 09-S 5255 along with her family members and she received injuries when the bus jumped on a speed breaker. The said accident took place in Amravati at 2.50 a.m. when the respondent No. 1 was going to Bhilai. In the accident she received injuries in the right leg and forehead. Her right leg was fractured. It was operated and a rod was inserted.

3. The Motor Accidents Claims Tribunal by the impugned award dated 24.6.2003 found that the accident was caused by the driver of the bus by driving bus in question rashly and negligently. The Tribunal also found that the respondent No. 1 received 32 per cent permanent disability in the right leg and the Tribunal consequently granted compensation of Rs. 1,83,093 with 9 per cent interest from the date of the application.

4. The appellant insurance company has challenged the award of the Tribunal on the ground that the accident itself is doubtful since the police was not informed about the accident immediately after the accident and the F.I.R. was lodged on 19.8.1999 which was about two months after the incident and there is no

document of medical treatment immediately after the accident.

5. On the perusal of the impugned award, it is found that the Tribunal on the consideration of the oral and documentary evidence recorded a finding that on 19.6.1999 the accident was caused by the vehicle No. MP 09-S 5255. The appellant has not disputed the identity of the vehicle causing the accident, but it has disputed the accident itself.

6. On the perusal of the record, I find that the accident was caused on 19.6.1999 at 2.50 a.m. and on reaching Bhilai on the same day, i.e., on 19.6.1999 respondent No. 1 was examined by Dr. Rajendra Jain, who after examination had noted in Annexure P20 that "Injury yesterday while travelling in bus". By Annexure P20, he had referred the respondent No. 1 to Raipur. The respondent No. 1 has placed on record the documents showing that she received treatment at Raipur and thereafter at Indore. Medical bills have also been placed on record in respect of the expenses incurred by her in her treatment. Exhs. P16 to P18 are the pathology reports of respondent No. 1 relating to the period 20.6.1999 to 27.6.1999, which was the period immediately after the accident.

7. So far as F.I.R., Exh. P1, is concerned though it was recorded about two months after the accident but it contains the reason for delay in making the F.I.R. The delay was caused since the respondent No. 1 was travelling in the bus in the marriage party and she was resident of Indore, but due to the accident she was treated at Bhilai and the F.I.R. was lodged after returning back to Indore. The circumstances, which are mentioned in the F.I.R. indicate that the accident cannot be doubted only on the ground there was delay in lodging F.I.R. The record also indicates that on the basis of the F.I.R. criminal prosecution of the concerned driver also took place. A perusal of the record indicates that no cross-examination was done by the insurance company on the aspect of accident deposed by the witnesses of the claimant. Thus, I do not find any error in the findings recorded by the Tribunal that the accident was caused by bus No. MP 09-S 5255, in which the respondent No. 1 had received injuries.

8. It is also worth noting that the Division Bench of this Court in the matter of Daulatram v. Akhlesh Kumar 2006 (III) MPWN 117 [39], has taken the view that if the accident is proved by eyewitnesses and police also registered criminal case against driver then the application cannot be dismissed. The Division Bench of this Court in the matter of Manoj Vs. Samundar Singh and Others, , in a case, where the injured lodged F.I.R. after one year of the accident held that the Tribunal could not have dismissed the claim on the ground that accident was not immediately reported to the police if the eyewitness prove the accident and the driver admit that there was accident. The Apex Court also while considering the delay in lodging the F.I.R. in a rape case in the matter of State of Punjab v. Ramdev Singh 2004 (2) JLJ 1, has taken the view that the delay in lodging the F.I.R. cannot be used as a ritualistic formula for doubting prosecution case and the court has to see the explanation for delay. Present case stand on a better footing since the claim cases are of summary nature and standard of proof is

different and even if the accident is established on the preponderance of probabilities, it is sufficient to record a finding to that effect.

9. The appellant insurance company has also challenged the impugned award on the ground that compensation awarded by the Tribunal is on the higher side. As against this the respondent No. 1 has filed cross-objection raising the plea that the compensation awarded by the Tribunal is on the lower side and is required to be enhanced.

10. On the perusal of the award, it is found that the Tribunal has rightly found that the respondent No. 1, who at the time of the accident was a minor girl aged about 10 years, received fracture in the right leg, her right leg was operated on and after the operation rod and screw were inserted in the right leg. The Tribunal also found that she was unable to climb and she finds difficulty in sitting. The disability calculated has been to the extent of 32 per cent. The Tribunal also found that the right lower limb of the respondent No. 1 was shortened by half centimetre.

11. The Tribunal on account of the permanent disability granted Rs. 90,000 and on account of pain and suffering to respondent No. 1 and her family member granted Rs. 40,000, towards the treatment and operation granted Rs. 11,000, for the purchase of medicine granted Rs. 31,893 and for travelling granted Rs. 5,200, for special diet granted Rs. 5,000; totalling Rs. 1,83,093.

12. In the facts of this case, the insurance company is not right in raising the plea that the compensation awarded to the respondent No. 1 is on the higher side.

13. On the contrary, it is found that the respondent No. 1 being a minor girl of 10 years will have to suffer this permanent disability and shortening of limb throughout her life. Even her marriage prospects will be affected at the appropriate age. The respondent No. 1 has also raised the plea that even the actual expenses incurred by her as reflected in the medical bills have not been granted by the Tribunal.

14. Therefore, considering the entire circumstances, I am of the opinion that the cross-objection filed by the respondent No. 1 deserves to be partly allowed and accordingly, the amount awarded by the Claims Tribunal is enhanced by a lump sum amount of Rs. 40,000. The enhanced amount will carry an interest at the rate of 9 per cent from the date of the application.

15. Consequently, the appeal filed by the insurance company is dismissed and the cross-objections filed by the claimant-respondent No. 1 are allowed to the extent indicated above.