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(1993) 06 MP CK 0012

Madhya Pradesh High Court

Case No: None

Kailash Chandra Bansal — APPELLANT

Vs

Bhartiya Bus Co. and Others — RESPONDENT

Date of Decision: June 29, 1993

Citation: (1994) 1 ACC 96

Hon'ble Judges: V.S. Kokje, J; R.D. Shukla, J

Bench: Division Bench

Judgement

R.D. Shukla, J.

The applicant injured has filed this appeal for enhancement of compensation against the judgment and Award dated 3.1.85 of the Motor Accidents Claims Tribunal, Ratlam passed in Claim Case No. 8/75 whereby he was awarded Rs. 37,840.00 paise with interest @ 4% as compensation for injuries, loss of income, cost of medicines and general damages for the alleged infirmity.

2. The brief history of the case is that injured appellant was working as an Assistant Engineer and was coming to Ratlam in the Jeep R.J.B. 849 owned by respondent No. 5. The Jeep was under the control of respondent No. 4 one Surya Kiran was the driver at the relevant time.

There was a collision between Motor-bus No. MPM 4471 and the jeep referred above on 20.6.75 between Delanpur and Dhannod. The Motor-bus being taken away from Ratlam to Alot while the motor-jeep was coming from Rajasthan to Ratlam. There was collision between the two motor vehicles. Some persons who were sitting as passengers in the back-portion of the jeep sustained injuries and died. The driver of the jeep Suryakiran also died, on the spot. The claimant sustained injuries and fracture on right hand, right leg, left eyebrow and mandible. The motor bus was owned by respondent No. 1 and was being driven by respondent No. 2 at the time of the accident and was insured with respondent No. 3. There is no dispute on these points.

3. The claimant filed petition with the assertions that the driver of the jeep was rash and negligent in driving and the respondent No. 2 the driver of motor bus was also negligent in driving by not keeping a proper distance between two vehicles.

4. The injured appellant-claimed Rs. 1,90,000/- on various heads including expenses for the treatment, compensation for pain and suffering the damages for loss of wages and for special diet during the treatment and for a future loss of physical infirmity. The learned Tribunal has awarded the amounts as shown below against each of the heads:-

(i)	Cost of medicines. X-ray charges and Ambulance charges	: Rs. 11,638.50 Paise
(ii)	Special Diet.	: Rs. 1,200.00
(iii)	Loss of Salary	: Rs. 15,000.00
(iv)	General Damages	: Rs. 10,000.00

	The figure rounded as	: Rs. 37,840,00

Learned Tribunal has further awarded interest @ 4% per annum from the date of Award till realisation of the same.

5. The respondent No. 1 to 3 have been exonerated from all liability of payment of compensation as the driver Suryakiran, an employee of respondent No. 4 and 5 was held responsible for the rash and negligent driving and for causing the accident. Hence they have been made liable to make payments.

6. This appeal has been filed for the enhancement of compensation.

7. Respondent Nos. 4 and 5 have filed cross-objection with the assertion that respondent No. 2 was responsible for accident and the compensation awarded is excessive.

8. Learned Counsel for the appellant has submitted that the claimant-appellant had to remain in hospital and had to undertake treatment for fracture of hand and leg for a pretty long time. He is not in a position to walk freely even after a lapse of so many-years and therefore, compensation on the head of general damages'' and damages for pain and suffering deserves to be enhanced.

9. It has further been submitted by the learned Counsel for the appellant that the interest ought to have been awarded from the date of application and it should have been at the commercial rate.

10. Learned Counsel for the appellant has also submitted that respondents No. 4 and 5 have rightly been held liable for payment of compensation, but if for any reason, the respondent No. 2 is found negligent in driving the Vehicle claimant is entitled for compensation proportionately from respondents No. 1 to 3.

11. Counsel for the respondents No. 1 to 3 have rebutted the contention of respondents No. 4 and 5 regarding the fact of rash and negligent driving and the responsibility of respondent No .2 for causing accident Looking to the rival contentions of the parties it has to be examined first as to whether the finding of learned tribunal holding deceased Suryakiran responsible for the accident and respondents No. 4 and 5 responsible for the payment of compensation is correct.

12. A.W. 5 Shivsingh who has been examined on behalf of the claimant has stated that the Jeep was-running on a moderate speed of 25 Kms. per hour. The half of the Jeep was on the road and other half i.e. two wheels were on the Kachcha part of the road and it was the Motor Bus which was going with excessive speed that dashed against the Jeep, but during cross examination he has accepted that he was sitting on the back side of the Jeep. Bansal (claimant), driver Suryakiran and Dhannalal were on the front side of the Jeep. It has come in the evidence that the Jeep was over crowded. Thus, it was difficult for this witness to have watched the incident with accuracy.

13. A.W. 6 Mangilal Sharma, who is an Advocate by profession, has corroborated the statement of A.W. 4 Shivsingh and has stated that motor bus in which he was travelling was running with a high speed. Motor Jeep was on its left side and had partly covered Kachcha part of the road. The front portion of the Jeep was pressed and damaged. During cross examination he has stated that he was in the 2nd row behind the seat of the bus driver. There is normally nothing to disbelieve this witness, but as admitted by the parties it was raining slightly and therefore the visibility from two seats behind must not have been very clear.

14. A.W. 11 Dr. Kailash Chandra Bansal has also corroborated the same story and stated that half of the portion of the Jeep was on the Kachcha road and the Jeep was on the left side. Thereafter, Motor bus coming from the opposite direction in a high speed dashed against the Jeep. This witness may be taken as an interested witness on this count as he himself was the Assistant Engineer probably In-charge of the Jeep and subordinate officer or respondents No. 4 & 5. This witness has indirectly admitted in cross examination that Motor Jeep was over loaded. It was raining at the time of accident and therefore Kachcha part of the road was wet.

15. As against it the respondents have examined Abdul Gani (respondent No. 2) and Bherulal as N.A. 3 in support of their contention. Abdul Gani has stated that he had stopped the Motor bus on its left side and the Jeep came with an excessive speed and dashed against it. A similar statement has been given by Bherulal (NA.3) also. There has been no cross examination on behalf of respondents No. 4 & 5 so far as these witnesses are concerned. Thus, it can safely be accepted that respondents did not challenge statements of these two witnesses.

16. The photographs, Ex.D/1, D/2 & D/3 show skid marks on the road. It also shows that Motor bus was on its left side and sufficient road was left for the Motor Jeep. It

appears that because of the rains the Kachcha part of the road was wet. There was skiding of wheels of Motor jeep and since the Motor Jeep was overloaded, the driver could not control the vehicle and it dashed against the Motor bus. In our opinion, therefore, the finding of Tribunal that the driver Suryakiran was responsible for the rash and negligent driving of the vehicle, Motor Jeep and that resulted in accident and death, appears to be correct and we find no reason for interference in that finding.

17. Now, so far as the compensation on the head of general damages including pain and suffering is concerned, claimant had examined Dr. Narain Dubey (A.W.9) to prove the injuries which were five in number with fracture of leg, A.W.4 Dr. V.S. Jain has proved commuted fracture of right femur in upper third portion and a commuted fracture of right ulna. He has further proved Skiagram, Ex. P/2 and his report Ex.P/3. There is no challenge to it. During arguments also this fact has not been challenged by the Counsel for the respondents.

A.W. 7 Dr. R.K. Murti has stated that the claimant is not in a position to sit properly. He will not be able to walk freely and ride bicycle and will be required to use commode for whole of his life. He has estimated infirmity of the right leg to the extent of 39%. It appears Tribunal has not discussed this point while assessing general damages, pain and suffering. The claimant must have been under sever pain for the some time because of the fracture of hand and leg. 39% infirmity of the right leg will definitely affect the working capacity and efficiency of the claimant even as Engineer, as he will not be able to walk freely and attend to his normal duties like other ordinary healthy person. This infirmity of leg will affect the earning capacity and that may be estimated to be 10% taking into consideration the working capacity of all other part of the body. Hence, the claimant would be entitled for the compensation for that loss. The income of claimant has been estimated to be Rs. 700/- p.m. The claimant was aged 29 to 30 years at the time of accident. He will be required to work for another 20 to 30 years as Engineer with the Rajasthan Government and he will be able to work as Engineer even thereafter. Thus, he will have to suffer this infirmity for nearly 35 years. In such a situation the application of multiplier of 20 for assessment of the compensation would be just and proper. The loss being Rs. 840/- per year the total loss for 20 years would be 16,800/- may be rounded as 17,000/-.

18. The claimant would further be entitled for compensation for pain and suffering. He must have suffered 2 to 3 months so a compensation of Rs. 5,000/- on that heading would be just and proper. In our opinion, therefore a compensation on these heads deserves to be enhanced from Rs. 10,000/- to 22,000/-.

19. The learned Tribunal has awarded interest at the rate of 4% from the date of award that does not appear to be correct. In our opinion the claimant is entitled to interest@ 12% p.a. from the date of application before the Tribunal. (See I (1993) ACC 345 (SC)

20. As a result the appeal partly succeeds and the compensation awarded to claimant is enhanced from Rs. 37,842/- to Rs. 50,000/- in all. He is further entitled to an interest @ 12% p.a. from the date of application till realisation of the amount. Any payment made earlier will be given set of. The claimant will also be entitled to get cost of this appeal from the respondent Nos. 4 & 5. Counsels fee Rs. 750/- if certified.