(1991) 02 MP CK 0017

Madhya Pradesh High Court (Indore Bench)

Case No: M.A. No. 163 of 1982

Udairam		APPELLANT
	Vs	
Mohammadusman and Others		RESPONDENT

Date of Decision: Feb. 7, 1991

Acts Referred:

- Motor Vehicles Act, 1939 - Section 110A, 110B

Citation: (1991) 36 MPLJ 925 : (1991) MPLJ 925

Hon'ble Judges: A.G. Qureshi, J

Bench: Single Bench

Advocate: G.K. Neema, for the Appellant; Dhupar, for the Respondent

Judgement

A.G. Qureshi, J.

This appeal is directed against the award given by the Third Member, Motor Accident Claims Tribunal, Indore, in Claim Case No. 182 of 1980 dated 25-2-1982.

The short facts leading to this appeal are that the appellant filed the claim petition before the lower Tribunal under the provisions of the Motor Vehicles Act on the allegations that on 27-3-1980, the appellant was going on his bicycle towards Premsukh talkies coming from Nandlalpura Chauraha. When he reached the Nandlalpura bridge, the respondent No. 1 while driving matador No. CPF-8809 rashly and negligently reached the spot and dashed the matador against the bicycle and the appellant due to which the appellant received about 22 injuries on his body and both side of his ribs were fractured. The appellant was employed as a peon in the District Excise Office. Due to the injuries, he suffered physical and mental agony and also incurred loss of earning. He, therefore, claimed Rs. 20,000/- as compensation. The respondents resisted the claim on the ground that there was no negligence on the part of the respondent No. 1 and, therefore, respondent No. 2 was not liable to pay any compensation. The learned Member, Accident Claims Tribunal framed 11 issues to decide the claim and held that the accident took place

due to the rash and negligent driving of the relevant matador by respondent No. 1 and the claimant sustained grievous injuries in the said accident. His bicycle was also damaged and he also incurred medical expenditure. However, the claimant was awarded only Rs. 5,000/- on account of physical pain and mental agony, Rs. 500/- towards treatment and Rs. 100/- for the repair of the cycle. As such, an award of Rs. 5,600/- was passed in favour of the appellant. The appellant had also made a claim for getting Rs. 1,150/- for the loss of his income and Rs. 13,250/- on account of permanent disability; but the compensation on these two grounds was disallowed by the lower Tribunal. Hence this appeal.

According to the learned counsel for the appellant Shri Neema, the learned lower Tribunal has given the award on a very low side. His argument is that in no case the loss of earnings could be disallowed and if the Tribunal was not inclined to grant the compensation under the head of permanent disability, it could have granted higher amount by way of general damages because in view of 22 injuries coupled with the fracture of ribs. As such the appellant was entitled to get much more compensation tham what has been awarded to the appellant. On the other hand, the learned counsel for the respondent No. 3 Shri Dhupar argues that the award has been given in accordance with the evidence on record and does not require any interference.

In view of the aforesaid argument, it is first to be determined whether the appellant is entitled to get more amount than the one he claimed under the head of physical pain and mental agony.

On seeing the plaint, it is clear that while giving the details of the claim in para 6 of the claim petition, the claimant-appellant has claimed Rs. 5,000/- for mental and physical suffering. He has claimed Rs. 5,750/- for permanent weakness and reduction in the working capacity due to the injuries and Rs. 7,500/- for the irrittion in the head and permanent disability due to the fracture in the ribs. Now the Tribunal has not found it proved that the appellant had incurred any permanent disability. Therefore, the claim under that head was disallowed. However, a claim under the head of mental and physical suffering was allowed. Shri Neema argues that although a separate break up of the amount as claimed has been given in para 6 of the plaint, but still the claim is inter-linked and even if the appellant is held to be not permanently disabled. Still by way of general damages he should have been awarded a higher sum than what has been granted. In my opinion, the argument of Shri Neema has force because the amount of Rs. 5,000/- has been claimed by way of general damages but under the head of general damages, the weakness, irritation in the head etc. which were in existence till the time of the filing of the plaint were not covered. Therefore, while awarding the non-pecuniary/general damages the Tribunal should have considered the claim as a whole and not the bifurcation of the claim as has been given by the appellant in the plaint itself. The general principle is that if the award amount does not exceed the total amount of the claim, it could be awarded by the Tribunal. Actually for claiming general damages, it is not necessary

for the claimant to specify the claim amount under separate heads. It is sufficient even if a consolidated demand of compensation for general damages is made. The Tribunal has to ascertain the general damages and then has to pass an order in view of the facts and circumstances of the accident. I am fortified in the aforesaid view by the Division Bench judgment of the Gujarat High Court in the case of Bharat Premjibhai Vs. Municipal Corporation, Ahmedabad and Another, wherein it has been held as under : -

"Now in the present case, the accident occurred on March 9, 1972. The claim petition was instituted on July 26, 1972. The deposition of the claimant was recorded on February 11, 1974. On the basis of the position of law referred to earlier, the appellant would be entitled to compensation under this head from March 9, 1972 to February 11, 1974 at the rate of Rs. 50/- per month. It is true that in the claim petition he has confined the claim under this head upto the period ending with November 30, 1973. However, so long as the total amount to be awarded does not exceed the total amount claimed there should be no objection in awarding higher amount under one particular head, even without amendment of the claim petition, if on the true assessment of the evidence in the light of the settled legal position, the claimant is found entitled to the same (see Babu Mansa v. Ahmedabad Municipal Corporation and Bai Nanda v. Shivabhai, 1966 ACJ 220). Therefore, the appellant would be entitled to claim compensation at the rate of Rs. 50/- per month under this head for a period of 1 year and 11 months (March 9, 1972 to February 11, 1974). The compensation awardable to the appellant under this head would accordingly come to Rs. 1,150/-."

Now in the light of the aforesaid principle, I am of the opinion that the appellant is not deprived of claiming more amount than awarded to him for the pain and suffering caused to him. The facts of the instant case show that as a result of the accident the appellant had received as many as 22 injuries which included lacerated wound over right scalp, abrasion on left chest, abrasion over neck, ecchymosis below right eye, tenderness and swelling over left chest and another two lacerated wounds on the scalp. As such, the injuries were on all the vital parts of the body and due to tenderness in the chest and complaint of pain, the X-ray was advised and as a result of the X-ray, it was found that there was a multiple fracture of ribs on the left side. The injuries as such were of grievous nature on the vital parts of the body for which the appellant was admitted as an indoor patient and thereafter treated for months for those injuries. He had also to take the earned leave and medical leave for a long period due to these injuries. As such, the amount of Rs. 5,000/- awarded under the head of general damages is too low in view of the aforesaid injuries and the pain and suffering undergone by the appellant. In my opinion, in view of the purchasing power of the money at the time of the award the appellant should have been at least awarded Rs. 10,000/- as non-pecuniary damages.

Now as regards the loss of earning, the Tribunal has wrongly disallowed Rs. 1,150/- claimed by the appellant holding that because of taking leave no loss was caused to the appellant. Now it is not in dispute that a person can cash the earned leave accumulated and can use the earned leave in any contingency and if the earned leave is exhausted then the person has to take leave without pay. As such, it is wrong to hold that only because no wages were deducted because of earned leave a person has not suffered the pecuniary loss. The loss of earned leave can be computed in terms of money and it should be held as a pecuniary loss. On his own calculation, the appellant has claimed only Rs. 1,150/- towards the loss for taking the earned leave and commuted leave. The fact that he had taken those leave is not disputed. Therefore, in my opinion, the appellant is entitled to get Rs. 1,150/- as a pecuniary compensation for the earned leave and commuted leave taken by him because of the accident. As such, the appellant is held entitled to get Rs. 11,750/- as compensation from the respondents for the injuries caused to him due to the tortious act of respondent No. 1 for which respondents Nos. 2 and 3 are vicariously liable being the proprietor of the vehicle and the injurer of the vehicle respectively. The appellant shall also be entitled to get interest at the rate of Rs. 12/- per cent per annum on the enhanced amount of award from the date of the application till its recovery. However, the interest on the amount awarded by the lower Tribunal shall remain the same.

The appeal of the appellant is accordingly partly allowed as above. The appellant is also entitled to get the costs of this appeal from the respondents. Counsel''s fee Rs. 150/-.