

(2017) 04 MP CK 0080
MADHYA PRADESH HIGH COURT
Case No: 691 of 2006

Lalaram Kirar and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: April 20, 2017

Acts Referred:

- Motor Vehicles Act, 1988, Section 173, Section 173 - Appeals

Hon'ble Judges: S.K.Awasthi

Bench: Division Bench

Advocate: Shri Brijesh Tyagi, R.V. Sharma

Judgement

1. This is an appeal filed by the appellant/claimant under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act") against the award dated 23.03.2006 passed by First Motor Accident Claims Tribunal, Morena (for brevity "Tribunal") in claim case No. 08/2004 whereby by the impugned award, the Claims Tribunal awarded a total sum of Rs. 40,000/- with interest at the rate of 6% per annum to the appellant by way of compensation for the injuries sustained by him in the accident.

2. The appellant/claimant has filed this appeal for enhancement in the compensation awarded by the Tribunal. So the question that arises for consideration is whether in case for enhancement awarded by the tribunal on facts/evidence adduced is made out and if so to what extent.?

3. It is not necessary to narrate the entire facts in detail, such as how the accident occurred, who was negligent in driving the offending vehicle, who is liable for paying compensation etc. It is for the reason that firstly all these findings are recorded in favour of claimant by the Tribunal. Secondly, none of these findings though recorded in claimant's favour are under challenge at the instance of any of

the respondents such as owner/driver or insurance company either by way of cross appeal or cross objection. In this view of the matter, there is not justification to burden the judgment by detailing facts on all these issues.

4. Learned counsel for the appellant submits that the appellant sustained fracture in the humerus bone of the left hand. It is also submitted that appellant was hospitalized for about six days and he has expended sufficient amount in his treatment. The learned Tribunal has found that the appellant received permanent disability of 20%, but in spite of that, only a lump sum amount of Rs. 40,000/- has been awarded in favour of the appellant which is at lower side and which is liable to be enhanced.

5. On the other hand, learned counsel for respondent No.3 submits that looking to the injury sustained by the appellant, the amount awarded by the Tribunal is just and proper and not liable to be interfered with. It is further submitted that insurance company is not liable to pay compensation to the appellant because appellant was traveling in a jeep as a gratuitous passenger and no extra premium was paid for covering the risk of passenger in the jeep.

6. I have gone through the evidence adduced by the appellant/claimant in respect of the injuries sustained by the appellant. After taking into consideration the x-ray report (Ex. P-7) of appellant, it appears that the appellant has sustained fracture of humerus bone of left hand by which 20% of disability was observed by the District Medical Board Vidisha. The appellant was hospitalized for about six days.

7. From the contents of FIR, it appears that the appellant was traveling in a jeep as a fair paying passenger. Copy of insurance policy indicates that the insurance company received the premium to cover liability of 9 unnamed passengers, therefore, it cannot be said that the vehicle was driven in breach of any condition of insurance policy, therefore, the insurance company cannot be exonerated from its liability to pay compensation amount.

8. Looking to the nature of injuries, the compensation amount awarded by the Tribunal is looking to be at lower side. Under these circumstances, In my opinion, it will be proper to enhance the compensation. The appellant is entitled for the following amounts :-

S.No.	Amount Awarded	Heads
1	40,000/-	Towards permanent disability.
2	10,000/-	Towards pain & suffering

3	4,000/-	Towards medical expenses.
4	2,000/-	Towards special diet.
5	1,000/-	Towards expenses incurred on attendant.
6	6,000/-	Towards loss of income.
7	1,000/-	Towards transportation expenses.
	64,000/-	Total compensation

9. In view of foregoing discussion, the appeal succeeds and is hereby allowed in part and instead of award of Rs.40,000/-, an award of Rs.64,000/- is passed in favour of the appellant. The enhanced amount shall carry interest at the rate of 6% per annum from the date of filing of claim petition till the realization. The insurance company/respondent No.3 is liable to pay the compensation. The said amount be paid within a period of sixty days from the date of order passed by this Court.

10. In the facts of the case, the parties are directed to bear their own costs.