

**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**

**BEFORE HON.MR. JUSTICE ALOK VERMA, JUDGE**

**M.A. No.1457/2015**

**Savita Bai Vs. Aslam & others**

**M.A. No.1458/2015**

**Kailash Vs. Aslam & others**

**M.A. No.1462/2015**

**Omprakash Vs. Aslam & others**

**J U D G E M E N T**

**Post for 02.08.2016**

**(ALOK VERMA)  
JUDGE**

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Shri Prashant Sharma, learned counsel for the appellants.

Shri Mayank Upadhyay, learned counsel for respondent No.3.

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**J U D G E M E N T**

**( Passed on this 2<sup>nd</sup> day of August, 2016 )**

This common order shall govern disposal of M.A. Nos.1457, 1458 & 1462 of 2015.

The facts and circumstances as appear in M.A. No.1457/2015 would form basis of this order.

These appeals arise from a common award passed by learned Second Motor Vehicle Accident

Claims Tribunal, Dewas passed in claim case No.39, 40 and 41 of 2014.

Brief facts are that the appellant-Omprakash alongwith other appellants-Savita Bai and Kailash were going on his motorcycle bearing registration No.MP41-MA-3278 from Shajapur to his village Meharkheri. Near the village Titodi in front of Sagar Dhaba, respondent No.1 brought the offending vehicle bearing registration No.MP09-GF-0975 driving it rashly and negligently and by bringing the vehicle at wrong side of the road hit the motorcycle on which the appellants were travelling. Due to the accident, the appellants suffered various injuries. The separate claim applications were filed and by the common impugned award, the learned member of the tribunal awarded Rs.2,12,765/- to the appellant-Omprakash including expenses he made on his treatment and Rs.75,000/- against injuries and body pain he suffered in the accident. Appellant-Kailash was awarded a sum of Rs.1,58,147/- including expenses he made on his treatment and Rs.30,000/- was awarded against the injuries and body pain he suffered in the accident. Appellant-Savita Bai was

awarded Rs.70,650/- including expenses she made on her treatment and Rs.30,000/- was awarded against the injuries and body pain she suffered in accident.

Respondents No.1 and 2 denied the claim made by the appellant in the case.

Respondent No.3-Insurance company denied claim of the appellants before the tribunal and it was stated by respondent No.3 that at the time of accident, three persons were travelling on the motorcycle, which was meant only to carry two persons at a time. The driver of the motorcycle Omprakash was driving the motorcycle in a rash and negligent manner and also he was driving it at wrong side of the road. He could not control his vehicle as there was excess load due to three persons travelling on it and due to this, he fell down on the road and sustained injuries. The insured vehicle was not involved in the accident and was not responsible for causing injuries to them. It was also claimed that on the principle of contributory negligence, the appellants are entitled only for 50% of the amount.

Learned tribunal found that no permanent disability was caused to appellant-Omprakash and

Kailash and permanent disability was not claimed in respect of appellant-Savita Bai. It was further found by the tribunal that the accident was caused due to contributory negligence on part of the appellant-Omprakash and he was responsible for 30% contributory negligence.

The tribunal did not believe the statement of the doctor while deciding issue No.4 in claim case No.41/2014. Dr. Yogesh Limbe was examined as AW-4. According to him, the injuries caused 45.60% permanent disability on overall body of appellant-Omprakash. However, the learned tribunal opined that in cross-examination, this witness admitted that all the bones were properly fused and he also admitted that he has not assessed the total disability caused to the entire body of the appellant. He also admitted that he can now perform his day-to-day work properly.

Learned counsel appearing for the appellant submits that the tribunal erred in not believing the statement of this doctor. No evidence was produced by the respondent before the tribunal to show that the certificate was fake or doctor was

not qualified to issue such certificate. Only on the presumption that this doctor was not consulted during treatment of the appellant. His statement was disbelieved.

During argument, findings of the tribunal on other issues were not challenged and only quantum were challenged. Therefore, I have to go through the evidence available on record and found whether the findings of the tribunal were correct or not.

Though, it is true that there are cases in which fake medical certificate is produced to claim compensation, however, each case has to be decided on its own merit. In the present case, if the certificate produced by the appellant was suspicious, it was the duty of Insurance Company to enquire the matter and produce sufficient evidence in this regard. No such such evidence is produced, and therefore, the certificate produced by the doctor cannot be disbelieved, hence, it may be held that disability as assessed by him in respect of appellants-Omprakash and Kailash may be taken as correct.

Coming to the quantum of the case, I shall

first take the case of appellant-Omprakash in M.A. No.1462/2015, who was awarded following amounts by the tribunal :-

अ-	शारीरिक व मानसिक कष्ट हेतु	75,000/-
ब-	उपचार व्यय के मद में	1,79,950/-
स-	पोष्टिक आहार के मद में	10,000/-
द-	आय की हानि के मद में	24,000/-
य-	आवागमन व्यय के मद में	5,000/-
र-	अटेंडर व्यय के मद में	10,000/-
	कुल प्रतिकर	<b>3,03,950/-</b>

After deducting 30% of the amount on principle of contributory negligence, Rs.2,12,765/- was awarded. In the above table, it is apparent that for physical and mental suffering, Rs.75,000/- was awarded on the presumption that there was no permanent disability. However, looking to the job of broom-making and assuming his annual income as Rs.48,000/-, loss of income due to permanent disability, which is in his right leg, the total loss of income may be taken as Rs.10,000/-, and therefore, applying a multiplier of 16, total amount comes to Rs.1,60,000/-. In this amount, Rs.25,000/- may be added for mental and physical suffering by the appellant. This comes to Rs.1,85,000/- and by adding to this amount, the amount awarded on other heads,

total amount of award comes to Rs.4,13,950/-. Out of this, 30% amount i.e. Rs.1,24,185/- may be deducted against contributory negligence, and thus, the total amount comes to Rs.2,89,765/-, out of which, he has already received Rs.2,12,765/-, and therefore, total amount of enhancement comes to Rs.77,000/-.

Now, coming to the case of appellant-Kailash. He was awarded the following amounts by the tribunal :-

अ-	शारीरिक व मानसिक कष्ट हेतु	30,000/-
ब-	उपचार व्यय के मद में	1,03,147/-
स-	पोष्टिक आहार के मद में	5,000/-
द-	आय की हानि के मद में	3,000/-
य-	आवागमन व्यय के मद में	5,000/-
र-	अटेंडर व्यय के मद में	12,000/-
	कुल प्रतिकर	<b>1,58,147/-</b>

At the time of accident, age of Kailash was 52 years, therefore, multiplier of 8 may be applied. If his income is taken as Rs.48,000/- per annum, as he was also working as labour in making brooms and his loss of income may be taken as Rs.10,000/- and applying the multiplier of 8, total amount comes to Rs.80,000/-. Apart from this, Rs.20,000/- may be awarded for physical and mental suffering, and thus,

total amount of award comes to Rs.1,00,000/- adding the amount awarded against other heads which may be as under :-

अ-	शारीरिक व मानसिक कष्ट हेतु	1,00,000/-
ब-	उपचार व्यय के मद में	1,03,147/-
स-	पोष्टिक आहार के मद में	5,000/-
द-	आय की हानि के मद में	3,000/-
य-	आवागमन व्यय के मद में	5,000/-
र-	अटेंडर व्यय के मद में	12,000/-
	कुल प्रतिकर	<b>2,28,147/-</b>

Out of Rs.2,28,147/-, appellant-Kailash has already been awarded Rs.1,58,147/-, and thus, the enhanced amount comes to Rs.70,000/-.

Coming to the case of Savita Bai. She suffered fractures on her ribs and two of her ribs were fractured. No permanent disability was claimed and she was awarded Rs.30,000/- for mental and physical and also other amount. She was awarded the amounts by the tribunal as under :-

अ-	शारीरिक व मानसिक कष्ट हेतु	30,000/-
ब-	उपचार व्यय के मद में	19,650/-
स-	पोष्टिक आहार के मद में	5,000/-
द-	आय की हानि के मद में	2,000/-
य-	आवागमन व्यय के मद में	5,000/-
र-	अटेंडर व्यय के मद में	9,000/-
	कुल प्रतिकर	<b>70,650/-</b>

Looking to the injuries she suffered on her ribs, the total amount of pain and suffering may be enhanced to Rs.70,000/- and adding this amount alongwith other heads as awarded, the total amount of award comes to Rs.1,10,650/-. She was already awarded Rs.70,650/-, thus, the enhanced amount comes to Rs.40,000/-.

Accordingly, the appeals are partly allowed. The award passed by learned tribunal is modified on following terms :-

(i) Respondents shall be liable, jointly and severally, for payment of :-

(a) Rs.40,000/- to appellant-Savita Bai in M.A. No.1457/2015;

(b) Rs.70,000/- to appellant-Kailash in M.A. No.1458/2015; and

(c) Rs.77,000/- to appellant-Omprakash in M.A. No.1462/2015;

by way of enhanced amount, over and above the amount of award already awarded in their favour by

the tribunal.

(ii) The enhanced amount and interest thereon shall be paid to the appellant by crossed-cheque.

(iii) Respondents shall be liable for payment of 6% simple interest per annum from the date of filing of application before the tribunal on the enhanced amount also.

(iv) The cost of the appeal shall be borne by the respondent.

(v) Counsel fee is assessed at Rs.2,000/-.

With aforesaid modifications, the appeals stand disposed of.

Certified copy, as per rules.

**(Alok Verma)**  
**Judge**

Chitranjan