

HIGH COURT OF MADHYA PRADESH

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MA No.593/17

MA No.593/2017

(Dilip Kumar Mantri Vs. Akbar and others)

Indore, Dated : 18.12.2018

Shri Romil Malpani, learned counsel for the appellant.

Shri Ashish Jaiswal, learned counsel for the respondent No.3/Insurance Company.

Heard finally with consent.

This appeal under Section 173(1) of the Motor Vehicles Act, 1988 is at the instance of the claimant challenging the award dated 17.12.2016 passed in Claims Case No.72/2015 by the Motor Accident Claims Tribunal, Neemuch seeking enhancement of the compensation amount awarded by the tribunal.

The appellant/claimant had filed the claim petition before the tribunal with the plea that on 14.10.2013 he was going on his motorcycle when the accident was caused by Truck No.HR55-K-5666 driven in rash and negligent manner by the respondent No.1, owned by the respondent No.2 and insured with the respondent No.3, in which the appellant had received grievous injury and suffered permanent disability, therefore, the appellant had claimed compensation of Rs.14 Lakhs.

The respondents No.1 and 2 remained ex parte before the tribunal and respondent No.3/insurance company by filing the reply had denied the liability and had taken the plea that there was violation of the policy condition.

The tribunal by permitting the parties to lead evidence and after examining the same, had found that the accident was caused on account of the rash and negligent driving of the truck No. HR55-K-5666, in which the appellant had

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received the permanent disability. The tribunal further found that the insurance company could not prove the violation of the policy condition and having regard to the evidence adduced by the appellant, the tribunal awarded a sum of RS.64,000/- under the head of the actual medical expenses and by awarding the amount of Rs.11,000/- under the other heads such as special diet etc., the tribunal found the appellant entitled to receive a sum of Rs.75,000/-. The tribunal further awarded a sum of Rs.30,000/- under the head of permanent disability and Rs.5,000/- under the head of pain and suffering. Thus the tribunal passed an award of Rs.1,10,000/- along with the interest @8% from the date of application till the payment is made.

Learned counsel for the appellant submits that the tribunal has committed an error in awarding the adequate compensation amount and the amount awarded by the tribunal under the different heads is on the lower side.

As against this, learned counsel for the respondent No.3/insurance company has supported the impugned award.

Having heard the learned counsel for the parties and on perusal of the record, it is noticed that so far as the amount of Rs.64,000/- which has been awarded by the tribunal under the head of actual medical expenses, the same has rightly been awarded and that the award of the tribunal in this regard does not suffer from any error, but the tribunal has committed an error in awarding only a sum of Rs.30,000/- under the head of the permanent disability. The record reflects that in the accident the little finger of the appellant was amputated and the permanent disability was

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caused. The appellant had produced the permanent disability certificate Ex.P/32 reflecting the permanent disability to the extent of 20%, but the same has been disbelieved.

Having regard to the entire circumstances of the case and undisputed position that one of the finger of the appellant has been amputated, I am of the opinion that the tribunal ought to have assessed the permanent disability in reference to the whole body to the extent of 8%. The award of the tribunal reflects that the appellant is involved in the business of Krishi Upaj Mandi, therefore, having regard to the age of the appellant and also the year of accident, it would be safe to presume the income of the appellant as Rs.4,500/- per month. Learned counsel for the respondent has not disputed that the appellant was aged about 33 years at the time of accident, therefore, in terms of the judgment of the Supreme Court in the case of **Sarla Verma and others Vs. Delhi Transport Corporation and Another** reported in **[2009 ACJ 1298]** the applicable multiplier will be 16. Hence, the loss of income on account of the permanent disability comes to $\text{Rs.}4500 \times 8\% \times 12 \times 16 = \text{Rs.}69,120/-$ (round figure Rs.69,000/-).

Hence, the appellant will be entitled to a sum of Rs.69,000/- on account of loss of income under the head of permanent disability. Having regard to the nature of injury suffered by the appellant, the appellant is entitled to a further sum of Rs.27,000/- under the head of pain and suffering, special diet, attendant charges etc. Thus, the appellant is entitled to the total compensation of Rs.1,60,000/-, whereas the tribunal has awarded only a sum of Rs.1,10,000/-.

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Hence, I am of the opinion that the appeal deserves to be allowed by enhancing the compensation amount awarded by the tribunal by a sum of Rs.50,000/-.

Accordingly, the appeal is allowed in part. The compensation as awarded by the tribunal deserves to be and accordingly enhanced by a sum of Rs.50,000/- (Fifty Thousand). The enhanced amount will bear interest at the same rate as awarded by the tribunal and will be governed by the same conditions as contained in the award of the tribunal.

C.C. as per rules.

(Prakash Shrivastava)
Judge

trilok/-