

The High Court Of Madhya Pradesh

MA-1061-2008

(BANNE KHAN Vs BRIJPAL)

Gwalior, Dated : 28-06-2019

Shri Arun Sharma, learned counsel for the appellant.

Shri B.N.Malhotra, learned counsel for the respondent No.3 - Insurance Company.

This appeal has been filed by the claimant/appellant seeking enhancement of compensation being aggrieved by the award dt.09.04.2008 passed by the learned Additional Motor Accident Claims Tribunal, Ambah District Morna in Claim Case No.206/2006, whereby for an accident, which had taken place on 25.04.2006 when Bus No.M.P.06B 1699 had met with an accident with Truck No. UP80 W 7699, as a result of which bus had turned turtle and had caught fire, Claims Tribunal has awarded a sum of Rs.65,000/-.

Another issue which has been raised is that the liability to satisfy the award is of the insurance company. It is submitted that coordinate Bench of this High court in the case of **Brijpal and others Vs. Munni Bai and another** as reported in **2017 (1) T.A.C. 438 (M.P.)** has already decided the issue of the liability of the insurance company and therefore award is to be made enforceable jointly and severally against owner, driver and insurance company.

It is submitted that the appellant alongwith others was travelling in the bus and due to such accident had sustained a fracture of left leg. It is submitted that the claimant had sustained permanent disability which has been overlooked by the Tribunal and the Tribunal has awarded only a sum of Rs.65,000/- under various heads, out of which Rs.35,000/- is towards reimbursement of treatment expenses, Rs.5,000/- for pain and mental suffering on account of fracture, Rs.5,000/- under the head of nutritious diet, Rs.5,000/- under the head of transport and Rs.12,000/- for loss of income @ Rs.4,000/- for a period of three months.

Shri B.N.Malhotra, learned counsel for the respondent No.3 Insurance

Company submits that as far as quantum of award is concerned, it is inadequate and does not call for any interference but fairly admits that issue of liability of the insurance company has been settled in the case of **Brijpal and others (supra)**, a case originating out of same accident.

As per the evidence, which has been adduced on record, there is no certificate showing any permanent disability to the claimant. Therefore, this court is of the opinion that Tribunal has rightly rejected the plea of permanent disability. Even Dr.D.S.Yadav (P.W.6) deposed that on examination he had found some restriction in the left femur bone and had certified handicap to the extent of 40%. This witness in the cross-examination admits that he had not treated the appellant nor had obtained any x-ray before certifying the percentage of handicap. Except leg there was no other handicap or restriction in the movement in the body of appellant. Thus, from evidence available on record, it is apparent that appellant has failed to prove aspect of permanent disability. However, learned Tribunal has awarded only a sum of Rs.5,000/- under the head of pain and suffering, which is enhanced to Rs.25,000/-. Looking to the fact that the Tribunal has considered loss of income for a period of three months and has awarded a sum of Rs.12,000/- but has only awarded Rs.5,000/- under the head of nutritious diet, a sum of Rs.1,000/- is increased under the head of nutritious diet taking it to Rs.6,000/- @ Rs.2,000/- per month. Similarly, a sum of Rs.6,000/- under the head of attendant at the rate of Rs.2,000/- p.m. for a period of three months is also awarded. Thus, there will be an addition of Rs.27,000/- (Rupees Twenty Seven Thousand), to which appellant will be entitled in addition to the amount already awarded by the learned Claims Tribunal.

Accordingly, the appeal is disposed of in above terms. It is directed that the claimants are entitled for a sum of Rs.27,000/- (Rupees Twenty Seven Thousand) over and above the amount awarded by the learned Claims Tribunal. In the light of the law of the coordinate bench, it is made clear that liability to satisfy the award including the enhanced award will be jointly and

severally of the owner, driver and the Insurance company. Other terms and conditions of the award shall remain intact.

(VIVEK AGARWAL)
JUDGE

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