

CASE NO.:
Appeal (civil) 2667 of 2002

PETITIONER:
KAPIL KUMAR

Vs.

RESPONDENT:
KUDRAT ALI & ORS.

DATE OF JUDGMENT: 12/04/2002

BENCH:
D.P. Mohapatra & P. Venkatarama Reddi

JUDGMENT:

P. Venkatarama Reddi, J.

Leave granted.

In this appeal by Special leave, the only question that is canvassed before us is about the adequacy of compensation awarded by the High Court to the appellant a minor, who was injured in a bus accident on 5.11.1994. The bus belonged to the second respondent and was insured with the 3rd respondent. At the time of the accident the appellant a student was aged nine years. The Motor Accident Claim Tribunal, Ratlam, awarded a sum of Rs.25,000/- towards compensation with interest at the rate of 12% p.a. from the date of petition. On appeal, the High Court enhanced the compensation to Rs.35,000/-. A letters Patent Appeal filed against that order, was summarily dismissed by the impugned order dated 8.7.1999. The amount of compensation awarded by the High Court under different heads is as follows :-

On account of disability suffered by the victim as a result of grievous injury caused to his right hand Rs.20,000/- (increased by Rs.5,000/-). For pain and suffering Rs.5,000/- (increased by Rs.1,500/-). Travel and stay expenses of the victim and his attendant for going to Baroda for treatment Rs.5,000/-.

It is contended that the compensation awarded under the first head is too low having regard to the nature and gravity of injury. The evidence of medical experts (PWS 3 to 5) discloses that three bones of the appellant were fractured and surgery had to be performed. According to P.W.5, an orthopaedic expert, appellant's right hand became irregular in shape and its movement became restrained and he cannot lift heavy articles with the right hand. The normal movement will be painful. However, the disability sustained was assessed at 20 per cent. As rightly observed by the High Court, the loss of earning capacity on account of permanent partial disability suffered by the appellant cannot be calculated in terms of percentage only. It will have serious repercussions on his studies and prospects of earning. He will have to face other handicaps in life. Though the High Court did realise the need to enhance the compensation, we feel that the extent of enhancement is still inadequate. The increase of Rs.5,000/- is only marginal. Taking inter alia the table in the 2nd Schedule as guiding factor, we are of the view that the compensation on account of

disability incurred by the appellant should be enhanced by Rs.20,000/- more; that means, he will get Rs.40,000/- instead of Rs.20,000/- awarded by the High Court under the first head. In respect of other items, the award as modified by the High Court remains undisturbed. In all, the appellant shall get Rs.50,000/-. This amount should carry interest at the rate and from the period specified by the High Court. The other directions in the award of the Tribunal shall stand.

Thus the appeal is partly allowed. Parties to bear their own costs.

..J
(D.P. MOHAPATRA)

..J
(P.VENKATARAMA REDDI)

April 12, 2002

JUDIS