

CASE NO.:
Appeal (civil) 5108 of 2007

PETITIONER:
Sunil Kumar

RESPONDENT:
Ram Singh Gaud & Ors

DATE OF JUDGMENT: 02/11/2007

BENCH:
ASHOK BHAN & D.K. Jain

JUDGMENT:
JUDGMENT

O R D E R
Civil Appeal No.5108 of 2007
(arising out of SLP) No. 19611 of 2005)

1. Leave granted.

2. Factual background of the case is that on 10th July, 2003, appellant was driving his mini truck No.MP 20 G-7705 towards Bargi along with one Ramesh Prajapati. When the mini truck reached Chulha Gulhai, a truck dumper bearing No.MP 18-6392 came from the opposite side, which was being driven in rash and negligent manner and hit the mini truck of the appellant with the result that the appellant sustained grievous injuries on his leg. He suffered three fractures including one at tibia. He was examined by the Medical Board. After examining the injuries, Board came to the conclusion that the appellant had suffered 45% permanent disability. Appellant was 29 years of age at the time of accident and was working as a driver and earning Rs.4,000/- per month.

3. FIR was lodged. A claim was also filed against the owner of truck dumper as well as the insurance company before the Motor Accident Claims Tribunal (for short \021the Tribunal\022) for compensation under Section 166 of the Motor Vehicles Act, 1998 (for short \021the Act\022), inter alia, stating that in the accident, appellant suffered fracture in his tibia and two other places. Appellant claimed Rs.8,20,000/- by way of compensation.

4. Tribunal by its order dated 25th June, 2004 awarded a compensation of Rs.45,000/- for the 45% permanent disability suffered by the appellant; Rs.21,000/- towards the amount spent on the treatment and Rs.6,000/- for physical pain and mental agony suffered by the appellant. Thus, a total sum of Rs.72,000/- was awarded as compensation along with interest @ 6% per annum from the date of the claim petition till payment.

5. Being aggrieved, appellant filed an appeal in the High Court of Madhya Pradesh at Jabalpur which has been dismissed by the impugned order.

6. Learned counsel appearing for the appellant contends that as a result of the impact of injuries suffered by the appellant, the appellant cannot pursue his vocation of driving any longer and the Tribunal as well as the High

Court have grossly erred in not awarding any compensation towards the loss of his earning capacity. That, keeping in view the injuries suffered by him, the compensation awarded is too low. Counsel appearing for the Oriental Insurance Company Limited, Respondent No.3, has supported the judgment and order passed by the courts below.

7. Learned counsels for the parties have been heard at length.

8. We find substance in the submission put forth by the counsel for the appellant. The Tribunal as well as the High Court have not awarded any compensation towards loss of future income. After the fracture of tibia, it is doubtful if the appellant can even drive again. Even if he pursues some other vocation, he would not be able to earn as much as he is earning now. The disability suffered by the appellant would surely reduce his earning capacity. Therefore, the appellant is required to be compensated for the loss of earning due to the injuries suffered by him in the accident.

9. Taking into consideration the present income of the appellant as Rs.4,000/- per month; and the permanent disability of 45% suffered by him, we are of the view that the capacity of the appellant to earn in future would be reduced by Rs.1,800/- per month approximately. If 1/3rd is deducted towards miscellaneous expenses, the loss of income comes to Rs.1,200/- per month which, in turn, comes to Rs.14,400/- per annum. Appellant was 29 years of age at the time of accident. Taking the multiplier to be 18 [as per the Second Schedule to Section 163A of the Act], the total loss of income comes to Rs.2,59,200/-.

10. For the reasons stated above, the loss of income is assessed at Rs.2,59,200/-. The appellant would be entitled to the aforesaid amount in addition to the sum already awarded by the Tribunal, which has been upheld by the High Court. The appellant would be entitled to interest at the same rate, i.e., 6% per annum on the enhanced amount as well from the date of filing of the claim petition till realization.

11. Accordingly, the appeal is accepted and the order passed by the Courts below stands modified to the extent indicated above.