Madhya Pradesh High Court
Mayabai vs Bhuru Shah And Anr. on 8 November, 2005
Equivalent citations: I (2006) ACC 316
Author: A K Tiwari
Bench: A K Tiwari
ORDER Ashok Kumar Tiwari, J.

1. This appeal under Section 173 of the Motor Vehicles Act, 1988, has been preferred by the claimant against the award dated 12.2.1999 passed in Claim Case No. 108/99 by learned Second Additional Member, Motor Accident Claims ' Tribunal, Dhar.

2. On 22.2.1998 at about 9.30 a.m. Mayabai was going with the cattle carried for grazing. While she was moving with the cattle, a jeep bearing registration No. CPZ-3703, owned by respondent No. 2 and driven rashly and negligently by respondent No. 1 came from the direction of Amjhera and dashed against her. Due to the impact appellant sustained severe injuries on her right leg, face, waist, head and other parts of the body. She sustained severe fracture on her right leg. She was taken immediately to the hospital. Due to injuries sustained in the accident, she suffered permanent disablement, despite the expensive treatment given to her.

3. On the aforesaid grounds the appellant filed a claim petition before the Claims Tribunal claiming compensation for loss caused to her. She claimed various amount under different heads and in all claimed a total sum of Rs. 3,25,000 as compensation. Her claim was opposed by the non-applicant/respondents. The learned Tribunal, after trying the issues, partly allowed the claim of the appellant and awarded a sum of Rs. 50,000 as compensation. Feeling the sum awarded to her insufficient this appeal under Section 173 of the Motor Vehicles Act has been filed through the father/natural guardian of the appellant.

4. The learned Counsel for respondents has submitted that the accident had not been caused due to any negligence on the part of respondent No. 2, therefore, respondents are not liable for payment of any compensation to the appellant. It has been contended by the learned Counsel for the respondents that appellant collided with the cattle and fell down and sustained injuries. She did not sustain any injury from the jeep.

5. The learned Tribunal has held that the jeep bearing registration No. CPZ-3703 was driven by respondent No. 1 rashly and negligently and the accident on 22.2.1998 had occurred due to rash and negligent driving of respondent No. 1. The learned Tribunal has also held that appellant Mayabai received various injuries in the accident and she sustained fracture, resulting in 34% permanent disablement. Thus, Issue Nos. 1 and 2 have been decided against the respondents.

6. The findings of the learned Tribunal regarding the involvement of vehicle in question in the accident, the negligence of the respondent No. 1, the driver of vehicle in question and the appellant having sustained injuries which ultimately resulted in permanent disablement are against the respondents. Respondents have not filed any appeal against these findings nor they have challenged these findings by way of cross-objections or cross appeal. Therefore, they are precluded from

challenging these findings during the course of the arguments. Even otherwise, after going through the evidence on record, the aforesaid findings of the learned Tribunal appear to be quite correct. The findings are based on proper appreciation of evidence on record and there is no ground to interfere in the aforesaid findings of the learned Tribunal. Hence, the findings of the learned Tribunal on Issue Nos. 1 and 2 are affirmed.

7. Now, the question arises as to whether appellant is entitled to get any sum as compensation in addition to what has already been awarded by the learned Tribunal. The learned Tribunal has awarded Rs. 1,000 towards the pain and sufferings which, looking to the nature of the injuries sustained by the appellant, appears to be on lower side.

8. The learned Tribunal has held that 34% permanent disablement has been caused to the appellant. Dr. Sanjay Nigam (A.W. 2) has deposed that the appellant will have a limb in her right leg. Appellant is a girl of 12 years of age. It is obvious that due to above disablement her future prospects will be adversely affected. She will have to suffer inconvenience even in her day to day work for rest of her life. Her marriage prospects will also be adversely affected. The learned Tribunal has not properly considered the aforesaid facts and features of the case. The learned Tribunal has awarded a lump sum amount of Rs. 25,000 for the disablement, but in view of the aforesaid features this amount of Rs. 25,000 awarded towards loss due to disablement appears to be on lower side. The appellant is a village girl and she must be assisting her parents in household works. Due to the disablement she might suffer some financial loss also as she would not be able to do the labour work as efficiently as she might be performing.

9. In view of the above and in the facts and circumstances of the case, it would be proper to award a lumpsum amount of Rs. 75,000 instead of Rs. 25,000 as awarded by the Tribunal as compensation which shall take care of just and proper compensation payable towards the pain and sufferings and towards the inconvenience and financial loss already caused or to be caused in future. It will be appropriate to add to this a consolidated sum of Rs. 25,000 which will be including the amount spent on treatment, diet, transportation and any other incidental expenses making the total amount of compensation payable to the appellant to be Rs. 1,00,000 (one lakh).

10. Hence, this appeal is partly allowed. The impugned award is modified only to the extent indicated above and the amount of compensation is enhanced from Rs. 50,000 to Rs. 1,00,000. The appellant shall also be entitled to get interest @ 6% per annum on the enhanced amount. The respondents shall be liable to pay the amount of the award jointly and severally. The amount of award shall be deposited and should be payable in accordance with the directions contained in the impugned award. The respondents shall bear the cost of the appellant throughout. Counsel fee Rs. 1,000, if certified.