
(2013) 02 DEL CK 0002
In the Delhi High Court
Case No : Mac. App. 248 of 2007

Anil Kumar

APPELLANT

Vs

Kartar Singh and Another

RESPONDENT

Date of Decision : 13-02-2013

Acts Referred:

Citation : (2013) 02 DEL CK 0002

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Arun Kumar, for the Appellant; Arati Mahajan Shedha and Mr. Anand Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—Vide the instant appeal, the appellant has challenged the impugned award dated 27.07.2005, whereby the learned Tribunal has awarded the compensation amount as under:-

The learned counsel appearing on behalf of the appellant has argued only on two grounds as under:-

C. That the Ld. Lower Court failed to grant any relief on account of appellant remained on leave from 27.2.2001 to 26.7.2001 i.e. for 5 months.

D. That the Ld. Lower Court failed to appreciate the disability certificate issued by Dr. K.L. Kalra in which the appellant's permanent disability was 30 % and with respect to right foot function was 55 %. No weightage has been given by the Ld. Trial Court to this effect. The Ld. Lower Court has not granted any relief to the appellant for his being permanent disables. Disability has not been considered at all by the Ld. Lower Court.

2. The appellant/injured stated before the learned Tribunal that he had remained on leave from 27.02.2001 to 26.07.2001 i.e. for five months and the loss of salary comes to Rs. 32,500/- He lost one increment also as he remained without

pay for three months.

3. The learned Tribunal on this issue has recorded that the appellant/injured had failed to prove the loss of income by examining any independent witness from the department. Therefore, the learned Tribunal did not find it a fit case to grant any amount for loss of income.

4. This Court has specifically asked the learned counsel appearing on behalf of the appellant/injured as to whether he has any proof regarding the loss of income, as stated in the instant appeal, to which learned counsel has replied in negative.

5. On this issue, learned counsel appearing on behalf of the respondents has argued that though the appellant/injured, as stated, was on leave, however, he got the salary for all the five months and the same stands proved as no witness has been examined from the Department, who could have established this fact that he remained on leave without any salary. Learned counsel further submitted that even regarding loss of increment, neither there is any proof nor any evidence advanced by the appellant/injured. Whereas the respondents have annexed the relevant documents as R-1 to their reply/affidavit, whereby it is established that there is no loss of increment and he got all the increments due to him.

6. On the second issue, learned counsel for the appellant/injured has argued that the learned Tribunal failed to appreciate the disability certificate Ex. PW 1/3 dated 16.08.2001 issued by Dr. K.L. Kalra, wherein stated that he is having permanent disability of 55% of foot function and overall disability of 30% of limb function.

7. Learned counsel for the respondents has submitted that since the said certificate has not been issued by the competent authority, therefore, the same cannot be relied upon. Regarding the permanent disability of the appellant/injured, the learned Tribunal has opined that the certificate has not been issued by a competent Medical Board.

8. On permanent disability, law has been settled by the Apex Court in the case of Raj Kumar Vs. Ajay Kumar and Another, , as under:-

10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or

restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of "loss of future earnings", if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation.

9. However, the learned Tribunal still, keeping in mind the kind of injuries suffered by the appellant/injured, like crushed injury on right foot due to which he is not able to run or walk in the manner as he was doing it before the accident causing the feeling of deprivation and mental tension, Ld. Tribunal granted him a sum of Rs. 30,000/- for loss of amenities and enjoyment of life.

10. On perusal of the impugned award, I note that the learned Tribunal also recorded that the appellant due to the said injuries must have suffered a lot of pain and agony, therefore, the learned Tribunal granted a sum of Rs. 30,000/- for his pain and suffering.

11. I further note that during the cross-examination, PW2 Dr. K.L. Kalra has deposed that the permanent disability was assessed as per the guidelines issued by AIIMS, Rehabilitation Department. He further affirmed that the appellant remained under his treatment for six to seven months.

12. However, the case of the appellant is that after the accident he was removed to Sushrut Trauma Centre and from there he was shifted to Sir Ganga Ram Hospital on 27.02.2001 where he remained admitted as an indoor patient upto

06.03.2001. Further case of the appellant is that an operation was performed upon his right leg and foot on 27.03.2001. He was taken to Rohtak where he contacted ESI hospital for treatment and was further referred to the Medical College, Rohtak. Thus, his treatment continued in the Medical college Rohtak upto 25.07.2001.

13. As rightly pointed out by the learned counsel for the respondents that the appellant never remained the patient of PW2 Dr. Kalra for six to seven months and the deposition of PW2, Dr. Kalra is contrary to the case of the appellant/injured.

14. Be that as it may, the appellant/injured has been working with the Delhi Transport Corporation and is stilling continuing with the said Corporation. He is regularly getting the salary, increments and all the benefits due to him. Therefore, there is no functional disability in the present case. Consequently, no loss of future earning on account of disability.

15. Keeping in view the above discussion and legal position, there is no discrepancy in the impugned award.

16. I find no merit in the instant appeal. Therefore, the same is dismissed. No order as to costs.