
(2013) 09 DEL CK 0063
In the Delhi High Court
Case No : MAC. App. 329 of 2011

Baby Neeta @ Sunita

APPELLANT

Vs

Miland Kumar and Another

RESPONDENT

Date of Decision : 09-09-2013

Acts Referred:

Citation : (2013) 09 DEL CK 0063

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Navneet Goyal and Ms. Mamta Bhardwaj, for the Appellant; Pankaj Seth, for R2, for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.—Instant appeal has been preferred against the impugned award dated 28.02.2011, whereby, Id. Tribunal has granted a sum of Rs. 1,65,606/- as compensation with interest @ 7.5% per annum from the date of institution of the claim petition, i.e., 13.12.2007 till realization. Id. Counsel appearing on behalf of the appellant has argued that Id. Tribunal has not considered the entire facts and the award granted by the Id. Tribunal is not proper.

2. The injured is a minor girl of 11 years and the similar issue came before the Supreme Court in a recent decision in a case of Master Mallikarjun v. Divisional Manager, the National Insurance Co. Ltd. in Civil No. 1676/2012 decided on 26.08.2013.

3. In the above-noted case, the issue before the Apex Court was as under:

What is the just and fair compensation to be awarded to a child, who suffered disability in a motor accident, is the main point arising for consideration in this case.

4. In the above-noted case, the age of the petitioner was 12 years; and the disability was assessed by the Disability Board as 34% and the functional

disability has been assessed as 18%. Whereas in the present case the age of the injured was 11 years; the disability was 56% and the Id. Tribunal has assessed 25% functional disability qua the whole body.

5. Id. Counsel for the appellant submits that the instant case is fully covered by the case of Master Mallikarjun (Supra) and accordingly this court may consider Para 12 of Master Mallikarjun (Supra) wherein the Apex Court has held as under:

12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs. 3 lakhs; upto 60%, Rs. 4 lakhs; upto 90%, Rs. 5 lakhs and above 90%, it should be Rs. 6 lakhs. For permanent disability upto 10%, it should be Rs. 1 lakh, unless there are exceptional circumstances to take different yardstick.

6. Id. Counsel appearing on behalf of the appellant submitted that injured in the present case is a girl and the Id. Tribunal has granted compensation towards loss of marriage prospects as Rs. 25,000/-. Therefore, the amount is very meagre and that may be enhanced and alternatively may be maintained.

7. On the other hand, Id. Counsel appearing on behalf of the respondent/ insurance company submits that he does not dispute the law laid down in case of Master Mallikarjun (Supra). Therefore, this court may grant the compensation as per the observation made in Para 12 of the above noted case. He submits that qua the issue on the marriage prospects, there is no discussion in the case of Master Mallikarjun (Supra). He further submits that qua the loss of marriage prospects, Id. Tribunal has granted Rs. 25,000/- which is proper and could be maintained.

8. Keeping in view the dictum of the Apex Court in Master Mallikarjun (Supra), the impugned award dated 28.02.2011 is modified qua the other heads, except compensation towards loss of marriage prospects of Rs. 25,000/- granted by the Id. Tribunal.

9. Consequently, the appellant is entitled to get the compensation as follows:

10. Thus the total compensation amount comes to Rs. 4,00,000/-.

11. Resultantly, the enhanced compensation amount is Rs. 2,34,394 (Rs. 4,00,000-Rs. 1,65,606)

12. Needless to state that the enhanced amount shall also carry interest @ 7.5% per annum from the date of filing of the Claim Petition till realization.

13. The insurance company is directed to deposit the enhanced compensation amount with Registrar General of this court within four weeks from today.

14. On deposit the Registrar General is directed to release the amount in favour of the appellant/injured as per the ratio of award dated 28.02.2011 passed by the Id. Tribunal. Accordingly, Instant appeal is allowed on the above terms.