

(2008) 05 DEL CK 0256

In the Delhi High Court

Case No : MAC Appeal No. 218 of 2008

Chander Mohan @ Sonu

APPELLANT

Vs

Balbir Singh, Sardar Kulwant Singh and New India Assurance
Company Ltd.

RESPONDENT

Date of Decision : 01-05-2008

Acts Referred:

Citation : (2008) 05 DEL CK 0256

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : O.P. Mannie, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—The present appeal has been filed by the appellant against the impugned judgment dated 18.09.07 passed by Sh. A.S. Jayachandra, Judge, Motor Accident Claims Tribunal (for short as "Tribunal"), KKD, Delhi for enhancement of the compensation amount.

2. Brief facts leading to dispute are that on 20.11.05, the Appellant and his elder brother Kamal kishore were traveling on motor-cycle from Delhi to Sector-55, Faridabad and when at about 12.55 p.m. reached Canara bank, Town No. 1, Faridabad, then a truck bearing No. HR-38G-3162, driven by Respondent No. 1 came from behind at a very high speed driven rashly and negligently and hit against the motorcycle of the deceased. Appellant received serious grievous injuries all over his body and his elder brother died on the spot.

3. The Tribunal vide impugned judgment, awarded compensation of Rs. 4,08,484/- along with interest @ 7.5% per annum towards the injuries sustained by the appellant.

4. Aggrieved by the amount of compensation, the present appeal has been filed by the appellant, seeking enhancement of the compensation.

5. It has been contended by Learned Counsel for the appellant that the Tribunal erred in computing the income of the appellant on the basis of Minimum Wages @ Rs. 3,500/- per month whereas the deceased was actually earning Rs. 7,000/- p.m. The Tribunal has failed to consider the future increase in the income of the Appellant due to inflation and price rise. Further, the Tribunal has not taken into consideration matrimonial prospects of the appellant. No compensation for pain & suffering suffered by the family members was awarded. The Tribunal erred in paying the interest @ 7.5% only on the awarded amount. It ought to have awarded the interest @ 18% p.a. on the award amount from the date of the petition till realization.

6. Ld. Counsel also cited *Ram Avtar v. Davinder Singh and Ors.* I (2008) ACC 70, *Oriental Insurance Co. Ltd. v. Vijay Kumar Mittal and Ors.* 2007 (3) T.A.C. 397 (Del.) and *Managing Director, North East Karnataka Road Trans. Corpn. Vs. T. Prabhakar and Others*, in support of its contentions.

7. In the light of aforementioned facts and contentions, this Court has to determine the "fairness" of the compensation awarded by the Tribunal.

8. Although the appellant has placed salary certificate showing his income as Rs. 7,000/- per month but the Ld. Tribunal has not believed the said certificate as the appellant himself stated in his statement that he was drawing Rs. 5,000/- per month in private service. Thus, there are contradictions in the appellant's own case with regard to his monthly income. The primary and best evidence in this case to prove about the salary of Appellant was his employer who could have thrown light on this controversy as to what actual salary he was paying to the appellant. For reasons best known to him, the appellant has chosen not to produce the primary and best evidence and as such inference has to be drawn against the Appellant on this issue. Hence, in the absence of any reliable evidence, the Tribunal had taken the help of Minimum Wages Act to assess the monthly income of the appellant which has been rightly done in this case. Therefore in the absence of any documentary evidence, I do not find any infirmity in the finding of the Tribunal on this issue.

9. The next question which arises for consideration is as to whether the Ld. Tribunal is right in assessing functional disability suffered by the Appellant as 30%?

10. It was well established before the Tribunal that the appellant had suffered fractures although he stated that he had three fractures. Further, the Tribunal has observed that in the cross examination by the insurance company it was found that no rod is inserted into the legs of the appellant. Further, the Appellant was admitted in Escort Hospital, Faridabad only for one day. The Certificate showed that the appellant suffered disability only to the extent of 53% in his lower limb and the same was silent with regard to the effects on all over body. The medical expert was also not examined. Therefore, in the absence of any evidence, the effect of disability affecting the whole body was rightly taken as

30% by the Tribunal.

11. It is now well settled that while estimating future loss of income, the Court has to take into account future prospects of the injured. No future prospects can be considered in the present case as no evidence to this effect was led by the appellant. Therefore, in the absence of any proof with regard to the same, in view of *Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others*, , the contention regarding the future prospects is rejected.

12. As regards to the contention of marriage prospects, this point was not raised before the Tribunal and for the first time, appellant is taking this plea before this Court. Therefore, the same is not permitted at this stage. Thus, the decision of *Oriental Insurance Co. Ltd. (supra)* cited by learned Counsel for the appellant is not applicable on the facts of the present case.

13. Further, the judgment of *Ram Avtar (supra)* cited by Ld. Counsel for the appellant is not applicable to the facts of present case. In that case, this Court enhanced the compensation from one lac rupees to two lac rupees as appellant suffered 66% disability. Further, medical bills were placed and proved on record by the appellant. In the present case, the bills are not supported by prescriptions, and even then Ld. Tribunal has granted actual expenses for medical.

14. In *Managing Director, North East Karnataka Road Trans. Corpn. (supra)*, the High Court of Karnataka observed that

In my considered view, non-examination of the doctor is not fatal to the case of claimants. It is permissible under law to produce the wound certificates by the claimants issued by the medical officer.

15. In the present case, the Ld. Tribunal has already assessed the disability of the whole body as 30% and has granted compensation of Rs. 60,000/- for pain and suffering; Rs. 71,884/- for actual medical expenses; Rs. 15,000/- for special diet and conveyance ; Rs. 21,000/- for loss of earnings during the period of treatment for six months even in the absence of any evidence; Rs. 2,01,600/- for loss of earnings owing to disability; Rs. 30,000/- for loss of amenities in the life, in the absence of evidence and Rs. 9,000/- for expenses on attendant for three months even there is no evidence to this effect @ Rs. 3,000/- per month, totaling Rs. 4,08,484/-.

16. As regards the award of interest @ 7.5% per annum by the Tribunal, in a plethora of cases the Apex Court and various High Courts have held that the rate of interest would depend upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time. Therefore, this Court is not inclined to interfere on the said rate of interest.

17. The compensation awarded by the learned tribunal is just and fair. Accordingly, no infirmity can be found with the order of learned Tribunal.

18. The present appeal is, Therefore, dismissed.