

(2012) 03 RAJ CK 0072

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 606 of 2003

Kesar Deo

APPELLANT

Vs

Sanwarmal and Others

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Citation : (2012) 03 RAJ CK 0072

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Bhagwati

1. Challenge in this appeal is to the judgment and award dated 26th November, 2002 whereby the Motor Accident Claims Tribunal, Jaipur (hereinafter to be referred in short as "Tribunal"), decreed an amount of Rs. 1,33,850/- in favour of the appellant- claimant and against the respondents. Aggrieved and totally dissatisfied with the amount under the award, the appellant has beseeched to enhance the quantum of compensation. Background facts of the case, in nut-shell, are that on 23rd December, 1997, the appellant-claimant was coming by his Scooter from his village Renwal. No sooner did he reach near Power House, one Jeep bearing registration No. RJ-18-C-1023 driven by its driver rashly and negligently suddenly came on wrong side at a fast speed and hit his Scooter, as a result of which he sustained numerous simple and grievous injuries on his person. The appellant filed a claim petition before the Tribunal and the Tribunal after completion of trial, decreed the amount as indicated above.

2. Heard the learned counsel for the parties and carefully perused the relevant material on record including the impugned award.

3. Learned counsel for the appellant canvassed that the claimant-injured Keshardev sustained serious injuries all over his body, especially a fracture of shaft of femur of right leg and neck of humerus bone of right hand. Initially the

injured was taken to Hospital at Renwal and later on he was shifted to S.M.S. Hospital, Jaipur, where he remained admitted for 15 days. Learned counsel further canvassed that the injured was operated and steel rod was inserted in his fractured femur bone. He remained admitted in Khandaka Hospital at Jaipur also. During the treatment over such a long period, the injured not only incurred huge expenses on medicines, surgical operation and other heads but suffered physical pain and trauma also. On account of this accident, the right leg of the injured also got shortened by one and half inches. The promotion avenues of the injured got dim. He was not even allowed to appear in the examination of Head Constable resulting into great financial hardship, loss and inferiority complex to himself. In view of these circumstances, the amount of award passed by the Tribunal towards different heads is abysmally low, which needs to be enhanced at an apposite level.

4. E-converso, Mrs. Archana Mantri, appearing for the Insurance Co. vehemently opposed the submissions made by the learned counsel for the appellant and contended that on 25th November, 2009, this Court directed to file those documents in the Court whereby the claimant was denied promotion and removed from service on account of the injuries sustained in the alleged accident, but he had utterly failed to produce such documents even in long period of more than two years. The injured was working as a Constable of Rajasthan Police Force. There is no evidence on record to prove that he has been removed from service or has been denied any promotion on account of his shortened leg. Learned counsel further defended the impugned award and stated the same to be just and proper and canvassed that it did not justify any intervention.

5. Having reflected over the submissions made at the bar and carefully scanned the impugned award, it is nowhere found on record that on account of the alleged accident and shortening of leg, the appellant-injured was ever denied promotion to the post of Head Constable by his employer or he lost his promotional avenues. Learned counsel is also found to have spoken of 50.10% permanent disability in his leg resulting into the decrease of future income, but the same has also not been proved by any kind of direct or documentary evidence. Learned counsel also submitted that the appellant had availed the leave of more than 290 days, but the Tribunal awarded only Rs. 23,850/- towards the loss of salary, which is totally insufficient.

6. It is relevant to point out that the injured availed the Privilege Leave of 147 days and rest of the leave was Medical Leave. It is also relevant to note that under the Government rules medical leave is not reimbursable, whereas the Privilege Leave can be encashed during the service and at the stage of retirement also. Hence, the Tribunal is found to have rightly reimbursed the loss of salary of 147 days, which he would have got encashed at any time he wished.

7. Learned counsel further submitted that the appellant is left to face the hardship in walking, sitting, cross-legged, squatting for rest of his whole life but

the Tribunal towards this head also has awarded a very paltry amount to the tune of Rs. 50,000/- only. The amount under the award, in view of the facts and circumstances, is exiguous, which needs to be enhanced.

8. The arguments put-forth by the learned counsel for the appellant are found to be fancied. The Tribunal has taken care of all aspects while passing an award on different heads. Since the appellant-injured is a Government employee and has been continuously in service after accident. He shall be even getting pension after his superannuation from service. Not only that, after retirement, he shall keep on getting medical facility also, till he survives. The case of the appellant being a constable police (A Government Servant) is altogether distinct from that of an ordinary person, who keeps on hunting for a job through-out his life. The shortening of leg probably could come on the way in his working or doing any job but the case of the appellant irrespective of shortening of the leg, he has been continuously in service and shall be getting pension permanently, till he survives. The impugned award of Rs. 1,33,850/- is found to be just and proper and cannot be said to be abysmally low or exiguous from any stretch of imagination. The award suffers from no infirmity, hence, the appeal being devoid of any substance, deserves to be dismissed. For the reasons stated above, the appeal fails and the same being bereft of any substance, stands dismissed.