
(2013) 10 DEL CK 0436
In the Delhi High Court
Case No : Mac. App. 258 of 2011

Mohd. Saleem

APPELLANT

Vs

Adarsh Kumar and Others

RESPONDENT

Date of Decision : 24-10-2013

Acts Referred:

Citation : (2013) 4 ACC 894

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : S.N. Parashar, for the Appellant; Sameer Nandwani, for R3, for the Respondent

Final Decision : Disposed Off

Judgement

Suresh Kait, J.—Instant appeal has been preferred against the impugned award dated 13.10.2010 whereby, Id. Tribunal has granted compensation as under:

Therefore, in my considered opinion the petitioner is entitled for Rs. 4,53,355/- (rounded off to Rs. 4,53,500/-) which shall be the just compensation to petitioner.

The present appeal is for enhancement of the compensation as noted above.

2. Ld. Counsel appearing on behalf of the appellant has argued that appellant was coming from Ghazipur Subzi Mandi with his friend namely Rohit after purchasing vegetables in Vehicle No. DL-1Q-0078. When they reached main Jagat Puri Road Picket PV4, Jagat Puri, Delhi, a Tempo no. DL-1LG-5999 driven rashly and negligently hit the appellant's vehicle. As a result of which he and one Nadeem sustained grievous injuries. They were taken to Dr. Hedgewar Hospital, Delhi.

3. Due to the aforesaid accident, appellant suffered grievous injuries such as (i) fracture both bone leg type II compound (rt.) (ii) S/c fracture left type-1 compound. He remained hospitalized for the period from 20.10.2007 to 18.12.2007 and 04.08.2008 to 12.08.2008 and thus suffered 45% permanent

disability. At the time of accident, he was 32 years of age and was earning Rs. 7,000/- per month.

4. PW3, Dr. Arun Yadav, Orthopaedic Surgeon, Hindu Rao Hospital, Delhi deposed that disability certificate dated 13.07.2009 was issued to appellant by the Board of Directors of which he was one of the member. He further deposed that as per the certificate, the appellant was suffering from disability of 45% in relation to both lower limbs and right upper limb.

5. Id. Counsel appearing on behalf of the appellant submits that appellant is a vegetable vendor and for vegetable vending, person should be healthy and fit. Due to the injuries sustained, there will be effect on his avocation.

6. Id. Counsel submits that for functional disability, Tribunal or the court has to see what would be the effect on the avocation of the injured due to the injuries received. However, Id. Tribunal failed to do so. Therefore, the Id. Tribunal has wrongly considered 25% of the functional disability.

7. Id. Counsel submits that in the present case, it has been certified by Dr. Arun Yadav (PW3) that the appellant received 45% permanent disability in relation to both lower limbs and right upper limb. If a person like vegetable vendor received such disability, certainly he will not be able to work as he was working earlier. Id. Tribunal ought to have considered 45% as functional disability, however considered only 25% without any base and reasons.

8. On this issue, Id. Counsel appearing on behalf of respondent/insurance company submits that Id. Tribunal has rightly considered the functional disability as 25% keeping in view the law settled on this issue by the Apex Court in the case of Raj Kumar Vs. Ajay Kumar and Another, .

9. Id. Counsel further submits that Tribunal or the court has to see what would be the effect on the avocation of the injured and only thereafter the disability has to be assessed.

10. The appellant could not prove his salary. Therefore, the Id. Tribunal has taken the minimum wages and accordingly granted the compensation. Even in the case of a labourer, a person has to be bodily healthy and fit and only thereafter he can earn his livelihood.

11. In the present case, the appellant was working as a vegetable vendor and the accident took place when he was coming after purchasing the vegetables from Sabzi Mandi. Therefore, it is established that he was a vegetable vendor and selling the vegetables in a retail manner. Therefore, he has to move here and there, one place to another, one Gali to another Gali. Therefore, after receiving the nature of injuries as noted above, his movement has been restricted considerably.

12. Similar issue has come before the Supreme Court in case of Mohan Soni Vs. Ram Avtar Tomar and Others, and Sri Nagarajappa Vs. The Divisional Manager,

The Oriental Insurance Co. Ltd., .

13. Keeping in view the injuries and the avocation of the appellant and the dictum of the Supreme Court in the cases noted above, I am of the considered opinion that Id. Tribunal has wrongly considered 25% functional disability. Therefore, I consider 45% functional disability of the appellant.

14. The second issue argued by the Id. Counsel for the appellant is that for the loss of disfigurement nothing has been granted by the Id. Tribunal.

15. On this issue, Id. Counsel appearing on behalf of respondent/insurance company has fairly conceded that towards loss of disfigurement, Id. Tribunal has not granted any amount, however compensation towards loss of amenities and for pain and sufferings, Rs. 50,000/- and Rs. 70,000/- has been granted respectively. Therefore, both these heads cover loss of disfigurement.

16. I do not agree with the submission of the Id. Counsel for the appellant. Above noted two heads are totally different from disfigurement. Therefore, I grant Rs. 50,000/- for loss of disfigurement to the appellant. Accordingly, the compensation comes as under:

17. Hence the enhanced compensation comes to Rs. 2,39,000/-(Rs. 6,92,355-Rs. 4,53,355).

18. The enhanced compensation shall also carry interest @ 7.5% per annum from the date of filing of the petition till realization.

19. Instant appeal stands disposed of on the above terms.

20. Consequently, respondent no. 3/insurance company is directed to deposit the enhanced compensation with interest within five weeks from today with Registrar General of this Court. On deposit, the Registrar General shall release the said amount in favour of the appellant/claimant.