

(2013) 09 DEL CK 0195
In the Delhi High Court
Case No : MAC. App. 561 of 2011

Mohd. Salman

APPELLANT

Vs

Kishan Lal and Others

RESPONDENT

Date of Decision : 09-09-2013

Acts Referred:

Citation : (2013) 09 DEL CK 0195

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Vibha Mahajan Seth, for the Appellant; S.L. Gupta and Mr. Ram Ashray, for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.—Instant appeal has been preferred against the impugned award dated 07.01.2011, whereby Id. Tribunal has granted compensation as under:

It is pertinent to note that the Id. Tribunal has granted recovery rights in favour of insurance company and against respondent nos. 1 & 2, who have not challenged the said finding of the Id. Tribunal.

2. Instant appeal is for enhancement of compensation amount granted by the Id. Tribunal. Id. Counsel for the appellant submits that in the present case a minor boy aged about 14 years had received injuries in the accident in question and the disability board has assessed 3% disability qua the lower limb and the Id. Tribunal has assessed 3% disability qua the whole body.

3. Id. Counsel further submits that the issue "how the compensation has to be granted in case of minor" was before the Hon"ble Supreme Court in the case of Master Malikarjun v. Divisional Manager, the National Insurance Co. Ltd. in Civil No. 1676/2012 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 Re. 1 lakh, unless there are exceptional circumstances to take different yardstick.

4. Keeping in view the dictum of the Apex Court in the case of Master Malikarjun (Supra), the claimant/appellant is entitled for compensation on following heads:

5. Ld. Counsel appearing on behalf of the appellant further submitted that neither the Id. Tribunal nor the Apex Court in case of Master Malikarjun (Supra) has considered the issue of loss of marriage prospects. Therefore the same may be considered by this court.

6. I note, the appellant/injured received 3% disability qua the lower limb, therefore, I deem it appropriate that for just and fair compensation Rs. 15,000/- is granted on account of the marriage prospects. The total compensation, therefore, comes to Rs. 2,00,000/-. Accordingly, the enhanced compensation amount comes to Rs. 1,42,800/- (Rs. 2,00,000-Rs. 57,200)

7. Respondent/insurance company is directed to deposit the enhanced compensation amount with Registrar General of this court within four weeks from today. The same amount shall also carry interest @ 7.5% per annum from the date of filing of the Claim Petition before the Id. Tribunal till its realization.

8. On receipt, the Registrar General is directed to release the amount in favour of the appellant in terms of the award dated 07.01.2011.

9. Needless to state that respondent/insurance company shall recover the enhanced amount from respondent nos. 1 & 2 after deposit of the enhanced amount. Accordingly, Instant appeal is allowed on the above terms.