(2014) 01 DEL CK 0114

In the Delhi High Court

Case No : M.A.C. A.P.P. 779 of 2012

Nikunj Wadhawan APPELLANT

Vs

Jitender and Others RESPONDENT

Date of Decision : 28-01-2014

Acts Referred:

Citation : (2014) 1 ACC 950

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : H.S. Arora, Advocate for the Appellant; Shruti Shukla, Advocate for the Respondent No. 3, Advocate for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.—The instant appeal is directed against the impugned award dated 12.1.2012 whereby learned Tribunal has awarded compensation for a sum of Rs. 10,61,541 with interest @ 7.5% per annum from the date of filing of the petition till realization of the amount. Vide the instant appeal, appellant is seeking enhancement of the compensation amount noted above.

2. Learned Counsel appearing on behalf of the appellant/claimant has argued that P.W.5, Dr. Arun Yadav, Sr. Orthopaedic Surgeon, Bara Hindu Rao Hospital, deposed that as per disability certificate Ex. P.W.3/16, the appellant had received 50% permanent disability qua the whole body. However, learned Tribunal has erred in considering 35% functional disability.

3. Learned Counsel further submits that though the appellant had past history of Epilepsy, however, Insurance Company has not led any evidence as to what would be the effect of the Epilepsy on permanent disability of the injured.

4. As per Ex. P.W.2/1, appellant had no seizure for the last one year, learned Counsel submits that when there was no seizure of the Epilepsy for the last one year, then reducing the economic disability from 50% to 35% does not arise.

5. Learned Counsel further argued that the appellant was 25 years old young unmarried boy, was helping and assisting his father in the business of medicines and earning Rs. 12,000 per month. Mother of the injured had already predeceased and there is no other member in the family to look after him, except his father.

6. Learned Counsel for the appellant submits that the learned Tribunal ought to have considered the functional disability as 50%. On this issue he has relied upon a case of Raj Kumar Vs. Ajay Kumar and Another, , wherein in Para 5 it is held as under:

A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

7. The learned Counsel further submits that in Para 6 of the case of Raj Kumar (supra), the Apex Court has further held as under:

The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special Damages) (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure, (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising: (a) Loss of earning during the period of treatment; (b) Loss of future earnings on account of permanent disability, (iii) Future medical expenses, Non-pecuniary damages (General Damages), (iv) Damages for pain, suffering and trauma as a consequence of the injuries, (v) Loss of amenities (and/or loss of prospects of marriage), (vi) Loss of expectation of life (shortening of normal longevity). In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

8. Learned Counsel further submits that appellant remained in hospital for 24 days. Since the date of accident, he is leading life with the help of wheelchair. The conveyance charges will continue throughout his life and in such condition, he requires special diet. However, learned Tribunal has granted Rs. 9,000 towards conveyance and special diet, which is on a lower side.

9. Keeping in view the disability received by the injured, I am of the considered opinion that learned Tribunal has considered meagre amount of Rs. 9,000 towards conveyance and special diet. Therefore, I enhance to Rs. 30,000 towards

the heads noted above.

10. As the issue of compensation towards marriage prospects is concerned, it is true that due to the injuries received in the accident, the marriage of the appellant could not take place. He has lost the enjoyment of married life and becoming of a father. However, I am of the considered opinion that learned Tribunal after considering all the facts has rightly awarded Rs. 2,00,000 towards marriage prospects. I do not find any discrepancy on this issue.

11. So far as the issue of disability is concerned, as per the disability certificate, the Disability Board has specifically mentioned that the injured received 50% permanent disability qua the whole body. He has become paralytic. He is leading his life with the help of a wheelchair and is unable to do anything. However, there was no occasion before the learned Tribunal to reduce the disability from 50% to 35%. Accordingly, the disability is considered as 50%.

12. Consequently, the compensation amount comes as under:

Resultantly, this Court enhanced the compensation amount to Rs. 2,13,086 (Rs. 12,74,627 - Rs. 10,61,541).

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

14. Accordingly, the respondent No. 3/Insurance Company is directed to deposit the enhanced compensation amount with the Registrar General of this Court within a period of five weeks from today, failing which, appellant/claimant shall be entitled for penal interest @ 12% per annum on account of delayed payment.

15. On deposit, the Registrar General is directed to release the amount in favour of the appellant/claimant on taking necessary steps by him. In view of the above, the appeal is allowed.

