
(2014) 12 DEL CK 0248
In the Delhi High Court
Case No : Mac.App. 1127/2014

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Pinki

RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Citation : (2014) 12 DEL CK 0248

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Pankaj Seth, Advocate for the Appellant; Vijay Ahlawat and Shahid, Advocate for the Respondent

Judgement

Jayant Nath, J.

CM No. 20384/2014

Exemption is allowed, subject to all just exceptions.

The application stands disposed of.

MAC APP 1127/2014 and CM No. 20383/2014

1. By the present appeal the appellant seeks to impugn the Award dated 23rd September, 2014. The appeal can be disposed of at this stage itself.

2. The brief facts are that respondent No. 1 on 7th March, 2011 was crossing the road at Mayur Vihar, Phase-III and was hit by a Gramin Sewa vehicle which was driven by respondent No. 2 at a high speed in a rash and negligent manner. Respondent No. 1 sustained multiple grievous injuries.

3. The dispute centers around the compensation awarded to respondent No. 1 on account of permanent disability suffered by her. The Tribunal awarded a total compensation of Rs. 14,55,537/-, as follows:-

4. Learned counsel appearing for the appellant submits that the compensation

awarded is on the excessive side. He submits that there is no evidence placed on record to show the nature of work done by respondent No. 1 and accordingly there is nothing on record to assess the functional disability suffered by the appellant. Accordingly, he submits that compensation for loss of income is much on the higher side. Similarly, he submits that compensation for loss of amenities, disfigurement, and loss of marriage prospects, conveyance and special diet is on the higher side and has been awarded without any basis or evidence whatsoever. He further submits that the driving license of the driver was not valid but the Tribunal had wrongly given recovery rights whereas the appellant should have been exonerated. He further submits that while computing loss of income the tribunal assessed the income towards future prospects wrongly.

5. Learned counsel appearing for respondent No. 1 on seeing the matter on the cause list has strongly defended the compensation awarded. He submits that in fact the compensation is on the lower side and given the nature of injuries suffered by respondent No. 1, the compensation is grossly inadequate.

6. A perusal of the award shows that the Tribunal noted that the respondent No. 1 suffered permanent disability of 79 per cent in relation to her right upper and lower limb. The Tribunal concluded that respondent No. 1 was doing the work of embroidery/thread work in Radhika Enterprises. Her marriage was scheduled after one month. The effect of the accident was that she is unable to carry on her profession and her marriage has also been cancelled. Accordingly, the Tribunal assessed the functional disability at 50 per cent in relation to the whole body, following the judgment of the Supreme Court in the case of Raj Kumar Vs. Ajay Kumar and Another, . Compensation was accordingly amended as noted above.

7. As far as the profession of respondent No. 1 is concerned, in her affidavit by way of evidence she states that she is VIII class pass and is getting a salary of Rs. 6000/- per month. Nothing else is elaborated in the said affidavit regarding nature of her work. In her cross examination, she has clarified that she is receiving an income of Rs. 6000/- per month and that she was working with Radhika Enterprises as an embroidery worker. The Tribunal also recorded her statement on 22nd September, 2014 wherein she has reiterated that she was doing the job of embroidery in Radhika Enterprises and earning Rs. 6000/- per month. She has further said that after the accident, she had to leave her job. In the light of this evidence on record, there are no reasons to interfere with the finding of the Tribunal that the claimant was doing embroidery work.

8. In her statement made on 22.9.2014, respondent No. 1 further states that her marriage was fixed by her parents which was scheduled within one month and thereafter the accident took place and her marriage prospects are now completely marred. She also stated that she is personally not in a position to carry on any work and is unable to walk properly and her right limb and hand is completely immobile she even cannot write. She has undergone a plastic surgery of her right mammary organ.

9. A perusal of the award shows that she was admitted in the hospital from 8.3.2011 to 26.4.2011. She sustained compound Grade III b Fracture of right leg, right arm, elbow dislocation and multiple abrasions over face, right breast, shoulders and other parts of the body. The external fixator was applied for dislocation on 9.3.2011. The debridement of wound was done on right thigh on 11.4.2011, and open reduction and internal fixator with K-nails was carried out. Bone grafting was also done on 18.4.2011. Petitioner suffered permanent disability of 79% in relation to her right upper and lower limb as a case of post traumatic fibrous ankylosis of right elbow, and compound fracture of upper and lower limbs. The Disability Certificate was proved by Dr. Brijesh Kumar Jain (Orthopedics) as PW2.

10. In the light of the above facts the assessment of the Tribunal fixing the functional disability at 50% is in order.

11. The next contention pertains to compensation for loss of amenities, disfigurement and loss of marriage prospects.

12. Reference may be had to the judgment of the Supreme Court in the case of V. Mekala Vs. M. Malathi and Another, . That was a case of a 16 year old girl studying in XI Class. Her disability was ascertained at 70%. The Supreme Court assessed her income at Rs. 10,000/- per month and accordingly awarded loss of future income of Rs. 22,68,000/-. For pain and suffering Rs. 2,00,000/- was awarded; for loss of amenities and attendant charges, a sum of Rs. 2,00,000/- was awarded, for loss of enjoyment of life and marriage prospect Rs. 3,00,000/-. The total compensation of Rs. 30,93,000/- was awarded.

13. Reference may also be had to the judgment of the Supreme Court in the case of Rekha Jain Vs. National Insurance Company Ltd. and Others, where compensation of Rs. 79, 66,000/- was awarded. In the case of Rajesh and Others Vs. Rajbir Singh and Others, compensation of Rs. 34, 38,747/- was awarded.

14. In the present case, the Tribunal has assessed the income of respondent No. 1 based on minimum wages of skilled worker as applicable to the State of UP as Rs. 4993/-. This amount has been enhanced by 50% for future prospects and the multiplier of 18 was applied. The future loss of income is assessed at Rs. 8, 08,920/-. Given the facts and circumstances of this case and legal position, in my opinion, there is no reason to interfere with the award amount.

15. On the issue of future prospects reference may be had to the judgment of the Supreme Court in the case of Raj Kumar vs. Ajay Kumar (supra). This contention is without merit.

16. As far as the liability of the appellant is concerned, in the facts and circumstances of the case, there are no reasons to interfere with the direction in the award. Reference may be had to the judgment of the Supreme Court in the case National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, , Manager, National Insurance Company Ltd. Vs. Saju P. Paul and Another, .

17. The appellant may comply with the award within four weeks from today.
18. The appeal stands disposed of.