
(2012) 11 DEL CK 0268
In the Delhi High Court
Case No : MAC. APP. 812 of 2011

Ramveer Singh

APPELLANT

Vs

Rajesh Kumar and Others

RESPONDENT

Date of Decision : 30-11-2012

Acts Referred:

Citation : (2013) 133 DRJ 568

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Amit Kumar Pandey, for the Appellant; Neerja Sachdeva, Advocate for the Respondent No. 4 Insurance Company, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appellant Ramveer Singh who at the time of accident was working as a Head Constable in Delhi Police seeks enhancement of compensation of Rs. 5,07,554/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) for having suffered grievous injuries in a motor vehicle accident which occurred on 06.12.2007. In the absence of any Appeal by the driver, owner or the Insurance Company, the finding on negligence reached by the Claims Tribunal has attained finality.

2. In the unfortunate accident, the Appellant suffered multiple fracture and crush injury on his left leg and on his abdomen. Immediately after the accident, the Appellant was removed to Max Balaji Hospital where wound debridement was done and external fixator was applied on 07.12.2007. Wound debridement of split skin grafting was done on 12.12.2007 by Dr. Biraj Nathani, a Plastic Surgeon. On 15.12.2007, exploratory laparotomy with primary repair of diaphragmatic hernia and anterior gastropexy was done by Dr. Deepa Tayal, a General Surgeon. The Appellant was discharged from the Hospital on 22.12.2007. It was stated that because of the crush injury, the Appellant took longer time to join his duty. He took leave for 16 months from 16.12.2007 to 16.04.2009 and for one month from 14.12.2009 to 14.01.2010. Disability

Certificate Ex. PW1/3 was proved which shows that the Appellant suffered permanent physical impairment to the extent of 43% in relation to his left lower limb. The Claims Tribunal awarded a compensation of Rs. 5,07,554/-, which is tabulated hereunder:

Sl.

No. Compensation under various heads

Awarded by the Claims Tribunal

1.

Medical Charges

Rs. 3,27,554/-

2.

Conveyance Charges

Rs. 10,000/-

3.

Special Diet

Rs. 20,000/-

4.

Loss of Leave

Rs. 50,000/-

5.

Pain & Suffering

Rs. 50,000/-

6.

Curtailment of Enjoyment of Life

Rs. 50,000/-

Total

Rs. 5,07,554/-

3. Following contentions are raised on behalf of the Appellant:

(i) The compensation of Rs. 50,000/- towards loss of leave was on the lower side. The Appellant should have been granted full compensation on account of loss of leave irrespective of the fact that he was paid salary towards earned leave/medical leave.

(ii) On account of permanent disability, the Appellant would not be promoted to the level of Assistant Sub Inspector and Sub Inspector in Delhi Police. He was not awarded any compensation on account of loss of future prospects.

(iii) No compensation was awarded towards attendant charges.

(iv) The compensation towards pain and suffering was on the lower side.

4. On the other hand, the learned counsel for the Respondent Insurance Company urges that the compensation awarded is just and reasonable.

LOSS OF LEAVE:

5. From the certificate Ex. PW1/4, it was established that the Appellant was on leave from 16.12.2007 (the date of the accident) to 16.04.2009, that is, for a period of about 16 months. He was again on leave for one month from 14.12.2009 to 14.01.2010 which was proved by the certificate Ex. PW1/5. The Claims Tribunal instead of granting compensation on account of actual loss of leave, granted a lumpsum compensation of Rs. 50,000/- on the ground that the Appellant was paid salary during this period. A victim of a motor vehicle accident cannot be made to suffer loss of his full pay leave or the medical leave for the benefit of the tortfeasor. An employee loses an opportunity for encashment of leave at the time of his superannuation if the leaves are exhausted during service. In the circumstances, the Appellant is entitled to be paid full salary for the loss of leave.

6. In the Claim Petition the Appellant stated his salary on the date of the accident was Rs. 13062/-. During evidence, the Appellant proved the salary certificate Ex. PW1/6 to show that his salary in October, 2010 was Rs. 26,091/-. Salaries of the Government employees including Delhi Police personnel were revised retrospectively w.e.f. 01.01.2006 on implementation of the 6th Pay Commission. Thus, I would take the Appellant's salary on the date of the accident, that is, 06.12.2007, to be Rs. 18,000/- per month (increase of 40%) and would award him the compensation for loss of 17 months leave as Rs. 3,06,000/- as against a lumpsum compensation of Rs. 50,000/-.

LOSS OF FUTURE PROSPECTS:

7. As stated earlier, at the time of the accident the Appellant was getting a salary of Rs. 13,062/-. It is proved on record that in October, 2010 his salary was revised to Rs. 26,091/-. Thus, the Appellant's salary doubled during the span of four years. In his affidavit Ex. PW1/1, the Appellant testified that on account of the injuries suffered by him, he would not be promoted to the rank of Assistant Sub Inspector or possibly the Sub Inspector. The Appellant preferred not to adduce any evidence from his employer to prove that he was eligible to be promoted as Assistant Sub Inspector. No evidence was produced as to the monetary loss, if any, if he was not promoted. No evidence was produced as to when he was likely to be promoted. The learned counsel for the Appellant pointed out that after the accident, the Appellant was doing the desk work. In

Delhi Police, there are posts of the rank of Assistant Sub Inspector, Sub Inspector and even Inspector who carry out ministerial job. Thus, because of disability in the left lower limb, the Appellant would not lose an opportunity of his promotion. In view of the above, the Appellant is not entitled to any compensation under this head.

ATTENDANT CHARGES AND PAIN AND SUFFERING:

8. The Appellant suffered crush injury with fracture on both bone in left leg. He suffered permanent physical impairment to the extent of 43% in respect of his left lower limb. The Appellant underwent successive surgeries in Max Balaji Hospital. He had to take leave for about 16 months in the first instance. Taking into consideration the nature of injuries suffered, the Appellant has to be compensated for the attendant charges. Even if some or the family member looked after the Appellant during this period of one year, the Appellant cannot be deprived of the compensation for the same. I am supported in this view by a judgment in Delhi Transport Corporation and Another Vs. Lalita, , where it was held as under:

(33) Counsel for the Corporation argued that since Lalita is being looked after by her mother compensation ought to be reduced. We do not agree. In the case of Lalita the main question is of future care. Today she is being helped by her mother. But that does not mean that she is not to be compensated for services rendered to her. A legal agreement between mother and daughter is not necessary to claim compensation. We cannot deduct what is described as the "domestic element" from the cost of care. A wrong doer cannot take advantage of this "domestic element." If the mother renders service to her, instead of a nurse, it is right and just that she should recover compensation for the value of the services that the mother has rendered to her. Mother's services were necessitated by the wrong doing and the injured should be compensated for it. (Cuningham v. Harrison (1973) 3 All E.R. 463). The services of a wife and mother are worth more than those of a house-keeper because she is in constant attendance and does many more things than a house-keeper. (Regan v. Williamson (1976) 2 All E.R. 241).

9. In the circumstances, I would like to award a compensation of Rs. 24,000/- (Rs. 2000/- x 12) towards attendant charges for 12 months.

10. Keeping in view the fact that the Appellant underwent successive surgeries, he remained an indoor patient in Max Balaji Hospital for a period 06.12.2007 to 22.12.2007 and remained an outdoor patient for quite a long time and had to take 16 days months leave, the compensation under the head pain and suffering is raised from Rs. 50,000/- to Rs. 75,000/-. The compensation of Rs. 50,000/- towards loss of amenities and loss of enjoyment of life is maintained.

11. The compensation awarded is recomputed as under:

Sl. No.

Compensation under various heads

Awarded by the Claims Tribunal

Awarded by this Court

1.

Medical Charges

Rs. 3,27,554/-

Rs. 3,27,554/-

2.

Conveyance Charges

Rs. 10,000/-

Rs. 10,000/-

3.

Special Diet

Rs. 20,000/-

Rs. 20,000/-

4.

Loss of Leave

Rs. 50,000/-

Rs. 3,06,000/-

5.

Pain & Suffering

Rs. 50,000/-

Rs. 75,000/-

6.

Curtailment of Enjoyment of Life

Rs. 50,000/-

Rs. 50,000/-

7.

Attendant Charges-

-

Rs. 24,000/-

Total

Rs. 5,07,554/-

Rs. 8,12,554/-

12. The enhanced compensation of Rs. 3,05,000/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its deposit. 75% of the compensation shall be kept in fixed deposit for a period of two years; rest of the amount shall be released on deposit.

13. The Respondent No. 4 Insurance Company is directed to deposit the enhanced amount of Rs. 3,05,000/- along with interest with the Claims Tribunal within six weeks.

14. The Appeal is allowed in above terms. Pending Applications stand disposed of.