
(2013) 08 DEL CK 0216
In the Delhi High Court
Case No : MAC. A. 69 of 2012

Ravinder Malhotra

APPELLANT

Vs

Vijender Singh and Another

RESPONDENT

Date of Decision : 19-08-2013

Acts Referred:

Citation : (2013) 08 DEL CK 0216

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Vibha Mahajan Seth, for the Appellant; Arati Mahajan Shedha, for the Respondent

Final Decision : Disposed Off

Judgement

Suresh Kait, J.—Instant appeal has been preferred against the impugned award dated 29.09.2011, whereby Id. Tribunal granted total compensation of Rs. 1,01,600/- for the injuries sustained by the appellant. The present appeal is for enhancement of the compensation amount. Counsel for the appellant has argued that as per the disability certificate, appellant received 15% disability qua right upper limb, however, Id. Tribunal has not granted any compensation on account of disability.

2. Id. Counsel submits that the disability certificate was not proved before the Id. Tribunal, therefore, appellant moved an application to lead additional evidence, which was allowed by this court vide order dated 06.11.2012.

3. Thereafter, Dr. Raj Kumar, Senior Resident Doctor, Department of Physical and Medicine Rehabilitation, AIIMS, New Delhi was examined before the Registrar as AW1. The said Doctor deposed that disability certificate dated 26.02.2003 was issued to Mr. Ravinder Malhotra (appellant herein) by AIIMS. The photocopy of the said disability certificate is Ex. AW1/1. The disability has been assessed in relation to right upper limb of Mr. Ravinder Malhotra (appellant herein). As per the said certificate, 15% permanent disability has been assessed. Though he

admitted that he was not working in the medical institute when the certificate was issued, however, stated that the photocopy of the said certificate has been compared with the original, which he had brought.

4. In cross-examination, he deposed that disability of 15% mentioned in the certificate is in relation to right upper limb and not in relation to whole body.

5. Ld. Counsel for the appellant further submits that the disability certificate was issued after 9 years of the accident, which took place on 01.09.1994, for the reasons that during treatment he was suggested to undergo physiotherapy for rehabilitation. Therefore, when the injury could not be rehabilitated properly, at last the disability certificate was issued on 26.02.2003. Ld. Counsel submits that though the certificate was produced before the trial court, however, the same could not be proved as no Doctor was examined to this effect.

6. Ld. Counsel further submitted that appellant was a Scientist by profession and this disability of 15% on the right upper limb affect his day-to-day working and he is incapacitated to work properly. She submits that 15% disability may be considered as 15% functional disability to whole body.

7. The second ground argued by the counsel for the appellant is on the loss of income. Ld. Counsel submits that Id. Tribunal recorded that as per the treatment record, the appellant remained under treatment w.e.f. 01.09.1994 to 29.12.1994 and accordingly awarded 3 month's salary for loss of income. Ld. Counsel has pointed out that Id. Tribunal has erred in calculating the 3 months whereas from 01.09.1994 to 29.12.1994, it comes to 4 months. Thus, Id. Tribunal has wrongly assessed loss of income for 3 months salary, i.e., $2,200 \times 3 = 6,600/-$, however, it should have $Rs. 2,200 \times 4 = Rs. 8,800/-$ as considered by tribunal itself.

8. Ld. Counsel for the appellant further submits as per Ex. PW1/J the appellant remained under treatment up to 23.09.1995, i.e., for 13 months, however, Id. Tribunal has awarded compensation only for 3 months.

9. She further argued that the appellant sustained grievous injuries and filed his treatment papers Ex. PW1/F to Ex. PW1/J. Since, no bills of the medicines and medical papers have been filed by the appellant, Id. Tribunal has considered only Rs. 10,000/- for the treatment only for 3 months, whereas the appellant was under treatment for 13 months. Accordingly, amount for medicines and medical treatments for 13 months should be granted.

10. Ld. Counsel further submits that Id. Tribunal has granted compensation of Rs. 10,000/- on conveyance and special diet, which are on the very lower side.

11. Ld. Counsel has prayed that taking into consideration the treatment for 13 months, amount spent on conveyance, diet and medical treatment, enhancement of compensation is required for "just" and "fair" compensation.

12. On the other hand, Id. Counsel appearing on behalf of respondent no. 2/DTC submits that disability certificate was issued after 9 years of the accident,

therefore, it cannot be ascertained that the said disability certificate is qua the injuries received by the appellant on 01.09.1994. As per the disability certificate it is a case of post-traumatic deformity of right upper limb with restricted range of motion at elbow joint with weakness.

13. She submits that accident took place on 01.09.1994 and there were possibilities of receiving injuries from anywhere, in many manner, thereafter. Therefore, the disability cannot be considered to be occurred due to the accident in question.

14. On the issue of loss of income, Counsel for the respondent no. 2 submits that the appellant remained under treatment i.e. up to 14.01.1995 as per his own document, which is at Page 36 and further treatment was taken from OPD. She submits that once the patient is discharged from the hospital, he resumes his work and can work, thereafter, no enhancement in the compensation towards loss of income can be considered. She has clarified that appellant did not remain in the hospital. He was coming for follow up from 20.10.1994 to 14.01.1995. There is no prescription of any of the Doctors, who suggested him physiotherapy for rehabilitation. Therefore, it is afterthought. After 9 years of the accident he procured the disability certificate and now claiming enhancement on the issue of loss of income. Moreover, it is specifically stated in the disability certificate that it is a post-traumatic deformity of right upper limb with restricted range of motion at elbow joint with weakness.

15. In rejoinder, Id. Counsel for the appellant argued that AW1 Dr. Raj Kumar, who has proved the disability certificate, has not cross-examined by the respondent no. 2 Therefore, at this stage they cannot take the plea that the disability certificate was not issued qua the injuries sustained by the appellant on 01.09.1994.

16. Appellant/claimant in the instant case produced the disability certificate after a period of 9 years, i.e., on 26.02.2003. Since the disability certificate was not proved before the Id. Tribunal, the appellant moved an application to lead addl. evidence, and same was allowed by this court vide order dated 06.11.2012.

17. Dr. Raj Kumar, Senior Resident Doctor, Department of Physical and Medicine Rehabilitation, AIIMS, New Delhi was examined before the Registrar as AW1 after a gap of period for more than 9 years from the date of issue of certificate which creates suspicion on the credibility of the appellant. Since the disability was suffered by the appellant, onus to prove disability was on the appellant.

18. In the instant case, Disability Certificate was issued after a period of 9 years and Doctor/AW1 was examined after a gap of 9 years from the date of issue of Disability Certificate.

19. Considering all the relevant aspects, I am not inclined to award compensation on account of disability.

20. On the issue of loss of income, counsel for the appellant submitted that, Id.

Tribunal has recorded in impugned award that as per treatment record, the appellant remained under treatment w.e.f. 01.09.1994 to 29.12.1994 and wrongly awarded for loss of income for 3 months, while it comes to 4 months.

21. As submitted by Id. Counsel for the appellant that as per Ex. PW1/1, the appellant remained under treatment up to 23.09.1995. I have perused all the exhibits proved by the appellant, these exhibits are only OPD tickets pertaining to the visits of hospital, which does not mean that the appellant was not working during that period.

22. Considering the nature of injuries and OPD tickets, I accordingly award loss of income for six months.

23. On the issue of compensation towards conveyance and special diet, Id. Tribunal has granted compensation of Rs. 10,000/- on conveyance and special diet. Since the appellant produced OPD tickets pertaining to his regular visits, accordingly, I award Rs. 10,000/- each towards conveyance charges and for special diet.

24. Accordingly, the loss of income comes to Rs. 13,200= (Rs. 2,200x6) from Rs. 6,600. Towards conveyance & diet comes to Rs. 20,000 from Rs. 10,000/-. Therefore, the enhanced compensation comes to Rs. 16,400/- (Rs. 1,18,000/- - Rs. 1,01,600/-).

25. Respondents are directed to deposit the enhanced amount within a period of 4 weeks with Registrar General of this Court, who shall thereafter release the same in favour of the appellant. The enhanced amount will carry the interest @ 9% from the date of filing of the appeal till the realization of the award amount. In view of the above, instant appeal stands disposed of.