(2013) 03 DEL CK 0127

In the Delhi High Court

Case No : Mac. App. No. 549/2007

Sanjay Kumar APPELLANT

Vs

Ashok Kumar and Another RESPONDENT

Date of Decision : 21-03-2013

Acts Referred:

Citation : (2013) 2 ACC 522

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Judgement

Suresh Kait, J.—The instant appeal has been filed for enhancing the compensation amount on the ground that the learned Tribunal ought to have awarded compensation on the basis of the evidence adduced by the appellant. Though, in the instant appeal it is stated that the appellant was 22 years old and his income at the time of accident was Rs. 4,500/- per month, but the multiplier applied by the learned Tribunal is only 16.

2. Learned counsel appearing on behalf of the appellant submitted that the law is well settled by the Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , according to which for the age group between 15 to 25 years, the appropriate multiplier shall be 18.

3. He has argued that at the time of accident, the appellant was doing the embroidery work and was a skilled worker. However, the learned Tribunal has considered his income on the basis of the minimum wages applicable to a non-matriculate and non-skilled worker, whereas the appellant who appeared as PW 2 has deposed that he was doing the embroidery work (kadhai) and used to earn Rs. 4,500/- per month out of the said job. He further deposed that he could not continue with the said work after the accident and remained unemployed.

4. Since in the cross-examination no question has been put to him regarding the embroidery work, therefore, learned counsel for the appellant has submitted that while considering this issue, the learned Tribunal should have taken the minimum

wages of a skilled worker instead of an unskilled worker.

5. He has further argued that the accident took place on 28.09.2005 and the appellant remained under treatment from 26.10.2005 to 10.12.2005 as has been proved by him by exhibiting OPD cards PW 2/13 to PW 2/15.

6. Learned counsel submitted that due to injuries sustained to the appellant his right leg above knee was amputated, therefore, he could not attend the work for six months and the learned Tribunal has failed to grant compensation of a skilled non-matriculate on account of loss of income for six months.

7. Further submitted that the learned Tribunal has failed to grant any compensation towards future prospects and loss of marriage prospects.

8. In Para 14 of the impugned award dated 28.05.2007, the learned Tribunal has recorded that the petitioner stated to be unmarried and because of the permanent disability suffered by him, he is unlikely to get married in future.

9. While agreeing with the appellant, the learned Tribunal has further recorded that the marriage prospects of the appellant got diminished considerably because of the permanent disability and his sufferings are immense and cannot be counted.

10. In view of the above, learned counsel for the appellant has submitted that the learned Tribunal has failed to award any compensation on this aspect also.

11. I note, for pain and sufferings, the learned Tribunal has granted compensation of Rs. 50,000/-.

12. Learned counsel submitted that the injuries suffered by the appellant were grievous, which led to the amputation of his right leg above knee, therefore, the learned Tribunal ought to have granted at least Rs. 2,00,000/- towards pain and sufferings instead of Rs. 50,000/-.

13. On interest aspect, learned counsel for the appellant submitted that the rate of interest allowed by the learned Tribunal is on the lower side as it should have been allowed interest @ 9% per annum in place of only 7% per annum.

14. Lastly, learned counsel submitted that no compensation has been granted towards fee of attendant and conveyance. Due to the injuries suffered by the appellant, he was unable to move freely and look after himself, therefore, he engaged an attendant to whom he used to pay Rs. 3,000/- per month and also had to engage some conveyance for himself either for going to the hospital for his treatment or for any other purpose. The learned Tribunal has over looked these aspects and granted no compensation for the same.

15. On the other hand, learned counsel appearing on behalf of the respondent No. 2/Insurance Company has submitted that he joins hands with the argument of the learned counsel for the appellant as regards multiplier is concerned as the same has been settled in Sarla Verma''s case (supra).

16. Since the age of the appellant at the time of the accident was 18 years (however, in the appeal stated 22 years), therefore, learned counsel for the respondent Insurance Company submitted that whether the age is 18 years or 22 years, it hardly makes any difference as the appropriate multiplier for the age group between 15 to 25 is 18.

17. On the issue that the appellant was a skilled worker being doing the embroidery work, learned counsel submitted that he has nowhere stated in the evidence that he was an expert and skilled in that field. He may be doing the work as a helper or for other purpose in the embroidery field. However, it is not established that he was a skilled worker as no witness has been produced by him to prove this fact.

18. Regarding loss of income, the learned Tribunal in Para 12 of the impugned judgment has recorded that the loss of income suffered by the appellant during the period of his treatment is not calculated as compensation on the basis of 70% loss of earning capacity has already been calculated from the date of accident.

19. Learned counsel submitted that since the appellant has suffered 70% permanent disability and the learned Tribunal has already considered the loss of earning capacity from the date of the accident itself, therefore, it is contrary that the appellant has not granted any amount towards loss of income by the learned Tribunal.

20. So far as the fee of the attendant is concerned, the learned counsel for the Insurance Company has submitted that firstly, the appellant has neither produced any witness to prove that he had kept an attendant nor produced any bill showing payment of fee of Rs. 3,000/- per month to him. Even ignoring the social status of the appellant, until and unless he proves the same in the Court of law, it cannot be granted.

21. Learned counsel for the respondent Insurance Company has fairly conceded that no conveyance charges has been granted in favour of the appellant and submitted that this Court has the discretionary power to grant reasonable charges towards conveyance if it deem it appropriate after taking into consideration the facts and circumstances of this case.

22. On the issue of loss of marriage prospects, learned counsel submitted that the learned Tribunal after considering all the facts in totality granted Rs. 50,000/- to the appellant on account of mental pain and agony and loss of future enjoyment of life suffered by him. Since the enjoyment of life includes enjoyment of marriage, therefore, the learned Tribunal has already considered this aspect and sufficiently granted Rs. 50,000/- towards the same.

23. Regarding grant of lesser rate of interest, learned counsel submitted that it is the discretion of the Court and the prevailing rate of interest on the date of the accident i.e. 28.09.2005, accordingly, has been granted.

24. I have heard the learned counsel for the parties and perused the records.

25. Appellant, who was doing embroidery work met with an accident at the age of 18 and as a result of the accident the right leg of the appellant got amputated above knee; permanent disability has been assessed as 70%, is seeking the enhancement of the compensation amount.

26. The Apex Court in Raj Kumar Vs. Ajay Kumar and Another, has enumerated the principles to be followed in assessing the compensation amount in injury cases. It must be noticed as a principle that all injuries do not result in loss of earning capacity. However, considering the nature of injuries and degree of disability that has been suffered by the appellant/claimant, the ld. Tribunal has awarded compensation on account of loss of earning capacity.

27. In order to ascertain the loss of earning capacity of the injured person, the following factors are to be assessed (1) the age of the injured for ascertaining the multiplier, (2) annual income of the injured for ascertaining the multiplicand and (3) functional disability of the injured for assessing the actual loss.

28. Out of the three factors, the appellant has no grievance as regards the assessment of functional disability. However, the appellant seeks interference of this Court in assessing the factor of multiplier, and the income of the injured.

29. Significantly, both, the appellant and the respondent have agreed on the point of selection of multiplier, that is ''18'', whereas the ld. Tribunal has wrongly taken the multiplier factor as 16. Therefore, as per the law laid down in Sarla Verma (supra) the multiplier ''18'' is applicable in the present case.

30. The ld. Tribunal has assessed the income of the injured as applicable for unskilled worker. It is pertinent to note that the claimant/injured has pleaded and deposed that he had been doing the work of embroidery and was earning an amount of Rs. 4,500/- per month. Consequently, the ld. Tribunal has assessed the income of the injured on the basis of minimum wages for unskilled worker as applicable on the date of accident. However, during the cross examination, not even a suggestion was put to the witness regarding the skill of the work that has been claimed. Significantly, the insurance company could not prove that the appellant/injured was not a skilled worker in the field of embroidery. Therefore, the proper appreciation of the evidence would lead to the presumption that the appellant/injured was a skilled worker. Therefore, in the absence of contrary, the income of the injured is to be taken, as applicable for skilled worker. The monthly income of skilled worker on the date of the accident was Rs. 3,590/-. Accordingly, the monthly income of the injured has been taken as Rs. 3,590/-.

31. On the point of assessing the functional disability, I am mindful of the aspect that the effect and impact of the disability on the earnings of the injured is more important than the actual disability. Considering the special facts and circumstance of this case, the ld. Tribunal has assessed the functional disability as 70%. Resultantly, the loss of future earnings would be Rs. 2,513/- (70% of

3590). The annual loss of income would be Rs. 30,516/- (Rs. 2513 x 12). On the basis of the age of the appellant the total loss of earnings comes to Rs. 5,42,808/- (Rs. 30,516 x 18).

32. Appellant sought enhancement of compensation amount, on account of conveyance charge. The record shows that the conveyance charge was not assessed and granted by the ld. Tribunal. However, the counsel for the respondent has also agreed that the appellant/injured is entitled for the same. Needless to state that the impact of the amputation of the leg above the knee directly affects the balance and movement of the whole body. Therefore, I grant Rs. 25,000/- as compensation on account of conveyance charges.

33. Regarding the attendant charge, the appellant/injured could not produce any record except the pleading; therefore, the ld. Tribunal has rejected the claim on the same account. It is not disputed that the claimant has suffered injury and the same is in the grievous nature. Therefore, by taking the duration of the treatment undergone, an amount of Rs. 10,000/- is granted on account of attendant charges.

34. On account of pain and suffering, the ld. Tribunal has granted an amount of Rs. 50,000/-. It is true that the ld. Tribunal has not specifically granted compensation on account of non-pecuniary heads such as marriage prospects etc. I am of the view that the ld. Tribunal has taken the other aspects into consideration while granting the compensation amount on account of pain and suffering.

35. In view of above, the amount of compensation is modified as mentioned in the following chart:-

36. Accordingly, I allow this appeal in part and increase the compensation by Rs. 1,52,336/- which shall carry interest @ 7% per annum, i.e. the rate awarded by the ld. Tribunal, from the date of the petition to the date of the payment. The respondent No. 2/New India Assurance Co. Ltd. is directed to pay the enhanced amount of Rs. 1,52,336/- with interest in favour of the appellant.

37. Accordingly, respondent No. 2/insurance company is directed to deposit the above enhanced amount with interest with Registrar General of this Court, within four weeks from the date of receipt of copy of this order, who shall thereafter release the same in favour of the appellant.

38. Instant appeal is disposed of in the above terms.

39. No order as to costs. A copy of this order be given dasti to the learned counsel for respondent No. 2/Insurance Company for compliance.