

(2013) 09 DEL CK 0533
In the Delhi High Court
Case No : Mac. App. 810 of 2013

Sh. Gopal Kumar @ Sanjay	Vs	APPELLANT
Sh. Amar Singh Patel and Others		RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Citation : (2013) 09 DEL CK 0533

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Manish Maini, for the Appellant;

Final Decision : Disposed Off

Judgement

Suresh Kait, J.—The instant appeal is preferred by the appellant for enhancement of the award dated 15.05.2013, whereby the learned Tribunal has granted a compensation for a sum of Rs. 3,15,068/-. Facts of the case are that on 15.06.2012 when the appellant was tightening the ropes of the tripal on his vehicle, the offending vehicle was reversed by the respondent No. 1 in rash and negligent manner without taking proper precautions. Consequently, appellant was sandwiched between his vehicle and the offending vehicle due to which he received grievous injuries.

2. For awarding compensation the learned Tribunal has framed the following issues:

1. Whether the petitioner suffered injuries in a road traffic accident dated 15/06/2012 due to rash and negligent driving of the offending vehicle bearing no. HR 63A 0252 driven by respondent no. 1 as alleged?
2. What amount of compensation the petitioner is entitled to and from whom?
3. Relief
3. Learned counsel appearing on behalf of the appellant does not dispute the

findings of the learned Tribunal qua issue No. 1. However, as regards issue No. 2, he submits that the learned Tribunal has granted very less compensation towards all the heads covered under this issue.

4. On perusal of the impugned judgment and as has been recorded by the learned Tribunal, appellant had suffered grievous injuries and was treated at Sant Parmanand Hospital. He spent Rs. 10,000/- on treatment, Rs. 10,000/- on conveyance, Rs. 15,000/- on special diet, Rs. 18,000/- as attendant charges and would require Rs. 50,000/- as future treatment expenses. He was earning Rs. 30,000/- per month and claimed Rs. 25,00,000/- (twenty five lakhs) as compensation.

5. Learned counsel appearing on behalf of the appellant submits that the learned Tribunal has erred in considering permanent disability to the extent of 30% and not awarding compensation on account of disability. He further submits that the learned Tribunal has also erred in granting non-pecuniary heads on lower side.

6. It is not in dispute that the appellant was admitted in Sant Parmanand Hospital on 15.06.2012 for treatment of fracture shaft left humerus with intercondylar left humerus bone operation of bone reduction and internal fixation was carried out and the appellant was discharged on 18.06.2012 with medicines and advise of review. Thereafter, appellant continued his treatment on 26.06.2012, 06.07.2012 and 20.07.2012. On 30.08.2012, ROM exercise of elbow with hot fermentation was advised. On 04.10.2012, appellant was further advised exercise and physiotherapy. No further treatment record has been filed except the certificate dated 19.12.2012 as estimated expenditure for future treatment and temporary disability certificate to the extent of 30% recommending re-assessment after one year. All the above noted facts have been proved on record.

7. Accordingly, the learned Tribunal vide impugned order dated 15.05.2013 has granted the compensation as follows:-

1. Medical expenses:-

Petitioner has claimed to have spent Rs. 1,00,000/- but has filed bills for an amount of Rs. 87,221.94/- only. The same being connected with the treatment of the injuries received in the accident in question rounded to Rs. 87,300/- are allowed.

2. Future treatment expenses:-

PW4 stated that the petitioner was under his treatment and that his range of movement of his elbow at present was 15-70 degree and petitioner required surgery of bone arthrolysis of left elbow for which estimated expenditure of Rs. 50,000/- was required. With this operation, range of motion would improve. In cross-examination he gave bifurcation of the estimated amount as Rs. 13,000/- surgeon fee, Rs. 10,000/- surgery, and Rs. 25,000/- to Rs. 30,000/- other expenses. He also clarified that the said charges were as applicable to general

patient only. As per disability certificate petitioner had suffered temporary disability of 30% due to fracture of left forearm and elbow for which re-assessment was re-commended after 01 year. Therefore, it appears reasonable that petitioner would require future surgery to improve his disability. Accordingly, an amount of Rs. 50,000/- as future expenses is allowed.

3. Special diet and conveyance:-

No specific evidence in regard to special diet and conveyance has been led. However, in view of the nature of injuries and presuming total treatment period of about 04 months, a lump sum amount of Rs. 12,000/- is allowed under this head.

4. Loss of income:-

Petitioner has stated that he was earning Rs. 30,000/- p.m. and was owner of the Tempo but has not filed any supporting evidence. Accordingly, minimum wages of Rs. 8,814/- p.m. as applicable to a skilled worker on the date of accident in question is presumed as income of petitioner. As per treatment record and disability certificate petitioner was having disability in regard to his left arm. Petitioner was stated to be driving his own Tempo, therefore, it can be presumed that petitioner would not be able to drive his Tempo atleast for a period of 01 years as per disability certificate. Accordingly, loss of income for a period of 01 year is allowed. Total Rs. 8,814/- X 12=Rs. 1,05,768/-.

5. Pain and suffering:-

In view of the nature of injuries whereby petitioner had suffered fracture of left humerus and elbow bone resulting in 33% temporary disability and was under treatment for more than 04 months. Accordingly, a lump sum amount of Rs. 60,000/- is allowed under this head.

Total Rs. 87,300/- +Rs. 50,000/- + Rs. 12,000/- +Rs. 1,05,768/- + Rs. 60,000/-.
= Rs. 3,15,068/- (Rupees Three Lakh Fifteen Thousand and Sixty Eight Only).

8. I note, the Ld. Tribunal has granted just compensation considering the nature of disability, i.e., 30% temporary disability. Therefore, I do not find any discrepancy in the impugned order dated 15.05.2013; and interference is not warranted.

9. It is important to note that the disability certificate, dated 19.12.2012 has been issued with recommendations of re-assessment after one year. Therefore, the appeal is premature.

10. However, I make it clear that the liberty is granted to the appellant to file appeal, after the reassessment, if the disability is found to be permanent in nature. The instant appeal is disposed of on terms noted above.