
(2013) 08 DEL CK 0221
In the Delhi High Court
Case No : Mac A. No. 795 of 2005

Sh. Ramu Rai

APPELLANT

Vs

Sidharth International School and Another

RESPONDENT

Date of Decision : 29-08-2013

Acts Referred:

Citation : (2013) 08 DEL CK 0221

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Monika for Mr. S.N. Parashar, for the Appellant; D.K. Sharma, Advocate for Respondent No. 2/Insurance Company, for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.—The present appeal is preferred for enhancement of compensation amount against the impugned award dated 02.05.2005, whereby the learned Tribunal has granted compensation of Rs. 2,18,100/- with interest @ 6% per annum from the date of filing of the petition till the date of realization in favour of the appellant. Learned counsel appearing on behalf of the appellant has argued that the appellant had sustained permanent disability to the extent of 52%, despite that the learned Tribunal has considered functional disability as 25% instead of 52%.

2. Learned counsel submitted that as per the disability certificate Ex. PW1/X, the Medical Board has assessed the permanent disability suffered by the appellant as 52%. She submitted that the appellant took his entire treatment from GTB Hospital. PW1/1 to PW 1/12 is the treatment record of the appellant. As per the said record, the appellant suffered fracture of lateral end of right clavicle and fracture of right occipital bone of skull. PW3 Dr. Gopesh, Radiologist has deposed that as per the record appellant had suffered fracture of shaft femur.

3. Learned counsel further submitted that though the appellant was a Mechanical Engineer and was working with Mahalaxmi Press Tools Limited, however, the

learned Tribunal keeping in mind the minimum wages applicable to an unskilled worker as per the Minimum Wages Act, has considered income of the appellant as Rs. 2,600/- per month. She submitted that as the learned Tribunal has also considered 25% towards future prospects, therefore, the average monthly income of the appellant was considered as Rs. 3,900/-.

4. On the other hand, learned counsel appearing on behalf of the respondent No. 2/Insurance Company has submitted that the appellant did not produce any record to show that he had done any technical course from ITI. He has failed to produce any proof regarding his education and employment, therefore, the learned Tribunal has no option but to take the income in view of the Minimum Wages Act applicable to an unskilled worker at the prevalent time, i.e., Rs. 2,600/- per month.

5. As regards the disability is concerned, the appellant has suffered 52% permanent locomotor impairment in relation to his lower limb, but to this effect no doctor has been examined. Although, PW3 Dr. Gopesh, Radiologist has deposed that as per the record, appellant had suffered fracture of shaft femur, however, there is no material on record to prove that the appellant had suffered 52% functional disability qua the whole body. Accordingly, the learned Tribunal has rightly considered functional disability suffered by the appellant as 25%.

6. In view of the above discussion, in my considered opinion and in view of the dictum of Raj Kumar Vs. Ajay Kumar and Another, , the learned Tribunal has rightly considered the functional disability suffered by the appellant as 25%.

7. After going through the record and the impugned judgment, I note the learned Tribunal has failed to award just and reasonable compensation on account of special diet, conveyance and disfigurement. It is pertinent to note that the appellant suffered 52% permanent locomotor impairment in relation to his lower limb.

8. In the interest of justice, and for just and fair compensation, I grant Rs. 10,000/- each qua special diet, conveyance and disfigurement in addition to the amount granted by the learned Tribunal.

9. The enhanced amount of compensation of Rs. 30,000/- shall carry interest @ 6% as awarded by the learned Tribunal from the date of filing of the petition till the date of realization.

10. Respondent No. 2/Insurance Company is directed to deposit the enhanced compensation amount along with interest @ 7.5% per annum within five weeks from today with the Registrar General of this Court, failing which, appellant shall be entitled for penal interest @ 12% per annum on account of delayed payment.

11. On deposit, the Registrar General is directed to release the amount in favour of the appellant.

12. The instant appeal is allowed on the above terms. There is no order as to

costs.