
(2012) 09 DEL CK 0014
In the Delhi High Court
Case No : MAC. APP. 1006 of 2011

Shri Bhupinder Mehta

APPELLANT

Vs

Shri Purshottam and Others

RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:

Citation : (2013) ACJ 2517

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

Bench : Single Bench

Advocate : Vijay Wadhwa, for the Appellant; Suman Bagga, for R-3, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.

CM. APPL. 20671/2012 (Delay)

For the reasons as stated in the Application, the delay of 199 days in filing the Appeal is condoned.

The Application is allowed.

MAC. APP. 1006/2011

1. The Appeal is for enhancement of compensation of Rs. 5,58,963/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellant for having suffered injuries resulting in amputation of left leg above knee in a motor vehicle accident which occurred on 12.06.2009. In the absence of any Appeal by the driver, owner or the Insurer, the finding on negligence has attained finality between the parties.

2. Immediately after the accident, the Appellant was removed to Safdarjung Hospital with compound fracture of left femur. In order to save Appellant's life amputation of left leg above knee was done on 13.06.2009. The Appellant was

discharged from the hospital on 28.06.2009 with advice to attend Ortho OPD on 03.7.2009. The Appellant attended OPD on several dates including 03.07.2009, 17.07.2009 and 04.09.2009. On 04.09.2009, the Appellant was required to get a regular dressing with Neosporin. On 04.09.2009, he (the Appellant) was referred to rehabilitation department for some exercise and physiotherapy.

3. During inquiry before the Claims Tribunal, the Appellant claimed that he was working as a Denter and was getting a salary of Rs. 5,200/- per month. The Appellant was unable to prove his salary. The Claims Tribunal opined that since the Appellant was carrying out the vocation of Denter, the amputation of left leg above knee would substantially affect his vocation and thus granted compensation of Rs. 4,90,963/- towards loss of earning capacity on the basis of minimum wages, taking the loss of earning capacity as 80%. The compensation awarded is tabulated hereunder:-

Sl. No.

Compensation under various heads

Awarded by the Claims Tribunal

1.

Treatment Expenses

Rs. 8,000/-

2.

Pain and Suffering

Rs. 50,000/-

3.

Conveyance & Special Diet

Rs. 10,000/-

4.

Compensation on account of Loss of Earning Capacity due to Disability

Rs. 4,90,963/-

Total

Rs. 5,58,963/-

4. The following contentions are raised on behalf of the Appellant:-

(i) The Appellant was not granted any increase in the compensation towards future prospects/inflation. He was entitled to an increase of 30% on the basis of the judgment in Santosh Devi Vs. National Insurance Company Ltd. and Others, .

(ii) The compensation of Rs. 50,000/- awarded towards pain and suffering is on the lower side.

(iii) No compensation was awarded towards Attendant charges.

(iv) The Appellant proved estimate Ex. PW-1/11 with respect to the cost of knee prosthesis. He also examined PW-3 to prove the same. The Claims Tribunal erred in not granting any compensation towards purchase of artificial limb.

5. The trend of the Superior Courts is to award full and fair compensation. In the case of *Raj Kumar Vs. Ajay Kumar and Another*, , the Supreme Court observed that the object of awarding damages is to make good the loss suffered as a result of the wrong done as far as money can do in a fair, reasonable and equitable manner. Paras 5 and 6 of the report are extracted hereunder:-

5. The provision of the Motor Vehicles Act, 1988 ("the Act" for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. [See *C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others*, , *R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others*, and *Baker v. Willoughby*, 1970 AC 467.

6. In *Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and Another*, , the Supreme Court dealt with the case of disability of an engineering student. The Supreme Court observed that while awarding compensation in personal injury cases, an attempt should be made to put the injured in the same position as he was as far as money is concerned. In para 9 of the report, the Supreme Court held as under:

9. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered.

7. In *Nizam Institute of Medical Sciences Vs. Prasanth S. Dhananka and Others*, ,

the Supreme Court emphasized that cases of serious injuries in motor vehicle accident are worse than the death cases because the victim and his family suffers throughout life. Para 90 of the report is extracted hereunder:-

90. At the same time we often find that a person injured in an accident leaves his family in greater distress vis-?-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity.

LOSS OF EARNING CAPACITY

8. Learned Counsel for the Appellant conceded that the Appellant's income was not proved. In the absence of proof of income the Claims Tribunal took the minimum wages of an unskilled worker to compute the loss of earning capacity.

9. this Court in Rakhi v. Satish Kumar & Ors. (MAC. APP. 390/2011) decided on 16.07.2012, referred to the reports of the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, , Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and Santosh Devi Vs. National Insurance Company Ltd. and Others, and held that even in the absence of any evidence with regard to future prospects Santosh Devi provides for an increase of 30% towards inflation in the victims income in case of self employed persons and persons having fixed income.

10. Thus, the Appellant would be entitled to 30% increase in the income towards loss of earning capacity. Keeping in view the Appellant's vocation, the Claims Tribunal held that the loss of earning capacity would be 80%. I do not find any ground to interfere with this assessment of the Claims Tribunal. Thus, the loss of earning capacity comes to Rs. 6,38,252/-(3934/- + 30% x 12 x 13 x 80%).

PAIN AND SUFFERING

11. It is difficult to measure in terms of money the pain and suffering which is suffered by the claimant on account of serious injuries caused to him in a motor accident. Since the compensation is required to be paid for pain and suffering an attempt must be made to award compensation which may have some objective relation with the pain and suffering underwent by the victim of a motor accident. For this purpose, the Claims Tribunal and the Courts normally consider the nature of injury; the parts of the body where the injuries were sustained; surgeries (if any) underwent by the victim; confinement in the hospital and the duration of the treatment.

12. In case of Govind Yadav Vs. The New India Insurance Company Limited, , where a victim aged about 24 years suffered amputation of one leg above knee, a compensation of Rs. 1.5 lacs was awarded towards pain and suffering.

13. In the instant case, victim was aged 45 years. The amputation was carried out just one day after the accident and the Appellant was discharged from the hospital after 16 days. He responded well to the treatment. In the facts and circumstances, the Appellant would be entitled to a compensation of Rs. 1,00,000/- towards pain and suffering as against award of Rs. 50,000/- made by the Claims Tribunal.

ATTENDANT CHARGES

14. No evidence was produced by the Appellant as to the amount spent on engagement of an Attendant.

15. In Delhi Transport Corporation and Another Vs. Lalita, , 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 fast 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).

16. In the circumstances, I award a compensation of Rs. 6,000/-, (2,000/- x 3) towards Attendant charges for three months.

ARTIFICIAL PROSTHESIS

17. The Appellant deposed that he required artificial leg for his movement. He contacted M/s. Endolite India Ltd. for a suitable prosthesis. He was given an estimate Ex. PW-/11 for Rs. 3,59,200/-. The Appellant also examined PW-3 Kapil Kaushik, Material Executive from M/s. Endolite India Ltd. to prove the estimate Ex. PW-1/11.

18. It is urged by the Learned Counsel for Respondent Insurance Company that this was merely an estimate for purchase of knee prosthesis. The Appellant cannot be awarded compensation merely on this estimate.

19. PW-3 in this cross-examination denied that the Appellant did not require an

artificial limb. The Appellant would definitely need an artificial limb to carry out his day to day essential activities to some extent. Thus, I would award him a sum of Rs. 3,59,200/- towards the cost of purchase of an artificial limb.

20. The compensation awarded is re-computed as under:-

Sl. NO.

Compensation under various heads

Awarded by the Claims Tribunal

1.

Loss of Earning Capacity

Rs. 6,38,252/-

2.

Pain and Suffering

Rs. 1,00,000/-

3.

Attendant Charges

Rs. 6,000/-

4.

Artificial Limb

Rs. 3,59,200/-

5.

Treatment Expenses

Rs. 8,000/-

6.

Conveyance & Special Diet

Rs. 10,000/-

Total

Rs. 11,21,452/-

21. The overall compensation is thus enhanced from Rs. 5,58,963/- to Rs. 11,21,452/-.

22. Out of the enhanced compensation of Rs. 5,62,489/-, a sum of Rs. 2,03,289/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till

its payment. He will be entitled to interest on the cost of knee prosthesis, that is, Rs. 3,59,200/- w.e.f. 02.08.2010 only.

23. The enhanced compensation along with interest shall be deposited with the UCO Bank, Delhi High Court Branch, New Delhi within six weeks in the name of the Appellant.

24. Seventy Five percent of the compensation of Rs. 2,03,289/- shall be held in fixed deposit for a period of two years, four years, six years and eight years in equal proportion. Rest 25% shall be released on deposit.

25. The amount of Rs. 3,59,200/- along with interest shall be released to the Appellant by Pay Order or A/c Payee cheque in favour of M/s. Endolite India Ltd. as and when the Appellant places order with regard to the same and the requisition for payment of the amount is made by the said company.

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