

(2008) 01 DEL CK 0232
In the Delhi High Court
Case No : MAC App. No. 463 of 2004

Shri Sanjeev Chopra

APPELLANT

Vs

The New India Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 21-01-2008

Acts Referred:

Citation : (2008) 01 DEL CK 0232

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Atul Bandhu, for the Appellant; S.S. Hora, for the Respondent

Judgement

Kailash Gambhir, J.—By way of this appeal the appellant seeks to challenge the impugned order mainly on the ground that correct income of the appellant was not taken into consideration by the Tribunal and only meager amount of compensation of Rs. 1,07,000/- has been granted. The Tribunal has granted Rs. 15,000/- in favour of the appellant towards pain and agony. Similarly a meager amount of Rs. 5,000/- has been granted on account of loss of income and Rs. 5000/- towards special diet and conveyance. Appellant was working as Marketing Manager in Universal Hardware & Mill Store and was getting a sum of Rs. 5,000/- and 6,000/- per month. Besides, the said employment, the appellant was also working with M/s. S. Electronics as commission agent and therefore, earning a sum of Rs. 4,000/- per month. The appellant is B.Com Graduate but the tribunal has not taken into consideration the income as disclosed by the appellant since the documents were not filed by the appellant. The contention of the Counsel for the appellant is that Tribunal has erred in awarding the compensation amount since the appellant could not place any document as no such payments for commission were paid through any vouchers or receipts. Counsel for the the appellant contends that the appellant remained under the medical treatment for a period of 2 months and the court has awarded a meager amount of Rs. 15,000/- on account of pain & suffering and same is the compensation of meager amount of Rs. 5,000/- towards special diet and conveyance.

2. Per contra Mr. S.S. Hora, Counsel for the respondent contends that already the tribunal has been generous in awarding the compensation since the appellant did not produce any documentary evidence to substantiate his income, therefore, there is no option left with the tribunal but to assess the income of the appellant under the Minimum Wages Act.

3. I have heard Learned Counsel for the parties and have perused the record.

4. Perusal of the record shows that the appellant had received fracture injuries and he was admitted in Sanjeevan Hospital, Daryaganj and thereafter to another hospital at Spring Medos Hospital, East of Kailash and from there he was shifted to Ortho Nova Nursing Home and ultimately to Apollo Hospital where he remained admitted from 29.06.1997 to 02.07.1997 and therefore again on 02nd July 1997 he went in Ortho Nova Hospital where he was operated. He was discharged from Orthonova Hospital on 06th July 1997. An amount of Rs. 82,000/- has been awarded by the tribunal on account of medical expenses incurred by the appellant. It has been contended by the Counsel that once a nail which is a foreign element is inserted in the leg, there are every chances that the appellant may undergo a second operation for getting the nail removed. There is a possibility of undergoing an operation for the removal of nail. Since no evidence in this regard has been placed by the appellant, no separate amount of compensation can be considered for the said possibility of appellant undergoing a second operation. In any case of the matter that amount of sum of Rs. 15,000/- towards pain and agony appears to be quite meagre, the same is enhanced from Rs. 15,000/- to Rs. 25,000/-. Award of Rs. 5,000/- towards special diet and conveyance is enhanced to Rs. 10,000/-. The tribunal has taken into consideration the confinement of the appellant to bed for two months during which period, he was undergoing the medical treatment and was not able to discharge his routine duties and has awarded a sum of Rs. 5,000/- in this regard. However, I do not find any infirmity in determining the income of the appellant as no relevant evidence is placed on record to substantiate the monthly income of Rs. 5,000/- to Rs. 6,000/- from Universal Hardware or his source of earning came from M/s SH Electronics either. The Apex Court in Lata Wadhwa and Others Vs. State of Bihar and Others, has held as under:

In examining the question of damages for personal injury, it is axiomatic that pecuniary and non-pecuniary heads of damages are required to be taken into account. In case of pecuniary damages, loss of earning or earning capacity, medical, hospital and nursing expenses, the loss of matrimonial prospects, if proved, are required to be considered. In the case of non-pecuniary losses, loss of expectation of life, loss of amenities or capacity for enjoying life, loss or impairment of physiological functions, impairment or loss of anatomical structures or body tissues, pain and suffering and mental suffering are to be considered. But for arriving at a particular figure on each of the aforesaid heads, the claimant is duty-bound to produce relevant materials, on the basis of which, a determination could be made, as to what would be the best compensation.

5. I do not find any infirmity in the finding of the tribunal taking recourse to Minimum Wages Act for determining the income of the appellant. The appellant has received the award amount. Let differential amount be paid to the appellant by the respondent with up-to-date interest @ 7.5% per annum from the date of filing of petition till realisation.