
(2013) 12 DEL CK 0217
In the Delhi High Court
Case No : MAC. App. 472 and 504 of 2011

Tek Bahadur

APPELLANT

Vs

Ram Bharose and Others
 New India Assurance Co.
Ltd. Vs Tek Bahadur and Others

RESPONDENT

Date of Decision : 17-12-2013

Acts Referred:

Citation : (2013) 6 ILR Delhi 4804

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

Bench : Single Bench

Advocate : F.K. Jha, Mr. Anand Vardhan Sharma and Mr. V.S. Vashdev, for the Appellant; Anand Vardhan Sharma, V.S. Vashdev, for R-3 and Mr. F.K. Jha, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

G.P. Mittal, J.—These two Appeals arise out of a judgment dated 23.02.2011 passed by the Motor Accident Claims Tribunal (MACT-03, Dwarka Courts, New Delhi) (the Claims Tribunal) whereby a compensation of Rs. 12,34,260/- was awarded in favour of Tek Bahadur, for having suffered injuries in a motor vehicle accident which occurred on 29.01.2009. MAC APP. 472/2011 has been preferred by Tek Bahadur (hereinafter referred to as the Claimant) for enhancement of compensation whereas MAC APP. 504/2011 has been preferred by the New India Assurance Company Limited (the Insurance Company) stating that the compensation awarded is excessive and exorbitant.

2. On 29.01.2009 at about 7:15 a.m., while the Claimant was crossing the road of VRC colony and Shankar Vihar, he was hit by a speeding Lancer car bearing No. DL-9CC-5313. The Claimant was initially removed to R.R. Hospital, Delhi Cantt. He was found to have suffered multiple fractures of both bones, left leg with fracture of femur neck. The Claimant remained admitted in R.R. Hospital, Delhi Cantt. till 15.04.2009 where he was operated upon. Thereafter, he was again admitted in Command Hospital, Western Command, Chandi Mandir,

Chandigarh for further follow up. The Claimant claimed that he suffered 60% disability on account of the injuries suffered. The Claims Tribunal awarded the compensation under various heads which is extracted hereunder:-

3. It is urged by the learned counsel for the Claimant that the Claimant who was working as a Hawaldar in the Indian Army was prematurely discharged from the military services and the Claims Tribunal erred in awarding a compensation of only Rs. 11,89,260/- towards loss of income. His salary had increased to about Rs. 20,000/- at the time of his discharge and he should have been awarded full compensation for loss of income on the multiplier of 14, which was relevant to his age of 42 years at the time of his discharge; the compensation awarded towards pain and suffering is inadequate; no compensation has been awarded towards loss of amenities and inconvenience caused to him and the compensation awarded towards special diet and conveyance is highly disproportionate.

4. On the other hand, the learned counsel for the Insurance Company argues that the Claimant was discharged on completion of full service of 24 years. No evidence was produced by the Claimant to show as to how many more years he would have been continued in Army service as a Hawaldar. No evidence was produced that he was likely to be promoted. The disability certificate reflected only temporary disability in respect of his left lower limb, which cannot be taken as functional disability or loss of earning capacity. The compensation, it is urged, awarded towards loss of future income is excessive and exorbitant.

5. Since the claimant had claimed that he was discharged from the military service on account of the injury suffered by him, he was permitted to lead additional evidence to prove his premature discharge. The Claimant examined Mr. V. Karthikeyan Naik who deposed that the Claimant was boarded out from the army service as he was unfit for military service due to the accident. Neither any oral nor any documentary evidence was produced by the Claimant to show the further service years he was entitled to put in the Indian Army as a Hawaldar.

6. As per the documents placed on record, the Claimant had joined the military service on 18.02.1988. He was discharged from the service on 01.03.2012 although the instant accident occurred on 29.01.2009. The terms and conditions of JCOs/OR available on the website of the Indian Army are extracted hereunder:-

Terms and Conditions: JCOs/OR

7. Rank Structure and Age/Tenure/Service Limit for Retirement.

(a) Sepoys. Refer AI1/S/76 as amended and Min of Def Letter No. F14(3)/98/D(AG) dated 03 Sep 98.

(b) NCOs. Refer to Min of Def Letter No. F. 14(3)/98/D(AG) dt 03 Sep 98.

Note: Reserve liability of all NCOs is up to 51 years of age or two years after retirement, whichever is earlier.

7. Thus, it would be seen that a Hawaldar is liable to be discharged on completion of 24 years of service. The same is, however, extendable by two years by screening committee. Thus, at the most what the Claimant can claim is the salary for a period of two years at the salary last drawn by him for a period of two years because his service was extendable only by two years.

8. The disability certificate dated 09.02.2010 (Ex. PW-2/1) produced on record shows that the Claimant had suffered fracture of both bones, left leg on 29.01.2009. Open reduction and internal fixation of fracture was done. There was residual shortening of left leg by 1.5 cms. and there was stiffness of left knee and ankle joint. The disability certificate further reveals that the disability was assessed to the extent of 60% for one year and reassessment was recommended after one year.

9. In Raj Kumar Vs. Ajay Kumar and Another, , the Hon''ble Supreme Court emphasised that permanent disability and functional disability are two different things. The permanent disability may cause loss of earning capacity in different persons depending upon the nature of their profession, occupation or job, etc. etc. It was also emphasised that normally expert evidence ought to be taken to assess the percentage of functional disability of a person who has suffered any permanent disability. Para 19 of the report in Raj Kumar is extracted hereunder:-

19. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

10. It is well settled by a catena of judgments 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 Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and Another, , in para 9 the Supreme Court observed 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.

11. Although the Claimant was permitted to prove the loss of his income and exact functional disability by leading additional evidence during the pendency of the appeal, he was however, content to place the entire file on record concerning his treatment. Page 25 of the documents (Ex. A-2/1-181 collectively) produced on record gave details of the various army personnel who were not granted extension and were retired on completion of their service. The details of the Claimant are extracted hereunder:-

SI.

2.

No.

5346616A

Rank

Hav

Name

Tek Bahadur Gurung

Parent Unit

? GR

Present/ERE Unit

-

Med Cat

A3 (Permt)

P2 (Temp)

Date of Enrolment

18 Feb 88

Date of Retirement

29 Feb 12

Date of Pension docus to reach in Record

05 Jul 11

Date of reporting in 14 GTC (Depot Coy)

05 Feb 12

NOK for pension

Tulasa Pun (Wife)

Nationality

Nepali

Date of SOS

01 Mar 12

Screened/Not Screened

Extn not gtd

12. Before his discharge, the Claimant was issued a certificate dated 10.08.2011 which is extracted hereunder:-

CERTIFICATE OF CIVIL EMPLOYMENT

Certified that No. 5346616A Rank: HAV Name: Tek Badr. Pun Unit 1/4 GR, C/O 99 APO is unfit for military service but fit for appropriate civil employment as deemed suitable for present medical condition of the individual/existing diagnosis and pre placement medical examination.

13. Thus, taking these two documents together, what can be inferred is that the Claimant was entitled to an extension of two years if he had not suffered the injury resulting in placing him in low medical category. Hence, the Claimant would be entitled to loss of income for two years.

14. The Claimant has also not produced on record any reliable evidence to show the extent of functional disability suffered by him. What can be gathered from the disability certificate is that there was shortening of left leg by 1.5 cms. There was stiffness in left knee and left ankle. Unfortunately, even the extent of stiffness was not brought on record by the Claimant. As stated earlier, this Court even permitted the Claimant to produce additional evidence in the appeal, but in spite of all this, evidence was not brought in. In the circumstances, this Court will refrain from remanding the case to the Trial Court to make a fresh assessment as to the functional disability.

15. Considering the facts stated above, I would take the functional disability in case of the Claimant to be 30% as after his retirement from military service as a Hawaldar, he could have got an employment as a security supervisor or a similar job either in any security agency or in private sector. The minimum wages of a skilled worker or a Matriculate on the date of the Claimant's discharge i.e.

01.03.2012 were Rs. 9386. Thus, he would be entitled for compensation towards loss of earning capacity by giving him benefit of 30% disability (age being 42 years on the date of discharge). On account of loss of earning capacity the compensation comes to Rs. 6,14,970/- ($9386/- + 30\% \times 12 \times 14 \times 30\%$).

16. As per the last pay slip placed on record, the Claimant was getting a salary of Rs. 16,942/- per month as the time of the accident. At the time of recording of the statement of the Claimant as PW-1 on 27.08.2010, the Claimant was getting a salary of Rs. 20,000/- per month. As stated above, the Claimant would be entitled to a sum of Rs. 4,80,000/- (Rs. 20,000/- x 24) towards loss of income for two years.

17. Since the Claimant's treatment was in the military hospital, the Claimant admitted that he did not have to spend anything on his treatment. Considering the nature of injuries, period of admission in the hospital and confinement at home, I would further make a provision of Rs. 50,000/- towards pain and suffering, Rs. 50,000/- towards loss of amenities/inconvenience, Rs. 10,000/- towards special diet, Rs. 10,000/- towards attendant charges and Rs. 10,000/- towards conveyance charges for himself as well as for the attendant. The overall compensation awarded is computed as under:-

18. Thus the compensation of Rs. 12,34,260/- awarded by the Claims Tribunal is just and reasonable and does not call for any interference.

19. The compensation awarded shall be released in terms of the order passed by the Claims Tribunal.

20. Both the appeals stand disposed of accordingly.

21. The statutory deposit of Rs. 25,000/- shall be refunded to the Appellant Insurance Company in MAC APP. 504/2011. Pending applications also stand disposed of.