
(2012) 10 DEL CK 0410
In the Delhi High Court
Case No : MAC. APP. 52 of 2005

Vijay Kumar

APPELLANT

Vs

The State (NCT of Delhi) and Others

RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:

Citation : (2012) 10 DEL CK 0410

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

Bench : Single Bench

Advocate : S.K. Vashisth, for the Appellant;

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appeal is for enhancement of compensation of Rs. 5,56,000/- awarded in favour of the Appellant for having suffered injuries in a motor vehicle accident which occurred on 13.06.2000. In the absence of any Appeal by the driver and owner of the offending bus No. DL-1GB-3582, the finding on negligence has attained finality.

2. Immediately after the accident, the Appellant was admitted in Vimal Hospital. In the accident the Appellant had suffered crush injury on his right leg and knee joint, posterior and lateral compartment muscles were exposed, fibula was dislocated and exposed, and anterior tibia could not be palpated. Reconstructive surgery was performed on 13.06.2000. The Appellant was discharged on 22.06.2000 but without much relief. He was, therefore, admitted in Jaipur Golden Hospital from 12.07.2000 to 16.07.2000 where re-fixation femoral condyle was done (Discharge summary Ex. PW-1/B). He was again re-admitted in Jaipur Golden Hospital on 13.12.2000 for removal of femoral condyle with screw. The record Ex. PW-1/E reveals that the Appellant was admitted in Jaipur Golden Hospital from 27.11.2001 to 14.12.2001 where knee arthroscopy was done and quadriceplasty was done on 28.11.2001. Vide another discharge summary Ex. PW-1/F, the Appellant again remained admitted in this hospital from 06.08.2002

to 18.08.2002. He was issued disability certificate Ex. PW-1/D declaring him to be suffering from permanent physical impairment in relation to his right lower limb to the extent of 15% on account of post traumatic deformity of right lower limb with gross restriction of range of motion at knee and ankle joint.

3. The Claims Tribunal awarded a compensation of Rs. 5,56,000/- which is tabulated hereunder:-

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

(i) The deceased was working as a Kabari. The loss of earning capacity taken by the Claims Tribunal to the extent of 25% was on the lower side. The Appellant was entitled to be awarded addition of at least 30% towards inflation.

(ii) The compensation awarded towards pain and suffering, loss of amenities and diminished marriage prospects was on the lower side.

(iii) The Appellant was in and out of hospital for about 26 months. After successive surgeries the appellant had to undergo physiotherapy for several months. The compensation awarded towards special diet, attendant charges and conveyance charges was totally inadequate.

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 Maharajadhiraj of Burdwan, Udaychand Mahatab Chand Vs. Subodh Gopal 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.

8. In Kavita v. Deepak & Ors., Civil Appeal No. 5945/2012 decided on 22.08.2012, the Supreme Court laid down that an attempt should always be made to award adequate compensation not only for physical injury and treatment but also for the loss of earning and inability to lead a normal life and enjoy the amenities, which would have been enjoyed but for the disability caused due to the accident.

LOSS OF EARNING CAPACITY

9. The Appellant claimed that by doing the job of Kabari he was earning Rs. 50,000/- per annum and on account of disablement, he was unable to carry out his duties. The Claims Tribunal accepted his income to be Rs. 3,000/- per month although there was no documentary evidence in this regard. Any income above Rs. 50,000/- per annum at the relevant time was subject to payment of income tax. In the circumstances, even if, the Appellant was working as a Kabari, the Claims Tribunal's assessment of his income in the absence of any documentary evidence, cannot be faulted.

10. The Appellant had to work at his shop. Thus, the Claims Tribunal took the loss of earning capacity to be 25% although there was permanent disability to the extent of 50% on account of gross restriction of range of motion at knee and ankle joint. In the absence of any medical evidence, this finding cannot be

challenged.

11. At the same time, the Appellant was entitled to be given addition of 30% on account of inflation on the basis of the judgment of the Supreme Court in Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCALE 559;

12. The loss of earning capacity thus comes to Rs. 2,10,600/- (3,000/- + 30% x 12 x 18 x 25%) instead of Rs. 1,44,000/- assessed by the Claims Tribunal.

13. The Appellant was a young boy of 19 years. This accident took place in the year 2000. In case of Govind Yadav Vs. The New India Insurance Company Limited, in case of amputation of one leg above knee a compensation of Rs. 1.5 lacs each was awarded towards pain and suffering and loss of amenities in life and loss of marriage prospects. Considering the long duration of treatment, the compensation of Rs. 40,000/- awarded towards pain and suffering appears to be on the lower side; the same is raised to Rs. 50,000/-.

14. Similarly, compensation towards loss of amenities, loss of expectations of life and diminished marriage prospects totaling Rs. 40,000/- awarded by the Claims Tribunal is on the lower side; the same is enhanced to Rs. 75,000/-.

15. The Claims Tribunal awarded a lumpsum compensation of Rs. 10,000/- on account of special diet and conveyance. As stated earlier, the Appellant was in and out of hospital for almost 26 months. During this period he was admitted to hospital on six occasions. He had to undertake physiotherapy for a very long duration and had to spend on conveyance every time he went for it. He also needed an attendant whom he took to the hospital, to look after him and then to take him for physiotherapy.

16. In Delhi Transport Corporation and Another Vs. Lalita, , a Division Bench of this Court held that a victim cannot be deprived of compensation towards gratuitous services rendered by some family members for the benefit of the tortfeasor. In the circumstances, I award a compensation of Rs. 52,000/- (towards Attendant charges, i.e. @ Rs. 2,000/- for 26 months).

17. I would further make a provision of Rs. 20,000/- each towards special diet and conveyance as against a lumpsum compensation of Rs. 10,000/- awarded by the Claims Tribunal.

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

19. The compensation is thus enhanced from Rs. 5,56,000/- to Rs. 7,69,600/-.

20. The enhanced compensation of Rs. 2,13,600/- shall carry interest @ 7.5% per annum from the date of filing of the petition till its deposit.

21. Respondent No. 1 the State (NCT of Delhi) is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks which shall be kept in fixed deposit in any Nationalized Bank as per the Appellant's convenience.

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