

Anil Kumar Vs. Nizamuddin and ors

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Court : Rajasthan Jodhpur

Decided On : Jan-03-2014

Appellant : Anil Kumar

Respondent : Nizamuddin and ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :

JUDGMENT

: S.B.CIVIL MISC.

APPEAL NO.1128/2004 Anil Kumar versus Nizamuddin @ Nizam Chippa & ORS.Date of Judgment :: 03.01.2014 PRESENT HON'BLE Mr.JUSTICE ARUN BHANSALI Mr.Hari Singh for Mr.Manish Pitaliya, for the apellant.

Mr.Vijay Kumar Vyas, for the respondents.s ---- BY THE COURT: This appeal is directed against the judgment and award dated 12.12.2002 passed by Motor Accident Claims Tribunal, Chittorgarh ('the Tribunal').whereby, for the injuries suffered by the apellant Anil Kumar, the Tribunal has awarded a sum of Rs.85,000/- as compensation alongwith interest @ 9% per annum from the date of filing application for compensation ('the application') i.e.29.08.2000.

The facts in brief may be noticed thus: the appellant was travelling on a Motor Cycle bearing Registration No.RJ-09-M- 2227, when one Maruti Van bearing Registration No.RJ-09-C- 2699, which was being driven by respondent No.1

Nizamuddin, collided with the said Motor Cycle, resulting in the appellant alongwith one Rajkumar suffering injuries.

The application for compensation was filed by the appellant 2 seeking compensation for a sum of Rs.9,51,000/- for permanent disablement suffered by him.

A reply to the application was filed by the respondent-Insurer and the averments contained in the application were denied.

On behalf of the claimant, he himself was examined as AW-1 and exhibited 111 documents.

The Tribunal after hearing of the parties, came to the conclusion that the accident had occurred on account of rash and negligent driving by the driver of the Maruti Van, the injured had not contributed to the accident and the Insurer was liable for making payment of the amount of compensation.

The Tribunal while assessing the quantum of compensation, awarded a sum of Rs.26,187/- towards medical bills, which were filed as Exhibit - 11 to 106, Rs.1628/- towards conveyance expenses, for the period of hospitalization, the Tribunal awarded a sum of Rs.22,185/- so as to round off the entire amount for medicines and attendants expenses to Rs.50,000/-, Rs.10,000/- for mental agony, Rs.20,000/- towards 10% disablement and Rs.5,000/- towards loss of income during the period the claimant remained confined on account of the injury.

It is submitted by learned counsel for the appellant that the compensation awarded is wholly inadequate as the claimant underwent hospitalization/surgery twice, loss on account of 10% disablement has not been calculated by applying multiplier method and only a lump sum compensation of Rs.20,000/- has been awarded and, as such, the award impugned deserves to be modified and just and reasonable compensation be awarded.

3 Per contra, learned counsel for the respondent-Insurance Company submitted that the award impugned does not call for any interference as the Tribunal has awarded compensation based on the material available on record.

I have considered the rival submissions.

So far as the award of compensation for medicines and conveyance is concerned, the same based on documentary evidence i.e.Exhibit - 11 to 106, the Tribunal has awarded a sum of Rs.22,185/- towards attendants' expenses and nutritious diet for a period of 18 days, which cannot be said to be inadequate.

So far as the award of compensation for permanent disability based on the Disability Certificate (Exhibit -

107) is concerned, the Tribunal took into consideration the oral statement of the claimant, wherein he claimed that on account of the injuries suffered by him/permanent disablement, he was not able to do as much work of Hair Cutting as he was earlier able to do.

The Disability Certificate (Exhibit -107) has been issued by Dr.G.K.Mishra, Jr.

Specialist Orthopedics, M.G.Hospital, Bhilwara and does not appear to have been issued by a Medical Board.

Further, the disablement indicated is 10% without further elaborating the nature of such disablement.

The said Doctor G.K.Mishra was also not produced in the witness-box and was not subjected to cross-examination.

However, keeping in view that the claimant had undergone hospitalization twice and had suffered injuries, whereby, he had a fracture in the femur-bone, 4 the Tribunal has awarded a lump sum compensation of Rs.20,000/- for permanent disablement suffered by him.

In the facts and circumstances of the present case where the nature of disability was not clearly spelt out from the Disability Certificate and the Doctor, who gave the Disability Certificate, was not produced in the witness-box, it cannot be said that the award of lump sum compensation of Rs.20,000/- by the Tribunal is inadequate.

So far as the award of compensation for loss of income during the period of confinement is concerned, the award of Rs.5,000/- for a period of two months also cannot be said to be inadequate, so as to require interference by this Court.

In view of the above discussion, there is no substance in the appeal and the same is, therefore, dismissed.

(ARUN BHANSALI).J.

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