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Nikunj Wadhawan Vs. Jitender and ors

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Court : Delhi

Decided On : Jan-28-2014

Judge : Suresh Kait

Appellant : Nikunj Wadhawan

Respondent : Jitender and ors

Judgement :

$~15 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

28. h January, 2014 MAC.APP. 779/2012 NIKUNJ WADHAWAN ..... Appellant Represented by: Mr. H.S. Arora, Adv. Versus JITENDER & ORS ..... Respondents Represented by: Ms. Shruti Shukla, Adv. for R3. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

(Oral) 1. The instant appeal is directed against the impugned award dated 12.01.2012 whereby Ld. Tribunal has awarded compensation for a sum of Rs.10,61,541/- with interest @ 7.5% per annum from the date of filing of the petition till realization of the amount.

2. Vide the instant appeal, appellant is seeking enhancement of the compensation amount noted above.

3. Ld. Counsel appearing on behalf of the appellant / claimant has argued that PW5, Dr. Arun Yadav, Sr. Orthopaedic Surgeon, Bara Hindu Rao Hospital, deposed that as per disability certificate Ex.PW3/16, the appellant had received 50% permanent disability qua the whole body. However, ld. Tribunal has erred in considering 35% functional disability.

4. Ld. Counsel further submits that though the appellant had past history of Epilepsy, however, Insurance Company has not led any evidence as to what would be the effect of the Epilepsy on permanent disability of the injured.

5. As per Ex.PW2/1, appellant had no seizure for the last one year. Ld. Counsel submits that when there was no seizure of the Epilepsy for the last one year, then reducing the economic disability from 50% to 35% does not arise.

6. Ld. Counsel further argued that the appellant was 25 years old young unmarried boy, was helping and assisting his father in the business of medicines and earning Rs.12,000/- per month. Mother of the injured had already pre-deceased and there is no other member in the family to look after him, except his father.

7. Ld. Counsel for the appellant submits that the Ld. Tribunal ought to have considered the functional disability as 50%. On this issue he has relied upon a case of Raj Kumar v. Ajay Kumar and Anr. (2011)1SCC343 wherein in Para 5 it is held as under:

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.

8. The Ld. Counsel further submits that in Para 6 of the case of Raj Kumar (Supra), the Apex Court has further held as under:

The heads under which compensation is awarded in personal injury cases are the following: Pecuniary damages (Special Damages) (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and

miscellaneous expenditure. (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising: (a) Loss of earning during the period of treatment; (b) Loss of future earnings on account of permanent disability. (iii) Future medical expenses, Non-pecuniary damages (General Damages) (iv) Damages for pain, suffering and trauma as a consequence of the injuries. (v) Loss of amenities (and/or loss of prospects of marriage). (vi) Loss of expectation of life (shortening of normal longevity).In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

9. days. Ld. Counsel further submits that appellant remained in hospital for 24 Since the date of accident, he is leading life with the help of wheelchair. The conveyance charges will continue throughout his life and in such condition, he requires special diet. However, Ld. Tribunal has granted Rs.9,000/- towards conveyance and special diet, which is on a lower side.

10. Keeping in view the disability received by the injured, I am of the considered opinion that ld. Tribunal has considered meagre amount of Rs.9,000/- towards conveyance and special diet. Therefore, I enhance to Rs.30,000/- towards the heads noted above.

11. As the issue of compensation towards marriage prospects is concerned, it is true that due to the injuries received in the accident, the marriage of the appellant could not take place. He has lost the enjoyment of married life and becoming of a father. However, I am of the considered opinion that Ld. Tribunal after considering all the facts has rightly awarded Rs.2,00,000/- towards marriage prospects. I do not find any discrepancy on this issue.

12. So far as the issue of disability is concerned, as per the disability certificate, the Disability Board has specifically mentioned that the injured received 50% permanent disability qua the whole body. He has become paralytic. He is leading

his life with the help of a wheelchair and is unable to do anything. However, there was no occasion before the Ld. Tribunal to reduce the disability from 50% to 35%. Accordingly, the disability is considered as 50%.

13. Consequently, the compensation amount comes as under:Sr. No.i. ii. iii. Heads of compensation Compensation Compensation granted by the ld. granted by this Tribunal Court. Loss of income on account of leave Future loss of income Attendant Rs.11,859/month MAC.APP. 779/2012 per Rs.11,859/month Rs.4,48,300/- Rs.6,40,386/- per Charges iv. Pain and suffering Rs.1,00,000/- Rs.1,00,000/- v. Loss of amenities Rs.1,00,000/of life Rs.1,00,000/- vi. Loss Expectation life of Rs.1,00,000/of Rs.1,00,000/- vii. Loss of Marriage Rs.2,00,000/prospects Rs.2,00,000/- viii. Conveyance Diet Charges Rs.30,000/- ix. For Medical Rs.81,882/Treatment Total & Rs.9,000/- Rs.10,61,541/- Rs.81,882/Rs.12,74,627/- Resultantly, this court enhanced the compensation amount to Rs.2,13,086/- (Rs.12,74,627 - Rs.10,61,541).

14. The enhanced compensation amount shall carry interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

15. Accordingly, the respondent No.3/Insurance Company is directed to deposit the enhanced compensation amount with the Registrar General of this Court within a period of five weeks from today, failing which, appellant/claimant shall be entitled for penal interest @ 12% per annum on account of delayed payment.

16. On deposit, the Registrar General is directed to release the amount in favour of the appellant/claimant on taking necessary steps by him.

17. In view of the above, the appeal is allowed. SURESH KAIT, J.

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