

Ramesh Vs. Mool Chand and ors

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Court : Delhi

Decided On : Nov-25-2014

Judge : Jayant Nath

Appellant : Ramesh

Respondent : Mool Chand and ors

Judgement :

\$~A-12 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

25. h November 2014. % + MAC.APP. 1242/2012 RAMESH Through
Appellant Mr.Sanjeev Srivastava, Advocate. versus MOOL CHAND & ORS
Through Respondents Ms.Kirti Sethi, Mr.J.P.N.Shahi, Advocates for R-4.
CORAM: HON'BLE MR. JUSTICE JAYANT NATH

ORDER

2511.2014 % 1. By the present appeal the appellant seeks enhancement of compensation as awarded by the award dated 13.02.2012.

2. The brief facts which led to the filing of the claim petition and the present appeal are that on 19.07.2004, the appellant was standing on a bus stop at Ashram. He was hit by a tractor said to be driven by respondent No.1 in a rash and negligent manner and he suffered injuries.

3. Based on the evidence on record the tribunal concluded that the accident took place on account of rash and negligent driving of respondent No.1.
4. On compensation, the tribunal awarded a total compensation of Rs.3,05,597/- as follows:- On account of medical expenses Loss of future income on account of disability Future loss of income Pain & Suffering Special diet Conveyance Total 5.
Rs.11,477 Rs.2,04,120 Rs.20,000/Rs.40,000/Rs.15,000/Rs.15,000/Rs.3,05,597
Learned counsel appearing for the appellant submits that the compensation awarded is inadequate. He firstly submits that the appellant has suffered 66% permanent disability in respect of the left upper limb. He submits that the appellant was working as a mason with MCD. The Tribunal has assessed the income of the appellant based on Minimum Wages Schedule for an unskilled labour at Rs. 2,863/- and has wrongly held that the appellant suffered temporary disability and assessed the functional disability at 66%. Hence, the Tribunal has wrongly awarded a compensation of Rs.2,04,120/- for loss of future income on account of disability. It is urged that the disability was actually permanent and the functional disability has to be assessed at much higher level. It is next urged that the appellant on the date of the accident was 55 years old and while assessing loss of future income on account of disability, the Tribunal has not enhanced the assessed income by 15% on account of future prospects relying upon the judgment of the Supreme Court in the case of Rajesh & Ors. vs. Rajbir Singh & Ors., (2013) 9 SCC54 It is lastly submitted that the compensation for nonpecuniary damages is also on the lower side.
6. Learned counsel for respondent No.4 submits that the compensation is just, fair and reasonable and the assessment of functional disability is in order.
7. I may first look at the evidence placed on record. PW-1 in his affidavit by way of evidence states that he was working as a mason with MCD and was getting a salary of Rs.8,500 per month. He further states that he has taken leave from the Department for a long time.
8. Nothing is filed by the appellant to show that he was working as a mason with MCD Department and earning Rs.8,500/- per month. No proof is filed to show that he was a mason. Even if he was working for MCD, no description of the office

where he was working and the nature of work he is performing is mentioned. No salary slip, appointment letter, etc. is filed. The evidence is completely silent.

9. In the light of the evidence placed on record, the Tribunal was justified in assessing the income of the appellant based on Minimum Wages of an unskilled worker.

10. On functional disability, reference may be had to the disability certificate. The disability certificate issued by Pt.Madan Mohan Malviya Hospital dated 30.07.2011 states as follows:

This is certify that Shri Ramesh s/o Kanda Swami aged 65 year male with registration No.120857 is a case of physical disability and has 66% (sixty six percent) permanent (physical impairment) in relation to his left upper limb. This condition is likely to improve after treatment. Reassessment is recommended after a period of two years.

11. The Tribunal noted that the accident occurred in July 2004 and as per the disability certificate dated 30.07.2011 the injured is likely to be temporary disabled for two years. The contention of the appellant that the disability is permanent cannot be accepted in the light of the clear wording of the disability certificate reproduced above.

12. Accordingly, given the nature of the evidence placed on record by the appellant, there are no reasons to differ with the view taken by the Tribunal assessing the functional disability at 66%.

13. On the issue of future prospects, the age of the appellant as noted by the Tribunal in the Award is 55 years. The voter card of the claimant has also been placed on record as Ex. PW1/4. According to the voter card the injured was 45 years old on 01.01.1994, hence on the date of the accident he would have been around 55 years old. Relying upon the judgment of the Supreme Court in the case Rajesh & Ors. vs. Rajbir Singh & Ors. (supra), it would be appropriate if in the facts and circumstances of the present case 15% is added to the income of the injured towards future prospects as the injured is below 60 years of age.

14. Thus, loss of future income on account of disability now amounts to Rs. 2,34,654/- $[(2863+15\%) \times 66\% \times 9 \times 12]$.

15. On non-pecuniary damages, PW1 in his affidavit by way of evidence states that he remained as indoor patient in the Hospital from 18.07.2004 to 23.07.2004. The appellant has suffered 66% physical impairment in relation to left upper limb.

16. In the light of the above fact, I award a sum of Rs.50,000/- for loss of amenities and disfigurement. The compensation amount is accordingly enhanced.

17. The compensation amount would now reads as follows: On account of medical expenses MAC APP. 1242/2012 Loss of future income on account of disability Future loss of income Pain & Suffering Loss of Amenities & Disfigurement Special diet Conveyance Total 18. Rs. 2,34,654/Rs.20,000/Rs.40,000/Rs. 50,000/Rs.15,000/Rs.15,000/Rs.3,86,131/- The above amount shall be deposited by respondent No.4 along with up to date interest @ 7.5% p.a. from the date of the filing of the claim petition till deposit in court before the Registrar General of this court within six weeks from today. On receipt of the amount, the same shall be released to the appellant 19. The appeal stands disposed of. JAYANT NATH, J
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