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Rajeeva Vs. Riyaz Ahmed

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Court : Karnataka

Decided On : Jun-02-2016

Judge : Mohan M. Shantanagoudar &Amp; R.B. Budihal

Appeal No. : Miscellaneous First Appeal No. 6408 of 2011 (MV)

Appellant : Rajeeva

Respondent : Riyaz Ahmed

Judgement :

Mohan M. Shantanagoudar, J.

1. The judgment and award dated 10-11-2010 passed by the V Additional District and Sessions Judge, Mysore in M.V.C. No. 1582/2010 is appealed against by the claimant seeking enhancement of compensation.

2. The records reveal that the appellant has suffered the following injuries :

1. Fracture of left tibia and fibula;

2. Chip fracture of right tibia with degloving injury;

3. Fracture neck of scapula with supra scapular injury;

4. Traction injury of right Brachial plexes injury, in the accident occurred on 6-12-2006. The wound certificate is at Ex. P5. The Tribunal on assessment of

compensation into various heads, awarded the total compensation of Rs. 1,49,900/-.

3. Having heard the learned Advocate for the appellant and after perusing the records, we proceed to enhance the compensation, since we find that the compensation awarded by the Tribunal is on the lesser side.

4. The Doctor, who treated and operated the appellant is examined as P.W. 2. He has deposed that the appellant was an inpatient in BGS Apollo Hospital from 7-12-2006 to 18-12-2006; the appellant was subjected to ORIF of fracture shaft of left tibia with interlocking nail and osteotomy of fibula; wound deoridment primary wound closure on right leg was also done. It is clear from the wound certificate as well as the evidence of the Doctor - P.W. 2 that the appellant has suffered fracture of left tibia and fibula, chip fracture right tibia and fracture neck of scapula. He has undergone operation. The appellant must have suffered lot of pain and agony not only immediately after sustaining accidental injuries, but also thereafter for some period. It is also borne-out from the evidence of PW. 2 that the appellant was inpatient again from 4-6-2008 to 7-6-2008 for removal of implants. Thus, it is clear that the appellant has undergone two operations. Hence, the claimant is awarded a sum of Rs. 50,000/- under the head of pain and suffering instead of Rs. 40,000/- as awarded by the Tribunal.

5. The Tribunal, in our considered opinion is not justified in awarding Rs. 1,600/- only towards attendant charges. The same needs to be enhanced to Rs. 7,000/- having regard to the cost of escalation and the prevailing rate of attendant charges during relevant point of time.

However, we find that the Tribunal has rightly awarded a sum of Rs. 64,300/- under the head of medical expenses, inasmuch as the said amount is spent by the appellant during treatment.

6. Since the appellant has taken treatment not only as inpatient, but also as out patient and as he had to travel to the hospital number of times, inasmuch as he has suffered many fractures, he must have incurred lot of expenses towards transportation and extra nourishment charges. Hence, he shall be awarded Rs.

13,600/- towards transportation and extra nourishment charges-instead of Rs. 4,000/- as awarded by the Tribunal.

The Tribunal on assumption that the appellant has taken at least two months rest during the period of earning, has awarded Rs. 10,000/- towards loss of income during laid-up period. In our considered opinion, since the appellant has undergone operations on two occasions, he must have taken rest at least for about four months without doing any job. To that extent he should be compensated. Therefore, he shall be awarded Rs. 20,000/- under the head of loss of income during laid up period instead of Rs. 10,000/- as awarded by the Tribunal.

7. The Tribunal has rightly decided that there will be no difficulty for the appellant to do work on computer, inasmuch as he has not suffered any functional occupational disability. The same is supported by the PW.2 -Doctor. Thus, in our considered opinion, the Tribunal has rightly not awarded any compensation under the head of loss of future earning capacity.

However, PW.2 - Doctor has deposed that the movement of right knee and left knee is restricted by 10 degrees and it would be painful for the appellant to squat cross-legged. He has further deposed that there is stiffness of right upper rd leg. Though he has not deposed that the appellant cannot walk, he has deposed that the appellant suffers from restriction at the time of walking and doing the work while squatting on the floor. The Tribunal has awarded Rs. 30,000/- under the head of loss of amenities and permanent disability. This amount appears to be on the lower side. The same needs to be enhanced to Rs. 60,000/-.

Front the aforementioned facts and figures, it is clear that the appellant is entitled to the total compensation of Rs. 2,14,900/- (Rupees Two Lakhs Fourteen Thousand Nine Hundred Only).

In view of the above, it is clear that the appellant is entitled to the enhanced compensation of Rs. 65,000/- (Rupees Sixty Five Thousand Only). The enhanced compensation of Rs. 65,000/- (Rupees Sixty Five Thousand Only) shall carry interest at the rate of 6% per annum as awarded by the Tribunal from the date of

petition till the date of realisation.

Appeal is allowed-in-part accordingly. The award of the Tribunal below is modified to the said extent.

Appeal partly allowed.

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