Kailash Nagar Vs. Karan Singh and Others

Kailash Nagar Vs. Karan Singh and Others

SooperKanoon Citation : sooperkanoon.com/1183740

Court : Delhi

Decided On : Feb-25-2016

Judge : R.K. Gauba

Appeal No. : MAC Appeal No. 141 of 2009

Appellant : Kailash Nagar

Respondent : Karan Singh and Others

Judgement :

Oral:

The appellant, then aged 34 years, had suffered injuries in a motor vehicular accident that occurred at about 8.45 p.m. on 17.11.2005 at bus stand of Sikandra Road, Mandi House, New Delhi upon being hit by bus of Delhi Transport Corporation (DTC) bearing registration No. DL1PB 1714 (the offending vehicle) statedly driven by the first respondent herein, it being admittedly insured against third party risk by the third respondent herein. He filed claim petition seeking compensation, inter alia, claiming that he had suffered disability to the extent more than 70 %, on account of amputation of the right lower limb below knee. The claim petition was registered by the motor accident claims tribunal (the tribunal) as suit No. 91/2006 and decided by judgment dated 3rd December, 2008 awarding compensation in the sum of Rs. 6,04,720/-0 with interest @ 7 % per annum computed as under:-

Compensation on account of pain and suffering	Rs. 50,000/-
Compensation on account of medicines, Medical treatment	Rs. 25,000/-
Compensation on account of conveyance and special diet	Rs. 15,000/-
Compensation on account of permanent disability and loss of income	Rs. 4,14, 720/-
Compensation on account of physical disfigurement	Rs. 50,000/-
Compensation on account of loss of enjoyment and amenity of life	Rs. 50,000/-
Total	Rs. 6,04,720/-

2. The appellant, feeling aggrieved, has come up with the appeal at hand seeking enhancement of the compensation raising four issues:-
(i) Disability has been wrongly treated as restricted to 60 % in relation to the whole body;

(ii) The income has been under-assessed;

(iii) The award under non-pecuniary heads of damages, viz. pain and suffering, physical disfigurement and loss of amenities of life is on the lower side; and

(iv) The interest awarded is inadequate

3. While it is true that the appellant in his petition had claimed that he had suffered disability to the extent of 70-100% in relation to "working activities", it is also true that he relied on the disability certificate (Ex.PW- 1/3) issued by medical board of Lok Nayak Hospital, Government of NCT of Delhi stating that he has suffered 60 % permanent disability in relation to the lower right limb which has been amputated below knee. The appellant had been earning his livelihood as an actor in TV serials or stage performances. Amputation of the lower right limb below knee would unduly affect his earning capacity. But, given the nature of the task that he

was performing prior to the accident, having regard to the principles laid down in Rajkumar v. Ajay Kumar (2011) 1 SCC 343, it cannot be said that the functional disability would be to the extent of 70-100 %. Thus, the tribunal is found to have taken an appropriate view on this subject and the grievance raised cannot be upheld.

4. On income, the tribunal considered the evidence adduced and decided instead to adopt minimum wages of skilled worker as the benchmark on the following reasoning:-

"Petitioner has deposed that he was an artist approved by Doordarshan and had worked/participated/taken part in various local films. He had also worked with Star Plus, Star Sport, MTV DD 1, DD Bharti etc. He is a Diploma Holder in television Arts and worked in various TV Serials. His certificates and testimonials issued by various TV channels are Ex.PW 1/8 to 18. At the time of accident he was earning more than Rs. 20,000/- per month and was getting salary of Rs. 10,000/- per month from Ranjit Studio and same are Ex. PW1/19 and 20. To prove his salary petitioner examined PW3 Sh. Ranjit Singh. Proprietor, Ranjit Studio, 7 Tansen Marg, Bangali Market who deposed on oath that petitioner was temporarily employed with him for temporary job. In fact his two serials were being telecasted on TV and he had employed the petitioner for acting as well as production control. He had employed the petitioner for one year i.e. from April, 2004 to March, 2005. He also stated that the actors like the petitioner are of ten required by them as and when their serials is being telecasted and had the petitioner not met with this accident he would have employed him this time also. After going through all the documents ie. Certificates issued by different T.V. Programmer, diploma of petitioner regarding his artist, the income of the petitioner was not permanent and he has not filed any permanent salary proof. In the absence of any such proof the safest course is to resort to the minimum wages. In November, 2005 the minimum wages of skilled worker was Rs. 3,589.90 so the same is taken as Rs. 3,600/-."

5. It is noted that though he claimed that he was a diploma holder in television arts, no such document has been produced in support. The certificates of participation in various programmes involving engagement of appellant in acting

do not reveal the remuneration received or the periodicity or value thereof. The certificate from M/s Ranjit Studio as brought on record through Ranjit Singh (PW-3) cannot be accepted as a cogent proof of regular income to the extent of Rs. 10,000/- per month for the reason the witness was unable to furnish any record of the studio showing regular employment of the appellant with the said entity.

6. In above facts and circumstances, the view taken by the tribunal in assessing the income cannot be faulted.

7. This Court, however, finds that the award of compensation under the above mentioned three non-pecuniary heads of damages is inadequate. In Jakir Hussein v. Sabir and Ors. (2015) 7 SCC 252 the claimant had suffered 55 % of disability due to severe compound fractures. The Supreme Court awarded Rs. 1,50,000/- each under the heads of loss of amenities of life and pain and agony. Noticeably, the accident in that case had occurred in November, 2008, which is in close proximity of the accident involved in the present case. Indeed, the physical disfigurement would unduly also have a bearing on the continued engagement of the appellant as a stage or TV artist. Thus, instead Rs. 50,000/- each under the above mentioned three heads, compensation in the sum of Rs. 1,50,000/- is awarded.

8. In the result, the compensation deserves to be increased by net Rs. 3,00,000/-.

9. There is merit in the contention that interest at 7 % per annum is inadequate. Having regard to the consistent view on the subject taken by the Supreme Court in a series of cases, the interest is increased to 9 % per annum from the date of filing of the petition till realization. [Kaushnuma Begum v. New India Assurance Co. Ltd. (2001) 2 SCC 9; Supe Dei v. National Insurance Co. Ltd. (2009) 4 SCC 513; Municipal Corporation of Delhi, Delhi v. Association of Victims of Uphaar Tragedy and Ors. (2011) 14 SCC 481; Basappa v. T. Ramesh (2014) 10 SCC 789; Syed Sadiq etc. v. Divisional Manager, United India Ins. Company (2014) 2 SCC 735; Surti Gupta v. United India Insurance Company and Ors. 2015 (3) Scale 795; Kumari Kiran v. Sajjan Singh (2015) 1 SCC 539]

10. The award is modified as above.

11. It is directed that the insurance company shall deposit the enhanced award with the tribunal within 30 days of this judgment whereupon the said entire deposit shall be released to the appellant (the claimant) in the form of fixed deposit receipt in an interest bearing account in a nationalised bank in his name for a period of 10 years with a right to draw monthly interest.

12. The appeal is disposed of in above terms.

13. The tribunal's record be returned.

Appeal disposed of.