

Virender Kumar vs.mukesh Kumar & Ors

Virender Kumar vs.mukesh Kumar & Ors

SooperKanoon Citation : sooperkanoon.com/1216358

Court : Delhi

Decided On : Jul-23-2018

Appellant : Virender Kumar

Respondent : Mukesh Kumar & Ors

Advocate for Def. : Mr. Pankaj Seth

Advocate for Pet/Ap. : Ms. Uma Khokhar

Judgement :

* + 1. IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision: July 23, 2018 MAC.APP. 62/2012 VIRENDER KUMAR Appellant Through: Ms. Uma Khokhar, Advocate versus MUKESH KUMAR & ORSRespondents Through: Mr. Pankaj Seth, Advocate for respondent No.3-Insurer CORAM: HON'BLE MR. JUSTICE SUNIL GAUR JUDGMENT (ORAL) Impugned Award of 20th September, 2011 grants compensation of `17,41,600/- with interest @ 7.5% per annum to appellant/injured- Virender Kumar, aged 26 years, on account of grievous injury suffered by him in a vehicular accident, which took place on 3rd May, 2008. The facts, as noticed in the impugned Award, are as under:-

"The petitioner has filed the present claim petition by way of the present petition under Section 166 and 140 of the Motor Vehicle Act seeking compensation for permanent disability caused by the accidental injuries sustained by the petitioner. It is the case of the petitioner that on 03.05.08 at about 12 O'clock, he was

standing on extreme left of road near Karala Village at Kirala T Point near Murli Sweets. In the meanwhile, a Tata Truck LP-2515, bearing No.HR-55F- 9373 which was being driven in a rash and negligent manner MAC.APP. 62/2012 Page 1 of 6 came from Kanjhawala side and was going towards Mundka side, suddenly hit him from its left side and ran over his both legs. It is further alleged that after the occurrence of this accident, the driver of the offending vehicle had stopped the truck and was caught red handed on the spot by the public persons who were present there. The friend of petitioner and other people called the PCR and gave information regarding grievous injuries and fracture on both his legs and other parts of body. After some time of the accident, petitioner was admitted in Sanjay Gandhi Memorial Hospital, Delhi by his friend. It is alleged that in the hospital, doctors provided the petitioner immediate medical help but his condition continued therefore, on 04.05.08, to be critical and, petitioner was taken to Maharaja Aggarsen Hospital by his family members for providing better medical facilities, where 30 bottles blood was transfused to the petitioner and he remained admitted at Agrasen Hospital as an indoor patient for one month. It is further the case of the petitioner that his right leg was operated by the doctors and a rod was inserted and again his second operation was done and skin grafting of his right leg was conducted again. The surgery of his left leg was postponed. It is the case of the petitioner that again on 19.06.2008, his second operation was conducted and he was again discharged the hospital on 23.06.08 and thereafter, he is bed ridden in his house. It is claimed that the petitioner has incurred medical expenditure of more than Rs. 3 lacs on his treatment and his treatment is still continuing. At the stage of evidence, petitioner deposed that he has incurred expenditure of Rs. 5.5 Lacs and later during further proceedings, some more medical bills have been filed. The FIR No.75/2008 dated 03.05.08 under Section

IPC at PS Kanjhawala was the driver/respondent No.1, and the driver was arrested. It is registered from against MAC.APP. 62/2012 Page 2 of 6 the case of the petitioner that the offending Truck was being driven by respondent No.1 at a very high speed in a rash, negligent and reckless manner, as a result of which, it hit the petitioner causing him to fall down on the road thereby sustaining grievous in permanent disability. resulting injuries 2. To render the impugned Award, learned Motor Accident Claims Tribunal (hereinafter referred to as the Tribunal)

has relied upon evidence of appellant-injured and as per the Disability Certificate (Ex. PW2/118), Injured had suffered 96% permanent disability in relation to both lower limbs and the Tribunal has assessed the functional disability at 80%. The breakup of compensation awarded by the Tribunal is as under:-

"Loss of earning capacity Medical expenses Attendant Charges Conveyance and special diet Pain and sufferings `11,01,600/- ` 5,00,000/- ` 20,000/- ` 20,000/- ` 1,00,000/- Total ` 17,41,600/

Learned counsel for appellant-Injured submits that the quantum of compensation granted is inadequate and it needs to be suitably enhanced. She further submits that the medical expenses of more than `9 lacs were incurred, but the Tribunal has erred in granting `5 lacs only towards the medical expenses. It is further submitted that the attendant charges of `20,000/- is wholly inadequate. Attention of this Court is drawn to additional evidence of Dr. Hans U. Nagar (AW-2) and the evidence of appellant-Injured (AW-1) regarding medical expenses incurred during MAC.APP. 62/2012 Page 3 of 6 the pendency of this appeal as well as in respect of future medical expenses. So, enhancement of compensation is sought in this appeal.

4. On the contrary, learned counsel for respondent-Insurer supports the impugned Award and maintains that the compensation granted is just and proper.

5. Upon hearing and on perusal of impugned Award and the evidence on record as well as the additional evidence led, I find that the Tribunal has relied upon the final medical bills while excluding the duplicate and provisional bills and so, on its basis, medical expenses of `5 lacs have been granted to appellant which are found to be justified. As regards attendant charges, I find that no tangible evidence has been led on this aspect. However, the attendant charges of `20,000/- granted by the Tribunal under this head is quite meager and it is accordingly enhanced to `1 lac. The compensation granted under the head of special diet and conveyance charges appears to be reasonable and is thus maintained. However, compensation granted under the head of pain and suffering appears to be on lower side and it is accordingly enhanced from `1 lac to `3 lacs as Injured had suffered 80% disability and is bed-ridden. The Tribunal has erred in not granting any compensation under the head of loss of amenities of life. In the facts and

circumstances of this case, it is deemed fit to grant compensation of `3 lacs to appellant-Injured under the head of loss of amenities of life. Under the head of loss of earning capacity, the Tribunal has granted `11 lacs odd, which I find to be reasonable and is thus maintained.

6. As far as compensation granted under the head of future medical expenses is concerned, I find that appellant-Injured has placed on record MAC.APP. 62/2012 Page 4 of 6 medical bills (Ex.AW colly.) to the tune of `2,39,209/- and another set of medical bills (Ex.AW colly.) are of `5,17,150.52/-. Thus, the total medical expenses already incurred by appellant during the proceedings before the Tribunal are of `7,56,359.52/-, which is rounded off to `7,56,360/-, which have not been taken into consideration by the Tribunal because these bills were produced at the final stage of hearing. It is so evident from trial courts order-sheet of 25th July, 2011. In the considered opinion of this Court, appellant is entitled to aforesaid expenses so incurred. As regards estimate for future medical treatment, there is evidence of Dr. Hans, which reveals that he does not stand by the estimate for the surgery given by him. Otherwise also, it has come in evidence of this witness (AW-2) that the estimate does not have any comparative quotation from Sama Hospital. In this view of this matter, it is deemed appropriate to permit appellant to obtain future medical treatment from the hospital having cashless facility which is on the panel of respondent-Insurer and the future medical expenses so incurred be forwarded by the said hospital directly to respondent-Insurer, who shall transmit the expenses incurred directly to the concerned panel hospital of respondent-Insurer.

7. In view of aforesaid, the compensation payable to Injured as reassessed as under: - Loss of earning capacity Medical expenses Additional medical expenses Attendant Charges Conveyance and special diet `11,01,600/- ` 5,00,000/- ` 7,56,360/- ` 1,00,000/- ` 20,000/- MAC.APP. 62/2012 Page 5 of 6 Pain and sufferings Loss of amenities of life Total ` 3,00,000/- ` 3,00,000/- ` 30,77,960/

Consequently, the compensation amount payable stands enhanced from `17,41,600/- to `30,77,960/-. The enhanced compensation be deposited by Insurer with the Tribunal within six weeks from today. A Three Judge Bench of Supreme

Court in a recent decision of Jagdish v. Mohan and Others, (2018) 4 SCC571 has granted interest @ 9% per annum on the awarded compensation and so, appellant is also entitled to interest @ 9% per annum. Accordingly, re-assessed compensation (except additional medical expenses) shall carry interest @ 9% per annum. The interest on the additional medical expenses shall be from the year 2013 till the realization at the same rate of interest i.e. 9% per annum. The enhanced compensation be disbursed by the Tribunal in the ratio and manner as indicated in the impugned Award.

9. With aforesaid directions, this appeal is disposed of. (SUNIL GAUR) JUDGE
JULY23 2018 s MAC.APP. 62/2012 Page 6 of 6

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com