

Sirajuddin vs.om Prakash & Ors(united India Ins Co Ltd)

Sirajuddin vs.om Prakash & Ors(united India Ins Co Ltd)

SooperKanoon Citation : sooperkanoon.com/1220731

Court : Delhi

Decided On : Jan-18-2019

Appellant : Sirajuddin

Respondent : Om Prakash & Ors(united India Ins Co Ltd)

Judgement :

\$~30 * % IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

18. h January, 2019 + MAC.APP. 387/2018 SIRAJUDDIN Through Mr.Varun Sarin, Mr.Aakash Kundra, Appellant versus Advocates. OM PRAKASH & ORS(UNITED INDIA INS CO LTD) Through Mr.Sankar N. Sinha, Advocate Respondent

JUDGMENT

(ORAL) 1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.6,03,523/- has been awarded to the appellant. The appellant is seeking enhancement of the award amount.

2. The accident dated 30th March, 2017 resulted in the amputation of left limb above the knee of the appellant. The appellant remained hospitalized from 30th March, 2017 to 17th April, 2017. The amputation of left lower limb resulted in 85% permanent disability to the appellant relating to his left lower limb.

3. The Claims Tribunal awarded Rs.2,15,000/- towards the medical expenses, Rs.15,000/- towards conveyance, special diet and attendant charges, Rs.57,408/-

towards loss of income during treatment, Rs.40,000/- towards pain and suffering, Rs.25,000/- towards loss of amenities and enjoyment of life, Rs.10,000/- towards disfiguration, Rs.2,41,115/- towards MAC.APP.387-2018 Page 1 of 5 loss of future earning capacity/future income. The total compensation awarded is Rs.6,03,523/-.

4. Learned counsel for the appellant urged at the time of the hearing that the Claims Tribunal has not awarded any compensation towards the artificial limb. It is further submitted that the Claims Tribunal has taken the functional disability as 42% whereas the loss of earning capacity of the appellant is 100%. Learned counsel for the appellant urged at the time of the hearing that the Claims Tribunal has awarded grossly inadequate compensation towards pain and suffering, loss of amenities of life and disfiguration. Reliance is placed on *Master Mallikarjun v. Divisional Manager, The National Insurance Company Ltd.*, 2013 ACJ2445 It is further submitted that the compensation awarded under other heads is on lower side and warrants enhancement.

5. Learned counsel for the respondent submits that the Claims Tribunal has rightly assessed the functional disability of the appellant as 42% which does not warrant any enhancement. It is further submitted that the compensation awarded under the other heads is also fair and reasonable.

6. Vide order dated 30th May, 2018, this Court directed the Committee appointed by this Court in MAC.APP.1134/2017 to examine the appellant and advise about the artificial limb to be fixed, including the name of the supplier as well as the cost of the artificial limb.

7. Mr. Pankaj Gupta, learned amicus curiae in MAC.APP.1134/2017 has handed over the report of the Committee which is taken on record. As per the report of the Committee, the appellant has been recommended for artificial limb costing Rs.2,92,772/- from Ideal Artificial Limb Solution. The aforesaid artificial limb has a life of five years and would require MAC.APP.387-2018 Page 2 of 5 repair/maintenance thereafter, which would further incur the cost of approx. Rs.30,000/-. The appellant is awarded Rs.3,22,772/- (Rs.2,92,772 + Rs.30,000) towards cost of artificial limb.

8. The Claims Tribunal has awarded Rs.40,000/- towards pain and suffering, Rs.25,000/- towards loss of amenities of life and Rs.10,000/- towards disfiguration which are on lower side. The compensation towards pain and suffering is enhanced from Rs.40,000/- to Rs.1,00,000/-, compensation for loss of amenities of life is enhanced from Rs.25,000/- to Rs.1,00,000/-, compensation for disfiguration is enhanced from Rs.10,000/- to Rs.50,000/- and Rs.1,00,000/- is awarded towards inconvenience, hardships, disappointment, frustration, mental stress, dejection and unhappiness in future life, etc..

9. The Claims Tribunal has taken the functional disability of the appellant as 42%. The appellant is present in Court on a wheelchair and he submits that he was working as a salesman in spectacles shop at the time of the accident but is unable to do any work after the accident. The present functional disability is almost 100%. However, the functional disability after installation of the artificial limb is taken as 65%. The Claims Tribunal has taken minimum wages of Rs.9,568/- whereas the minimum wages of an unskilled worker at the time of the accident were Rs.13,350/-. Taking the minimum wages of Rs.13,350/-, applying the multiplier of 5 according to the age of the appellant and taking the functional disability as 65%, the loss of earning capacity is computed as Rs.5,20,650/-/-. The compensation towards loss of income during treatment is enhanced from Rs.57,408/- to Rs.80,100/- as the minimum wages of an unskilled worker at the time of accident was Rs.13,350/- . MAC.APP.387-2018 Page 3 of 5 10. The total compensation of Rs.15,38,552/- is awarded to the appellant as per the breakup given hereunder:-

"S.No.Heads Claims Tribunal High Court 1.

2.

3.

4.

5.

6.

7. Medical expenses Rs.2,15,000/- Rs.2,15,000/- Conveyance, special diet and attendant Rs.15,000/- Rs.50,000/- charges Loss of income during treatment Rs.57,408/- Rs.80,100/- Pain and suffering Rs.40,000/- Rs.1,00,000/- Loss of amenities and enjoyment of life Rs.25,000/- Rs.1,00,000/- Disfiguration Rs.10,000/- Rs.50,000/- Inconvenience, hardships, disappointment, Nil Rs.1,00,000/- frustration, mental stress, dejection and unhappiness in future life, etc.

8. Loss of future earning capacity/future Rs.2,41,115/- Rs.5,20,650/- income 9. Cost of artificial limb Nil Rs.3,22,772/- Total Rs.6,03,523/- Rs.15,38,552/- 11. The appeal is allowed and the compensation award is enhanced from Rs.6,03,523/- to Rs.15,38,552/-. The appellant is not entitled to the interest on Rs.3,22,722/- awarded towards cost of artificial limb. Interest @ 9% per annum is therefore, awarded on the amount of Rs.12,15,780/- (Rs.15,38,552/- - Rs.3,22,772/-) from the date of institution of the claim petition i.e. 02nd June, 2017.

12. Learned counsel for the appellant has handed over two photographs of the appellant. The same are attached to this order as Annexure A.

13. Respondent No.3 is directed to deposit the enhanced award amount along with up to date interest with the Registrar General of this Court within six weeks. MAC.APP.387-2018 Page 4 of 5 14. List for disbursement of the compensation amount on 29th March, 2019.

15. The appellant shall open a joint account along with his wife near the place of his residence and shall produce the passbook of the savings bank account as well as PAN card and Aadhaar card of the appellant and his wife on the next date of hearing. The wife of the appellant shall remain present in Court on the next date of hearing. The concerned bank is directed not to issue any cheque book and/or debit card to the appellant and if the same has already been issued, the concerned bank is directed to cancel the same and make an endorsement on the passbook that no cheque book or debit card shall be issued to appellant without the permission of this Court. The concerned bank of the appellant shall permit the appellant or his wife to withdraw money from their savings bank account by means of a withdrawal form. The appellant shall produce the copy of this order before the

concerned bank whereupon the bank shall make an endorsement on the passbook. The appellant shall produce the original passbook of the savings bank account with the necessary endorsement on the next date of hearing.

16. The photographs of the appellant attached to this judgment as Annexure A shall not be uploaded on the website of this Court.

17. Copy of this judgment be given dasti to counsel for the parties under the signature of the Court Master. JANUARY18 2019/dk J.R. MIDHA, J.

MAC.APP.387-2018 Page 5 of 5

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