Suresh Kumar Vs. Ravi Kishan and Ors.

Suresh Kumar Vs. Ravi Kishan and Ors.

SooperKanoon Citation : sooperkanoon.com/49308

Court : Delhi

Decided On : Mar-05-2015

Judge : G.P. Mittal

Appellant : Suresh Kumar

Respondent : Ravi Kishan and Ors.

Advocate for Def. : Mr. Shoumik Mazumdar

Judgement :

$-9 * IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on:

5. h March, 2015 + MAC.APP. 1228/2012 SURESH KUMAR Through: ..... Appellants Mr.O.P. Manie, Advocate versus RAVI KISHAN & ORS. Through: ..... Respondents Mr. Shoumik Mazumdar, Advocate for Respondent no.3. CORAM: HON'BLE MR. JUSTICE G.P.MITTAL

JUDGMENT
G. P. MITTAL, J.

(ORAL) 1. The Appellant has filed the appeal for enhancement of compensation of `90,000/- awarded to him for having suffered injuries in a motor vehicular accident which occurred on 01.06.2006 at 9:15 am when the Appellant was crossing a road.

2. In the absence of any appeal preferred by the driver/owner or the insurance company, the finding on negligence has attained finality.

3. The following contentions are raised by the learned counsel for the Appellant: (i) The appellant suffered fractured tibia right leg. He was under treatment for a long period and underwent two surgeries. The compensation awarded towards pain and suffering, attendant charges and loss of income is on the lower side; (ii) No notice was issued to the injured/Respondent No.2 herein to produce the driving license of the driver. Hence, Respondent no.3 failed to prove that there was willful and conscious breach of the terms and conditions of the insurance policy in respect of which the insurance company was exonerated. It is urged that the Appellant has not been able to recover the compensation paid from the insurer of the vehicle although, the vehicle involved in the accident was duly insured.

4. On the other hand, the learned counsel for Respondent no.3 supports the impugned judgment but states that the compensation awarded is much more than reasonable and just. It is stated that the driver was challaned for driving the vehicle without a valid licence under Section 3/181 of the Motor Vehicles Act, 1988; the breach of the terms and conditions of the insurance policy has been sufficiently established. Thus, the Respondent was rightly exonerated.

5. First of all, I shall take issue of quantum of compensation. It is proved on record that immediately after the accident, the Appellant was rushed to Safdarjung Hospital. He was discharged after POP cast. He followed up treatment with the Safdarjung Hospital for six months OPD Card (Ex.PW-1/4) reveals that it was the case of non-union of bone. The Appellant, therefore, got himself treated from a private Orthopedic Surgeon in Ram Katori Hospital, District Aligarh. The Appellant deposed that on account of the injury suffered by him, he could not attend to work for a period of one year. This part of the Appellants testimony was not challenged in the cross-examination. The Claims Tribunal dealt with the claim of compensation in paras 14 to 17 of the impugned judgment which are extracted here under:

COMPENSATION TOWARDS MEDICAL EXPENSES14 The petitioner has filed the medical documents Ex. PW1/1 to Ex. PW1/4. As per the documents, he sustained fracture in his right tibia. His treatment continued till 26.05.07. He has filed the bills Ex.PW1/5 to Ex.PW1/16 for Rs.42570/. Looking into the injuries and the medical bills, I award Rs. 43,000/to the petitioner towards medical expenses. COMPENSATION TOWARDS PAIN AND SUFFERINGS15 The petitioner sustained fracture in his right tibia. He followed up his treatment for long i.e. for about one year. Considering the injuries he sustained, I award Rs.25,000/to the petitioner towards pain and sufferings. SPECIAL DIET, CONVEYANCE AND ATTENDANT CHARGES16 The petitioner after discharge continued his treatment as an OPD patient till 26.05.07. He was advised special diet for early recovery. Injuries were such that he might have taken the help of some attendant at least for one month. I, award Rs. 10,000/- to the petitioner towards special diet, conveyance and attendant charges. COMPENSATION TOWARDS LOSS OF INCOME17 The petitioner used to do private service and earn Rs. 4000/-p.m. He sustained fracture on his right tibia. Although he has stated that he did not go to his place of work for about one year but keeping in view the injuries, he sustained, he might have taken bed rest at least for three months. I therefore, award Rs.12,000/-to the petitioner towards loss of income.

6. Since non-union of the bone was reported by the Safdarjung Hospital in December, 2006 i.e. almost six months after the accident, the Appellant did not take the risk and was not happy with the treatment in Government Hospital; that is why he contacted Dr. Rakesh Aggarwal, an Orthopedic Surgeon in Private Hospital. He was operated upon on 24.02.2007 when nails and screws were put. The screws were removed after three months of surgery on 09.05.2007 (Ex.PW-1/8). In view of this, the compensation awarded towards loss of income, pain and suffering, special diet, conveyance and attendant charges is less. I hereby award the following compensation:Sl. No.Compensation under various heads 1. Treatment 43,000/- 2. Loss of Income 48,000/- 3. Pain and Suffering 50,000/- 4. Conveyance 10,000/- 5. Special Diet 10,000/- 6. Attendant charges 10,000/Total 7. Awarded by this Court (in `) ` 1,71,000/- The overall compensation is hence, raised from `90,000/- to `1,71,000/-.

8. Thus, the compensation stands enhanced by `81,000/-. The appellant shall be entitled to interest @7.5% p.a on enhanced compensation.

9. As far as liability of insurer is concerned, the Claims Tribunal erred in holding that there was conscious and willful breach of the terms and conditions of the insurance policy on the part of the insured simply on the ground that the driver (Respondent No.1) was challaned under Section 3/181 of the Motor Vehicles Act, 1988. No notice was issued by Respondent No.3 /insurer asking Respondent no.2 to produce the driving license of the driver. The owner(insured) might have come forward to prove that he had seen the drivers license and taken steps to avoid the breach of the terms and conditions of the policy. In this connection, reference may be made to the judgment of this Court in Oriental Insurance Company Limited v. Rakesh Kumar and Others, 2012 ACJ1268 10. Since the insurer failed to prove the conscious and willful breach of terms and conditions of the policy, it cannot avoid liability. The entire compensation of `1,71,000/- shall be paid along with interest, as awarded by Respondent no.3 insurance company less the amount, if any, recovered by the Appellant from the owner of the vehicle.

11. The balance compensation of `81,000/- shall be deposited by Respondent No.3 within six weeks.

12. The appeal is disposed of in above terms.

13. Pending applications stand disposed of. (G.P. MITTAL) JUDGE MARCH05 2015 RS