

Pradeep Mullick Vs. Sher Singh and Ors

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Court : Delhi

Decided On : Nov-27-2014

Judge : Jayant Nath

Appellant : Pradeep Mullick

Respondent : Sher Singh and Ors

Judgement :

§~6 * IN THE HIGH COURT OF DELHI AT NEW DELHI + % MAC.APP. 33/2010
Date of decision:27.11.2014 PRADEEP MULLICK Through: Appellant Mr. Sanjeev Srivastava, Advocate versus SHER SINGH & ORS Through: Respondents Ms. Manjusha Wadhwa, Advocate for R-3. CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

(Oral) 1. The present appeal is filed by the claimant seeking release of the compensation as per award passed by the Tribunal dated 14.07.2009.

2. The brief facts are that the appellant Pradeep Mullick on 21.04.1997 while riding his two wheeler scooter was going from Rohini to his office at Srinivaspuri, New Delhi. When the appellant was standing at the signal at Naraina Chowk on Ring Road, New Delhi waiting for the signal to turn green suddenly a blue line bus driven by respondent no.1 rashly, negligently and recklessly at a very high speed, without blowing any horn hit some scooterists including the appellant, some cyclists and another bus. The appellant suffered injuries.

3. Based on the evidence on record, The Tribunal held that the accident took place due to rash and negligent driving of the driver of the offending vehicle.

4. On compensation, the Tribunal has awarded a total compensation of Rs.90,000/- details thereof is as follows:-

5. Loss of wages Rs.45,000/- Pain and suffering and amenities and enjoyment of life Medical expenses and conveyance and some conventional amount towards special diet Partial or permanent disablement compensation Total Rs.20,000/- Rs.5,000/- Rs.20,000/Rs.90,000/-

Learned counsel appearing for the appellant submits that the compensation is totally inadequate. He submits that pursuant to permission granted by this Court additional evidence has been led of AW-1 Dr. Arun Yadav, Senior Orthopaedic Surgeon who has proved the disability certificate of the appellee as Ex. AW1/1 which mentions the disability of 64 % of left lower limb and left upper limb of the appellant. He submits that in the light of disability certificate the functional disability has to be assessed by this Court and he further submits that it should be 50%. He next submits that the Tribunal wrongly assessed the income of the appellant. He submits that as per evidence on record, including the salary certificate he was receiving Rs.3,42,000/- per annum. He submits that the Tribunal has assessed the income at Rs.20,000/- per month wrongly. Hence he submits that for the purpose of computing loss of wages for 75 days as well future MAC APP. 33/2010 loss of wages Page 2 of 8 affected because of permanent disability suffered in this accident, the salary Rs.3.40 lakhs per annum be taken as the appropriate salary. He submits that as far as non pecuniary damages are concerned, complainant has been compensated for pain and sufferings as well as deprivation of amenities and enjoyment of life on a extremely lower side. Considering the suffering of the claimant this should have been much higher.

6. Learned counsel appearing for the respondents submits that the award is in order. She submits that income of the appellant after the accident increased. Further there is no functional disability suffered by the appellant when the accident took place in the year 1997. The disability certificate is now proved in the year 2014. Hence she submits that there is suspicion that the disability is not co-related to the accident. She submits that disability certificate is not sought for when the matter was pending before the Tribunal.

7. I will first deal with the contention of the learned counsel for the appellant regarding functional disability. As per the disability certificate Ex. AW1/1 issued by Hindu Rao Hospital, the appellant has 64% permanent disability in relation to left lower limb and left upper limb.

8. Learned counsel appearing for the appellant has drawn my attention to affidavit of the appellant/PW1 by way of evidence filed before the Tribunal, which read as follows:

Due to injuries/fractures of my wrist/fingers, the main nerve has been damaged resulting in loss of flexation of left side index finger and thumb as also affecting precision on movement. As such I am unable to type at the computer which has immensely affected my working capacity which is an essential pre-requisite for a software/computer professional. Due to fracture of left knee with multiple cuts on Motor Nerve, foot drop has happened and I am unable to move about or take up walking properly and have to wear special handcuff shoes provided by AIIMS hospital. I was about to fly to U.K. in connection with my official job a little after the day of accident and was to get a salary of 1400/- pounds per month in addition to the salary I was getting in India but due to the injuries I lost this opportunity owing to restricted movements. My memory and eye-sight has sufficiently received a set back due to multiple fractures of my skull and similarly bleeding of the ears has reduced my audibility to a great extent. Thus this accident has made me physically handicapped in various spheres of life. Even at times, I am unable to button up my shirt and am to depend upon others for such petty necessities of life.

9. There is no cross-examination of the appellant on this part of evidence by way of affidavit. However, in his cross-examination he has further deposed about loss of income suffered as follows:

Presently I am working in Pvt. Firm Keane India Ltd. and at present I am getting Rs.5.5 lacs per annum. My treatment is still continue in Bara Hindu Rao. I have brought medical documents today, the copy of which is Ex. DX. Before the treatment at Bara Hindu Rao treatment, all documents of treatment I have already filed alongwith affidavit. I have taken last treatment in America from the year 1998 till 2000. I have not brought the passport today but I can file. I went to America on

HIB visa. I have not taken any medical policy against treatment at abroad. In America I started working there due to my financial hardship, I started the job in Syntel Inc 2800 Liver Noise Michigan America. I do not remember at present the number of policy. I went abroad after resigning the job of IIS Infotech Ltd., I resigned on 17.04.1998 I have submitted by resignation letter with the company. I am not having the copy of the resignation letter.

10. In the light of the above facts it is clear that the salary of the appellant has actually increased after the accident. As per his averment he was getting Rs.3.4 lacs per annum in the year 1997 when the accident took place. In his cross examination which took place on 20.09.2003 he has admitted that the salary has increased to Rs.5.5 lacs per annum. In view of the evidence of the appellant it is clear that the appellant has not suffered any functional disability. However, given the nature of injuries suffered and the nature of his profession, the injury would hamper his promotional chances and future growth as a Software Engineer.

11. This is also clear from the evidence of the appellant by way of affidavit as follows:

That I am sufficiently qualified person. I am B.A. (Hons.) in Mathematics and possessing Diploma in Computer Software and have gained an experience of 14 years in the field. I had a bright future and was likely to be promoted as an Associate/Full fledged Consultant after years and would have been offered a salary of Rs.5,00,000/-p.a. The accident has not only affected my bright promotional chances as stated above but I have also lost an opportunity to go in abroad in U.K. putting me in heavy financial losses.

12. Regarding functional disability, the Supreme Court in the case of Raj Kumar vs. Ajay Kumar, (2011) 1 SCC343 culled out the methodology for determining functional disability in paragraph 14 held as follows:

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60 per cent. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the

other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100 per cent as in the case of a driver or carpenter, nor 60 per cent which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand....

13. For the purpose of computing his loss of income due to loss of opportunities/promotional chances I assess the functional disability at 30%.

14. As far as salary part is concerned, there is a letter on record from his employer dated 11.06.1997 stating that in recognition of the performance of the injured his salary has been revised from 1.04.1997 as per annexure enclosed. The annexure mentions the salary of Rs.3,42,000/- per annum. This letter dated 11.06.1997 is generated after the accident i.e. 21.04.1997.

15. The employer was not summoned to give evidence. This certificate which obviously has been generated after the date of accident which took place on 21.04.1997 does not inspire confidence. There is no reason why the employer was not summoned. The bank statements could also have been filed. I see no reason to dis-agree with the findings recorded by the Tribunal that the appellant had a salary of Rs.20,000/- per month.

16. As per the claim petition and his appellant would be 36 years evidence placed on record the on the date of accident. Hence the compensation payable for loss of functional disability amounts to Rs.10,80,000/- [20,000 x 12 x 15 x 30%].

17. There is no merit in the contention of the learned counsel for the respondents on the contention that the disability of the appellant cannot be connected with the injuries sustained. The accident has taken place on 21.04.1997. The disability certificate is dated 11.11.2009 which has been proved on record only in the year 2014. AW1 Dr. Arun Yadav further states that on medical examination of the

appellant a medically handicapped certificate was issued on 11.11.2009 and the accident took place on 21.04.1997. He has further stated that the Board has examined the appellant and on the basis of injuries sustained by the appellant and on medical examination of the appellant, a medical certificate was issued. No doubt he further states that he cannot say that the injuries had occurred due to the accident which took place on 21.04.1997 or any other accident thereafter till 11.11.2009.

18. In the absence of anything to the contrary on record there is no reason to doubt that the disability certificate is not co-related to the accident which took place on 21.04.1997.

19. Now I come to the issue of non-pecuniary damages. In view of the injuries suffered by the appellant, I increase the compensation for pain and suffering, loss of amenities, etc. from 20,000/- to 50,000/-.

20. The Tribunal has also awarded loss of wages for 72 days, I award a sum of Rs.10,000/- as attendant charges for these 75 days. Similarly for medicines/conveyance/special diet, I increase compensation from Rs.5000/- to Rs.15,000/-. The total compensation is now will be as under:- Loss of wages Rs.45,000/- Pain and sufferings Rs.50,000/- Medical expenses Rs.15,000/- Attendant charges Rs.10,000/- Loss of income on Rs.10,80,000/account of disability Rs.12,00,000/Total 21. The respondent No.3/ the insurance company may deposit the additional compensation before Registrar General of this court @7.5% per annum from the date of filing of the present petition till passing of the award within six weeks from today. On receipt the same shall be released to the appellant in the same manner as done by the Tribunal. I disallow the interest on the subsequent period for the period of pendency this appeal as the appellant has taken his own time in leading evidence of AW1 and the insurance company should not suffer for the delay in proving the disability certificate which was obtained in 2009.

22. The appeal stands disposed of. JAYANT NATH, J NOVEMBER27 2014 An