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Baboo Vs. Ashok Kumar and ors.

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Court : Delhi

Decided On : Mar-22-1991

Reported in : 44(1991)DLT297

Judge : Santosh Duggal, J.

Acts : Motor Vehicles Act, 1939 - Sections 110D

Appeal No. : First Appeal No. 12 of 1974

Appellant : Baboo

Respondent : Ashok Kumar and ors.

Advocate for Pet/Ap. : Deep Mala and; Slil Paul, Advs

Judgement :

Santosh Duggal, J.

(1) This appeal was filed in-the year 1974 for enhancement of the compensation awarded by means of award dated 31st August 1973 The cause of action was an injury caused to a child aged about 5' years by the car driven by Ashok Kumar, respondent No. 1. The injuries were loss of four- front teeth and some other facial injuries for which the child was treated in Irwin Hospital, New Delhi. It is on record that the father of the child did not have to incur any expense on the treatment or medicine of the child so long as he was in hospital for about ten days. The

evidence of the father that he incurred expenses thereafter on medicines of the child was not supported by any documentary evidence, such as vouchers or cash memos, showing purchase of medicines or any other expense. Already a sum of Rs. 500.00 on account of expenses and Rs. 3,('0).00 by wav of general damages had been awarded i:i favor of the appellant. The photograph proved by the father as PW5 during proceedings in the claim petition of the child. vhich I have perused on t!ie case reJord. does not show any disfigureiix.t of the face or any other permanent facial injury.

(2) Learned counsel for respondent No. 4 rightly argued that the teeth were milk teeth. At the time of accident, the age of the child was 5' years and in the normal course he would have got the teeth.

(3) The Court directed the counsd for the appellant to produce him in Court to satisfy as to whether there .was any permanent scar or effect of the injuries left but inspire of time being taken, firstly of one month, then five days and then yesterday, the appellant has not been produced. In view of ihis, an adverse inference can be drawn against the appellant that tliere is nothing to show by way of permanent facial defect or injury or even scar.

(4) For all these reasons, I do not think that there is any case for entertaining the appeal f'r enhancement of the compensation when the appellant could not be produced in Court inspire of directions given by the Court.

(5) The appellant has not prosecuted the appsal diligently because according to Ms. Deep Mala, the appellant was not found available at tho address given and he had not intimated his change of address.

(6) For all these reasons I do not find any merit in this appeal. The same is accordingly dismissed.

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