

Suresh Kumar Sharma Vs. Pramod Kumar Sharma and ors.

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SooperKanoon Citation : sooperkanoon.com/701312

Court : Delhi

Decided On : Sep-12-2003

Reported in : I(2004)ACC231

Judge : S.K. Mahajan, J.

Acts : Workmen's Compensation Act; Motor Vehicles Act

Appeal No. : FAO No. 605/2001 and CM 88/2002

Appellant : Suresh Kumar Sharma

Respondent : Pramod Kumar Sharma and ors.

Advocate for Def. : L.C. Goyal, Adv. for Respondent No. 2

Advocate for Pet/Ap. : Bhupesh Narula, Adv

Disposition : Appeal allowed

Judgement :

S.K. Mahajan, J.

CM NO.88/2002

1. This application has been filed for condensation of one day's delay in filing the appeal. For the reasons stated in the application, I am satisfied that delay in filing

the appeal was not deliberate and there was sufficient cause for not filing the same in time. I, accordingly, allow the application and condone the delay of one day in filing this appeal. The application stands disposed of.

FAO No. 605/2001

2. ADMIT.

3. With the consent of the parties, matter has been heard and disposed of by this order.

4. The appellant has filed this appeal for enhancement of compensation awarded by the Motor Accident Claims Tribunal for the injuries sustained by the appellant in a road accident caused by the rash and negligent driving of the offending vehicle.

5. The only point argued by learned counsel for the appellant is that the appellant had lost his left eye completely which under the Workmen's Compensation Act amounted to 30% loss of earning throughout his life. It is submitted that even the medical certificate issued by the hospital has assessed 30% disability to the appellant, however, the Tribunal has observed that 30% disability to the eye cannot be considered to be 30% disability of the whole body and has not assessed compensation in accordance with the guidelines and the settled law on the subject. The other point argued by learned counsel for the appellant is that the proceedings before the Tribunal were not delayed because of the appellant but it was because of respondent No. 2 having been first proceeded ex-parte and opportunity having been given later on to the said respondent to cross-examine the witnesses produced by the appellant that delay was caused in the disposal of the petition before the Tribunal.

6. As per the medical certificate issued by the hospital placed on record, there was complete loss of one eye of the appellant in the accident and there was 30% disability. As per Schedule I to the Workmen's Compensation Act loss of vision of one eye amounts to loss of 30% of the earning capacity. In terms of the Second Schedule to the Motor Vehicles Act injuries deemed to result in permanent total disablement or permanent partial disablement and percentage of loss of earning

capacity shall be as per Schedule I of the Workmen's Compensation Act. A conjoint reading of the Workmen's Compensation Act and Motor Vehicles Act shows that loss of vision of one eye would amount to 30% loss of earning capacity of the victim of the road accident. The Tribunal, therefore, has completely erred in not appreciating that as the victim had lost vision of one eye because of injuries sustained in the accident there was 30% loss of his earning capacity. The appellant at the time of the accident was about 18 years of age and he has to suffer through out his life because of loss of vision of one eye. Taking his notional income at Rs. 15000/- per year in terms of the Second Schedule to the Motor Vehicles Act and applying the multiplier of 16 and taking the loss of earning capacity as 30% , the appellant would be entitled to compensation of Rs. 72,000/- on account of suffering 30% disability. Adding to this a sum of Rs. 7000/- awarded by the Tribunal being the non-pecuniary damages, the appellant would be entitled to total compensation of Rs. 79,000/-.

7. I am also in agreement with learned counsel for the appellant that as the proceedings before the Tribunal were considerably delayed because of respondent No. 2 having been proceeded ex-parte and the case having been reopened on his application, the appellant cannot be held responsible for such delay and the Tribunal ought to have awarded interest from the date of the application and not from the date of the award. In my opinion, there was no deliberate delay on the part of the appellant in conducting the case he cannot be denied interest from the date of the filing of the application.

8. I, accordingly, allow this appeal, modify the award, enhance the compensation and direct that the appellants would be entitled to total compensation of Rs. 79,000/-. The appellant will also be entitled to interest @ 9% per annum on the entire compensation from the date of filing of the application before the Tribunal till the date of the award on the enhanced compensation from the date of the award till realisation.