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

Sukumar Pattjoshi Vs. Rajdeep Leasing and Finance and ors.

Sukumar Pattjoshi Vs. Rajdeep Leasing and Finance and ors.

SooperKanoon Citation : sooperkanoon.com/707064

Court : Delhi

Decided On : Nov-10-2003

Reported in : II(2004)ACC714; 2005ACJ1292

Judge : S.K. Mahajan, J.

Acts : Motor Vehicles Act

Appeal No. : F.A.O. No. 659 of 2002

Appellant : Sukumar Pattjoshi

Respondent : Rajdeep Leasing and Finance and ors.

Advocate for Def. : L.K. Tyagi, Adv.

Advocate for Pet/Ap. : Party in Person and; Yasobant Das, Adv

Disposition : Appeal allowed

Judgement :

S.K. Mahajan, J.

1. Admit. The matter being short, the same has been heard with the consent of the parties and disposed of by this order.

2. The appellant has filed this appeal for enhancement of compensation for the injuries suffered by him in a road accident, mainly on three grounds, namely, (1) that the appellant was admittedly 30 years of age at the time of the accident and, thereforee, to arrive at the loss of income the Tribunal ought to have applied the multiplier of 18 in place of 15; (2) that there was no rebuttal to the evidence of the appellant that he was immobilised till July, 1993 and could not attend to work for a period of 7 months because of the injuries suffered by him and appellant was, thereforee, entitled to the loss of income for these 7 months whereas the Tribunal has awarded only three months income as the loss of income sustained by the appellant; and (3) that the Tribunal has awarded a meagre sum of Rs. 5,000 towards pain and suffering.

3. Under Second Schedule to the Motor Vehicles Act, while deciding compensation, the Tribunal in the case of disability is required to grant loss of income for the actual period of disablement not exceeding 52 weeks plus the amount payable by multiplying the annual loss of income till the date of determination. In his statement before the Tribunal, appellant has stated that because of the injuries suffered by him, he was unable to work for a period of 7 months, that is, up to July, 1993. There is no rebuttal to the evidence produced by the appellant nor any suggestion has been given to him in cross-examination that he was not disabled for the said period. In the absence of any suggestion given to the witness by respondents and in the absence of any other evidence, in my opinion, the Tribunal ought to have awarded the loss of income for actual period of disablement which, in the present case, is seven months. There is also merit in the contention of Mr. Das that as the appellant was 30 years of age, the correct multiplier to be applied in this case was 18 and not 15 as has been applied by the Claims Tribunal. It is now authoritatively held by the Supreme Court that unless there are special reasons to deviate, the courts and the Tribunals while awarding compensation should apply the multiplier mentioned in Second Schedule to the Motor Vehicles Act. In terms of the Second Schedule, the correct multiplier to be applied is 18 and not 15. The appellant has suffered mental pain and agony for a period of more than 7 months when he was confined to bed and he is continuing to suffer the same as he has not fully recovered from the injuries sustained by him because of his permanent disability to the extent of 26 per cent. In my opinion,

appellant is, thereforee, entitled to a sum of Rs. 15,000 by way of non-pecuniary damages for pain and suffering.

4. For the foregoing reasons, appellant would be entitled to a sum of Rs. 58,100 as the loss of income for a period of 7 months when he was immobilised. He will also be entitled to a compensation of Rs. 4,68,000 for permanent disability of 26 per cent on basis of the annual income of Rs. 1,00,000 and a sum of Rs. 15,000 as non-pecuniary damages for the pain and suffering. The appellant would thus be entitled to a total compensation of Rs. 5,41,000.

5. While awarding interest on the amount of compensation, the Tribunal has observed that since the delay was caused by the appellant in producing witnesses, he will not be entitled to interest for a period of three years. From the record, I find that the first day for recording of evidence was in the month of March, 1995 when no evidence was present, the. matter was adjourned to 5.12.1995 when also no evidence was present and it was then adjourned to 26.8.1996. Since no evidence was present even on 26.8.1996, the same was adjourned to 14.7.1997. The delay on the part of appellant in producing the evidence is only up to 26.8.1996 and thereafter the matter was adjourned not because of any adjournment taken by appellant but for other reasons. In my view, thereforee, the appellant cannot be penalised for not producing evidence subsequent to 26.8.96. For the foregoing reasons, I direct that the appellant will be entitled to compensation with interest at the rate of 9 per cent per annum both on the original compensation awarded by the Tribunal as well as on the enhanced compensation awarded by this court from the date of filing of the petition till the payment minus two years and not three years as has been directed by the Tribunal. With these observations, the appeal stands disposed of.

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