

Vishvanath Sharma Vs. Shri Mukand Lal Sharma and ors.

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Court : Delhi

Decided On : Mar-12-2007

Reported in : 2008ACJ1123

Judge : Pradeep Nandrajog, J.

Appeal No. : F.A.O. No. 302/1999

Appellant : Vishvanath Sharma

Respondent : Shri Mukand Lal Sharma and ors.

Advocate for Def. : Mohd. Raghib, Adv. for Respondent No. 3

Advocate for Pet/Ap. : Aruna Mehta,; Sanjeev Mehta and; Jagriti Mishra, Advs

Judgement :

Pradeep Nandrajog, J.

1. Appellant Vishwanath Sharma is aggrieved by the quantum of the compensation awarded to him.

2. Total compensation awarded to him is Rs. 25,000/-. The break-up is as under:

(i) Medical Treatment Rs. 10,000/-(ii) Special Diet Rs. 5,000/-(iii) Pain and Suffering Rs. 10,000/-

3. Since fairness of the compensation assessed is the only matter which was debated by the learned Counsel for the parties I need to note only such facts as are relevant for determination of the said issue.

4. The date of accident is 17.2.1985. Age of the appellant as on date of accident is 44 years. He claimed to be selling cosmetics from a small shop at his residence. He claimed income of Rs. 3,000/- per month.

5. Period of treatment spreads over different dates, spanning 6 months.

6. The entire treatment was at St. Stephen's Hospital. Ex.PW-3/8 is a certificate issued by Dr. Mathew Verghese who had treated the appellant at St. Stephen's Hospital and as PW-4 had proved the same.

7. Ex.PW-3/8 reads as under:

Vishwanath S/o Durgai Lal, 40 years, M, ID No. P-13602 was admitted on 17.2.1995 with alleged h/o roadside accident and fractured clavicle 'L', fracture of 5th metacarpal 'L' hand with degloving injury 'L' knee. He was operated for debridement followed by skin graft 'L' knee, open (illegible) 'L' 5th metacarpal was also done. He was admitted for 10 days starting 17.2.85 then for 6 days starting 2.3.81.

Presently he has (illegible) 'L' knee with restriction of flexion beyond 90° and restriction of flexion beyond 80°. M.P. jt and flexion deformity 'L' P-1 P.Jt little finger.

As per record his injury was grievous.

8. Learned Counsel for the appellant explains that the certificate establishes that since the skin and the muscles over the knee could not be stitched back immediately when the appellant was admitted at the hospital, the same had to be removed, evidenced by the use of the expression 'he was operated for debridement' in the certificate Ex.PW-3/8. The certificate records skin grafting. Meaning thereby, there is evidence to establish that from some other part of the body skin was removed and grafted over the knee.

9. Further, the certificate establishes a bent knee. The angle at which the knee cap can be bent stands recorded in the certificate. It shows that due to the knee developing a permanent bent, it cannot be bent beyond 900. Counsel explains that when a person sits on the haunches, the knee bends by nearly 1600.

10. Dr.Mathew Verghese who deposed as PW-4 has not been subjected to any cross examination. He has deposed what he has stated in Ex.PW-3/8.

11. I have before me the evidence of appellant being admitted for surgery twice. Once immediately after the accident and the other nearly a month thereafter. There are two spells of hospitalization spreading over 10 days and 6 days respectively. I have also before me the statement of the appellant that though discharge from the hospital, he had to visit the hospital for 6 months as an OPD patient.

12. I also have before me the evidence that the left knee of the appellant never fully recovered. As against mobility and bending of 1600, it cannot be bent beyond 900. This means that the appellant cannot squat on his haunches. The evidence also shows a permanent bending of the knee, meaning thereby that mobility would be affected.

13. No amount of money can recompense a person the loss of enjoyment of pleasures of life. Every disability takes away some pleasure of life or the other.

14. Where a leg gets immobilized, a person suffers various kinds of loss of pleasures of life. Free movement would be one. Answering the call of nature, in the instant case, in the Indian circumstances, would be another problem faced by the appellant. He states that even his matrimonial life has been affected. He has stated that he could not have meaningful cohabitation with his wife. I have no reasons to disbelieve him.

15. There cannot be an absolute measure to compensate a non pecuniary loss. But, some guidance can be had from the extent of injury and the period of hospitalization coupled with the disability suffered.

16. If I look at various judicial trends which are as under:

(1) Amar Singh v. Ishwar : AIR 1999 SC3448 , Supreme Court awarded compensation of Rs. 1,00,000/- under the head 'pain, shock and suffering' to an injured who suffered 30% permanent disability and remained in hospital for a period of more than 3 years though intermittently on account of injuries sustained by him in a road accident.

(2) Dr.(Ms.) K.R. Tandon v. Om Prakash and Anr. : (1998)8SCC421 , Supreme Court awarded a compensation of Rs. 1,00,000/- under the head 'non pecuniary loss' to an injured who sustained injuries of ribs, spine and hip-joint in a road accident.

(3) Ahmedabad Municipal Transport Corporation v. Hansa Ben Natwarlal Dabgar and Ors. due to accident which took place on 13.9.1991 Hansaben, a cook sustained a fracture in her right leg. The fracture mal-united resulting in shortening of right lower limb and thus she suffered permanent partial disablement to the extent of 38%. She was hospitalized for a period of 10 days. The Division Bench of Gujarat High Court awarded a compensation of Rs. 50,000/- to the injured under the head 'pain, shock and suffering'.

(4) Imtiaz Ahamed v. G. Banumathi and Anr. , a boy aged 19 years sustained serious injuries in an accident which took place on 25.10.1996. Due to the said road accident, he sustained fracture in his left leg below knee resulting in shortening of leg by 2' as also a fracture near left side of hip due to which hip movement was considerably reduced. The urethra in urinary bladder was cut to the extent of 2 cm due to which his entire urology system was damaged. Considering the gravity of injuries sustained by the injured, the Division Bench of Madras High Court awarded a compensation of Rs. 1,00,000/- for pain and suffering and a sum of Rs. 3,00,000/- for loss of future prospects and loss of marital relationship.

(5) Miss Ragini Raju and Ors. 2002 (2) T.A.C. 710 on 25.10.1995, a girl aged 13 years sustained serious injuries in a road accident while crossing the road. On account of injuries sustained in the accident, her left lower limb was shortened by 3 cm and her left hip was also deformed. She also sustained a fracture of her left femur, tibia and fibula. She remained in hospital for a period of 41/2 months. A

learned Single Judge of this Court awarded a sum of Rs. 50,000/- to the injured under the head 'pain and suffering'.

(6) R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. and Ors. : [1995]1SCR75 , on account of accident which took place on 20.5.1980, appellant aged 52 years suffered serious injuries resulting in 100% disability and a paraplegia below the waist, Supreme Court awarded a sum of Rs. 6,00,000/- under the heads 'pain and suffering' and 'loss of amenities of life'.

17. From the judicial trends it is evident that in the instant case there is inadequacy in the compensation awarded towards pain and suffering as also loss of amenities of life. The latter I note that has been totally denied by the Tribunal.

18. On the loss of income, noting that the appellant was running a cosmetics shop, I do not think that any meaningful loss of future income has surfaced. The nature of permanent disability, in my opinion, is not of a kind which would affect the avocation of the appellant. Thus, I agree with the award which has denied loss of future income.

19. However, on account of pain and suffering, noting that after the accident the skin over the knee was so badly damaged that it could not be sutured and had to be removed as also the fact that skin grafting had to be performed and that metacarpal bone required to be put into place after surgery evidences extensive pain undergone by the appellant. I enhance the compensation awarded on account of pain and suffering from Rs. 10,000/- to Rs. 25,000/-.

20. On account of loss of amenities and enjoyment of the pleasures of life, noting the permanent disability suffered by the appellant, I award him compensation in sum of Rs. 50,000/-.

21. The appeal accordingly stands disposed of enhancing the compensation by sum of Rs. 65,000/-.

22. The enhanced compensation in sum of Rs. 65,000 shall be paid to the appellant together with interest @6% per annum from date of claim petition till date of payment.

23. Compensation would be payable by the respondents on whom the liability has been fastened under the award.

24. No costs.

25. LCR be returned.

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