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Arvind Singh Vs. Kajodmal and ors.

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Court : Rajasthan

Decided On : Nov-30-2004

Reported in : II(2006)ACC52

Judge : Dalip Singh, J.

Appellant : Arvind Singh

Respondent : Kajodmal and ors.

Judgement :

Dalip Singh, J.

1. This appeal has been filed against the award dated 17th May, 1995 passed by the Judge, Motor Accident Claims Tribunal, Jaipur in Motor Accident Claims Case No. 573/1991 whereby a sum of Rs. 50,000 (Rupees fifty 9 thousand only) was awarded to the appellant for the injuries suffered by him in the accident. The appellant seeks enhancement of the compensation.

2. The brief facts of the case are that on 19th December, 1990 the appellant met with an accident, while riding on a Scooter No. RRX-6020 was struck by a jeep bearing registration No. RNB-1497 as a result of which the appellant suffered h multiple injuries. It has further come in evidence that as a result of the aforesaid injuries, the abdomen of the appellant was ripped open and, consequently, operated upon in which his spleen had to be removed and his one kidney was

partially damaged. As a result of the said accident, the appellant remained under treatment in the hospital from 19th December, 1990 to 29th December, 1990. The claimant-appellant amongst others produced in evidence A.W. 3 Dr. S.K. Pathak who has produced and proved the certificate (Ext. P-1 6) of the Medical Board, wherein the Medical Board has opined that on account of the said accident and the injuries received therein he was operated upon, one of the kidneys of the appellant was partially damaged and the spleen had to be removed, the appellant suffered 37.5% disability which reduced the immunity of the appellant which will make him more prone to the diseases. The appellant at the time of accident was 21 years of age and was a student of II year of M.B.B.S. It is the case of the appellant that being in the medical profession and being in touch with the patients suffering from various diseases, with his reduced immunity, he would be more prone to the diseases, as such, the disability in this case which was ignored by the Tribunal deserves to be considered and the amount of compensation be accordingly enhanced as per the provisions contained in Second Schedule of the Motor Vehicles Act, 1988.

3. Learned Counsel for the respondents does not dispute the fact that the provisions contained in the Second Schedule would be relevant in arriving at a just figure of compensation which may be awarded in such cases.

4. Learned Counsel for the appellant has submitted that the earning capacity on account of permanent partial disability of 37.5% has to be taken into account and the provisions of Item No. 6 of Second Schedule are relevant for the purposes since the appellant at the time of accident was a non-earning person being 'a student of II year M.B.B.S. and his notional income is assessed as Rs. 15,000 per annum. The appellant being 21 years of age, the multiplier adopted in such cases would be 17.

5. Consequently, the quantum of damages to be assessed would be Rs. 15,000 per annum, multiplied by 17 which is equal to Rs. 2,55,000 Since, the disability in the case of the appellant as per A.W. 3, Dr. S.K. Pathak, and as per the certificate (Ext. 16) issued is 37.5% the compensation would be 37.5% of Rs. 2,55,000 which is equal to Rs. 95,625. (Rs. ninety-five thousand six hundred twenty-five only).

6 However, learned Counsel for the appellant submits that the case of the appellant deserves to be dealt with under Item No. 5 of Second Schedule. This argument in my view does not hold good as Item No. 5 refers the loss of income, if any for the actual period of disablement plus in the case of total disablement, the amount payable is to be arrived at by multiplying the annual loss of income by the multiplier applicable to the age on the date of determining the compensation as has been held by him above. At the time of accident, the appellant was the non-earning person and since in the Second Schedule it is a specific provision made for the contingency of the non-earning persons. Item No. 5 is not attracted and the case would be governed by the Item No. 6 of the Second Schedule.

7. In this view of the matter, the contention raised by the appellant is not acceptable and is hereby rejected.

8. In view of what has been held above, the appellant would be entitled to a sum of Rs. 95,605 (Rs. ninety-five thousand six hundred five only) by way of compensation on account of the disability which has resulted in impairing the earning capacity of the appellant.

9. Learned Counsel for the appellant has also submitted that in view of the provisions contained in Item No. 4 of the Second Schedule for the grievous injury the appellant would be entitled to a sum of Rs. 5,000 under the head of pain and suffering and for the two non-grievous injuries, the appellant would be entitled to a sum of Rs. 2,000. In view of the aforesaid, the appellant is entitled in addition to an amount of Rs. 95,625 the amount of Rs. 7,000 under the head of pain and suffering. The learned Tribunal under the award has awarded an amount of Rs. 50,000 (Rupees fifty thousand only) by way of compensation which deserves to be deducted out of the total amount of Rs. 1,02,625. Thus, there remains a balance of Rs. 52,625 and this appeal is allowed to the extent of Rs. 52,625 (Rs. fifty-two thousand and six hundred twenty-five only).

10. The respondents would pay to the appellant by way of DD/crossed cheque or deposit with the Tribunal the aforesaid amount of Rs. 52,625 along with the interest to be paid to the appellant @ 6% per annum within a period of three months from today from the date of filing of the appeal, i.e., 24th August, 1995.

However, in case, the respondents fail to pay or deposit the amount within stipulated period of three months, the appellant shall be entitled to get the aforesaid amount along with the interest i.e., 9% per annum w.e.f. the date of filing of the claim petition e., 19th December, 1990. The appeal is allowed as indicated above. The parties are left to bear their own costs.

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