

Amarji Vs. Mohammad Salim and ors.

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Court : Rajasthan

Decided On : Jan-13-2009

Reported in : 2009(2)WLN483

Judge : Prakash Tatia, J.

Appellant : Amarji

Respondent : Mohammad Salim and ors.

Disposition : Appeal allowed

Judgement :

Prakash Tatia, J.

1. Heard learned Counsel for the parties.

2. In the accident occurred on 02.07.2004 which was caused by the respondent No. 2 Rais Khan while driving jeep No. RJ 12 T 0366, the claimant/appellant suffered serious injuries resulting into five fractures in both legs and as per the medical evidence and disability certificate issued by the Medical Board, the claimant suffered 52% permanent disability for both lower limbs. The appellant/claimant is hair dresser and according to learned Counsel for the appellant, he could do his job only by remaining standing on his legs. Because of these fractures, his part of the legs became frozen which is apparent from the

medical evidence.

3. The Tribunal while assessing the loss due to these injuries to appellant, instead of accepting loss to the appellant in his earning capacity to the extent of 52% as certified by the doctor, calculated 20% disability with respect to the total body treating disability of 52% to be disability of the appellant for lower limbs only and, therefore, awarded 20% of total compensation only which is Rs. 76,800/- only.

4. According to learned Counsel for the appellant, the Tribunal has committed serious error of facts and law and reduced the disability in earning of the appellant to 20% ignoring the fact of occupation of the appellant. It is submitted that the person who may suffer disability may not lose the earning potentiality to the extent of disability. But here in this case, 52% disability of both the legs of the claimant in fact virtually resulted in total loss of income to the claimant.

5. Learned Counsel for the respondents supported the award and stated that the Tribunal gave cogent reasons for not awarding the loss of income to the extent of 52%. It is submitted that in the injury report itself, it is clear that the disability of the appellant is only 52% and that is in relation to his lower limbs.

6. I considered the submissions of learned Counsel for the parties and injury report Ex. 41 as well as statement of the doctor.

7. It is clear from the award passed by the Tribunal while deciding the issue No. 1, that the Tribunal reduced 52% disability of the claimant to 20% by observing that 52% disability of the lower limbs of the claimant is 20% of the body's disablement. Calculation though has no basis is apparent from the award given by the Tribunal itself and further at the same time, the Tribunal misled itself by doing so. The relevant fact was the loss of income to the appellant and not the disability with respect to the total body of the appellant because of the reason that the appellant has suffered loss in earning due to the accident. The injuries may cause the permanent disability to a particular extent but that is required to be seen with respect to the loss to person's earning prospects because of the reason that the compensation is awarded not only for the disability suffered by the body but is also awarded in addition to that for the loss of income which he is likely to suffer

because of disability. A person may suffer disability of greater extent but in some cases may not suffer loss of future income because of that disability and converse is also true.

8. In this case, looking to the nature of the job of the appellant of hair dresser, it can be presumed that he can do his job only by standing on his legs. Serious injuries in two legs are not only of mere fracture so as to recover in time but they are frozen ankle etc. In view of the above, the appellant is entitled to full extent of claim to be calculated on 52% in loss of his future income.

9. In view of the above reasons, this appeal is allowed and the appellant/claimant is held entitled to Rs. 2,000/- x 12 x 16 x 52/100=Rs. 1,99,680/-. The claimant shall also be entitled to interest at the rate of 6% per annum from the date of filing of the claim petition.

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