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Court : Delhi

Decided On : Mar-22-2010

Judge : J.R. Midha, J.

Acts : Code of Civil Procedure (CPC) - Order 21, Rule 1

Appeal No. : MAC.App. No. 1028/2006

Appellant : Bimla

Respondent : Gopal and ors.

Advocate for Def. : Shantha Devi Raman, Adv. for R-3

Advocate for Pet/Ap. : O.P. Mannie, Adv.

Disposition : Appeal allowed

Judgement :

J.R. Midha, J.

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs. 8,21,606/- has been awarded to the appellant. The appellant seeks enhancement of the award amount.

2. The accident dated 18th October, 2003 resulted in grievous injuries to the appellant. The appellant was sitting on the pillion of motor cycle No. DL-4S-AG-

5822 being driven by her husband on Outer Ring Road near Jaipur Golden Hospital red light when the motor cycle was hit by Tata Tempo bearing No. DL-1L-E-2847, due to which the appellant and her husband fell down on the road. The appellant suffered following injuries:

(a) Close fracture soft libia, middle 1/3rd (Left),

(b) Fracture L-1, with Neurological deficit,

(c) Sup. Abrassions back right side lumber region left flank,

(d) Contusion Right thigh (S.T. injury),

(e) Interlocking nailing tibia left leg done,

(f) Profusely bleeding.

3. The permanent disability of the appellant has been assessed as 79% by the Medical Board in respect of lower limbs. The appellant has suffered spinal injury resulting into less power in lower limb and non-control of the bladder known as paraparesis with bladder involvement and there are no chances for its improvement or cure.

4. The appellant was 33 years old at the time of the accident and was working as a Nurse in a private hospital and was earning Rs. 4,000/- per month. The Claims Tribunal deducted 1/3rd towards her personal expenses and applied the multiplier of 17 to compute the compensation for loss of earning capacity as Rs. 5,44,000/-. The Claims Tribunal awarded Rs. 94,606/- towards medical expenditure, Rs. 50,000/- towards loss of amenities of life, Rs. 70,000/-towards pain and suffering, Rs. 12,000/- towards special diet, Rs. 15,000/- towards fractured left leg tibia, Rs. 12,000/- for attendant and Rs. 24,000/- towards loss of income. The total compensation awarded is Rs. 8,21,606/-.

5. The learned Counsel for the appellant has urged the following grounds at the time of hearing of this appeal:

(i) The deduction towards personal expenses be set aside.

(ii) The future prospects of the appellant be taken into consideration.

(iii) The compensation for pain and suffering and loss of amenities of life be enhanced.

(iv) The compensation for conveyance be enhanced.

(v) The rate of interest be enhanced from 6% to 7.5% per annum

6. The Claims Tribunal has not taken the future prospects of the appellant taken into consideration while computing the loss of income. The Claims Tribunal has deducted 1/3rd towards the personal expenses of the deceased. It is well settled by Hon'ble Supreme Court in the case of Sarla Verma v. Delhi Transport Corporation : 2009 (6) Scale 129, that 50% of the salary is to be added towards future prospects as the injured was below 40 years of age. Following the judgment of Sarla Verma (supra), the income of the deceased for computation of compensation is taken to be Rs. 6,000/- (Rs.4,000/- + 50%). The deduction of 1/3rd is not permissible in the injury cases and, therefore, the deduction of 1/3rd towards the personal expenses of the deceased is set aside.

7. Taking the income of the deceased to be Rs. 6,000/- per month and applying the multiplier of 17, the loss of her earning capacity due to permanent disability is enhanced from Rs. 5,44,000/- to Rs. 12,24,000/- (Rs. 6,000/- x 12 x 17). The loss of income for six months is computed at Rs. 36,000/-(Rs. 6,000 x 6)

8. The learned Tribunal has awarded Rs. 70,000/- towards pain and suffering and Rs. 50,000/- towards loss of amenities of life. The learned Counsel for the appellant submits that the non-pecuniary compensation awarded by the learned Tribunal be enhanced. The learned Counsel refers to and relies upon the judgment of this Court in the case of Oriental Insurance Co. Ltd. v. Vijay Kumar Mittal : (2008) ACJ 1300, where this Court examined all the previous judgments with respect to the non-pecuniary compensation awarded in the cases of permanent disability and held that the Courts have been awarding about Rs. 3,00,000/- under the heads of non-pecuniary damages for amputation of leg with permanent disability of 50% and above. The findings of this Court are reproduced

hereinunder:

17. From the aforenoted judicial decisions, a trend which emerges is that between the years 1985 and 1990, the courts have been awarding about Rs. 3,00,000/- under the head 'non-pecuniary damages' for amputation of leg resulting in permanent disability of 50 per cent and above.

9. The appellant has suffered 79% permanent disability. Following the principles laid down in the aforesaid judgment, compensation for pain and suffering is enhanced from 70,000/- to Rs. 1,00,000/-, the compensation for loss of amenities of life is enhanced from Rs. 50,000/- to Rs. 1,00,000/- and Rs. 1,00,000/- is awarded for disfiguration.

10. The Claims Tribunal has awarded Rs. 12,000/- towards special diet and conveyance. The compensation awarded by learned Tribunal is grossly insufficient considering that the appellant cannot sit for long time and cannot travel by public transport. The compensation of Rs. 12,000/- is treated towards special diet and compensation of Rs. 30,000/- is awarded towards loss on account of conveyance.

11. The appellant is entitled to total compensation of Rs. 17,23,606/- (Rs. 12,24,000 + Rs. 1,00,000 + Rs. 1,00,000 + Rs. 1,00,000 + Rs. 12,000 + Rs. 30,000 + Rs. 36,000 + Rs. 94,606 + Rs. 15,000 + Rs. 12,000).

12. The Claims Tribunal is awarded interest @ 6% per annum. The rate of interest is enhanced from 6% to 7.5%.

13. The appeal is allowed the award amount is enhanced from Rs. 8,21,606/- to Rs. 17,23,606/- along with interest @ 7.5% per annum from the date of filing of the claim petition till notice under Order 21 Rule 1 of the Code of Civil Procedure. The enhanced award amount along with interest be deposited by respondent No. 3 with State Bank of India, A/c Bimla, Tis Hazari Branch, through Mr. H.S. Rawat, Relationship Manager, Tis Hazari Branch, Tis Hazari (Mb: 09717044322) within 30 days.

14. Upon the enhanced award amount being deposited, UCO Bank is directed to release 10% of the said amount by transferring the same to the Savings Bank

Account of appellant. The remaining amount be kept in fixed deposits in the name of the appellant in the following manner:

(i) Fixed deposit in respect of 10% of the award amount for a period of one year.

(ii) Fixed deposit in respect of 10% of the award amount for a period of two years.

(iii) Fixed deposit in respect of 10% of the award amount for a period of three years.

(iv) Fixed deposit in respect of 10% of the award amount for a period of four years.

(v) Fixed deposit in respect of 10% of the award amount for a period of five years.

(vi) Fixed deposit in respect of 10% of the award amount for a period of six years.

(vii) Fixed deposit in respect of 10% of the award amount for a period of seven years.

(viii) Fixed deposit in respect of 10% of the award amount for a period of eight years.

(ix) Fixed deposit in respect of 10% of the award amount for a period of nine years.

15. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of the appellant.

16. Withdrawal from the aforesaid account shall be permitted to appellant after due verification and the Bank shall issue photo Identity Card to the appellant to facilitate identity.

17. No cheque book be issued to the appellant without the permission of this Court.

18. The Bank shall issue Fixed Deposit Pass Book instead of the FDRs to the appellants and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDR.

19. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

20. Half yearly statement of account be filed by the Bank in this Court.

21. On the request of the appellant, the Bank shall transfer the Savings Account to any other branch according to the convenience of the appellant.

22. The appellant shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.

23. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.

24. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) through the UCO Bank, High Court Branch under the signature of Court Master.

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