

Jaffar Abbas Vs. Mohan and ors

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Court : Delhi

Decided On : Dec-19-2011

Appellant : Jaffar Abbas

Respondent : Mohan and ors

Advocate for Def. : Mr. Kanwal Chaudhary

Advocate for Pet/Ap. : Mr. H. R. Khan Suhel, Mr. Ankit Mishra, Mr. Anchit Upadhayay

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:7th December, 2011 Pronounced on:19th December, 2011 + FAO 274/1999 JAFFAR ABBAS Appellant Through: Mr. H. R. Khan Suhel, Adv. with Mr. Ankit Mishra and Mr. Anchit Upadhayay, Neeraj Singh, Advocates. Versus MOHAN and ORS. Respondents Through: Mr. Kanwal Chaudhary, Adv. CORAM: HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT G. P. MITTAL, J..

1. The Appellant Jaffar Abbas, who was working as a Constable in Delhi Police seeks enhancement of compensation in respect of the injuries suffered by him in a motor accident, which took place on 11.06.1981. The Appellant was getting a salary of ` 489.56 paise per month. His left leg was amputated and he suffered 40% disability in relation to his left lower limb. He claimed a compensation of ` 5,00,000/-. The Motor Accident Claims Tribunal (the Tribunal) awarded a

compensation of ` 80,000/-, which is tabulated hereunder: - FAO 274/1999 Page 1 of 9 Sl. Head of Compensation Compensation No. granted by the Tribunal.

1. Pain and suffering ` 20,000/-.
2. For purchase of medicines, ` 7,000/- conveyance and special diet.
3. Loss of leave (187 days) ` 3,000/-.
4. Loss of future earning capacity ` 40,000/-.
5. Loss of career prospects ` 10,000/- Total ` 80,000/-.

2. There is no challenge to the finding on the negligence, thus I have to assess whether the compensation awarded is just and fair..

3. The Tribunal in detail dealt with the injuries suffered by the Appellant while discussing issue No.2, I would extract relevant portion of the impugned award hereunder: - "In support of this claim, petitioner examined himself as PW7 and also examined Doctor from Safdarjung Hospital PW6 and a witness of service record from his office as PW2. Petitioner in his evidence has reported that he remained in hospital for about two months in which period he was operated two times. Thereafter, another operation was performed on 31.5.85. He remained on leave for a period of one year. Due to injuries received by him, he was given light duties. He deposed that FAO 274/1999 Page 2 of 9 he spent ` 60,000/- to ` 70,000/- on medicines, conveyance, special diet etc. It is further deposed that due to this accident, his promotion has been affected. As he suffered disability to the extent of 40% as his left foot has been amputated in the hospital. In cross-examination, he further deposed that in the hospital he was admitted on 14.6.81 and after the first operation, a skin grafting operation was performed and this treatment existed second time. Thereafter, he remained on special leaves without pay. He admitted that he has not filed the bills of treatment in Court or any bills of conveyance or special diet..

5. PW6 Dr. Sardar Singh who was a Orthopedic Surgeon in Safdarjung hospital deposed that he attended on the petitioner as it was a case of crush injury of left

foot. He was operated on 22.6.81 and a gangrene affected fore-foot was amputated. He was again operated by him on 10.6.85 for a persistent wound infection. He deposed that now the patient was without forefoot on the left side. He proved the discharge slip in the hands of Dr. Vinod Sakhija as PW6/A and various statement papers running in 17 pages as Ex. PW4/1 and Ex. PW6/B. He deposed that the wound is still persists as a skin is very weak and gave way three or four months and needs permanent dressing. According to him this was a case of permanent disability vide certificate issued from LNJP hospital. Permanent disability is assessed 40%. He recommended special diet to the patient after each operation. In cross-examination he stated that 40% disability was in relation to the whole body."

4. The Appellant was working as a Constable in Delhi Police. He is working as an Assistant Sub-Inspector now. In the case of *FAO 274/1999 Page 3 of 9 Ward v. James*, (1965) 1 All ER 563 (CA) the Queen's Bench held as under: - "(iii) Loss during his shortened span. - Although you cannot give a man so gravely injured much for his lost years, you can, however, compensate him for his loss during his shortened span, that is, during his expected years of survival. You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to a back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet Judges and juries have to do the best they can and give him what they think is fair. No wonder they find it well nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The Judges have worked out a pattern, and they keep it in line with the changes in the value of money."

5. In a latest judgment of Supreme Court in *Yadava Kumar v. National Insurance Co. Ltd.*, (2010) 10 SCC 341 it was observed that while assessing compensation in accident cases the High Court or the Tribunal must take a reasonable and compassionate view of things. The Court must be liberal in determination of quantum of compensation and not niggardly as in a free country law must value

life and limb on a generous scale. Para 17 of the report is extracted hereunder: -
FAO 274/1999 *Page 4 of 9* "The High Court and the Tribunal must realise that there is a distinction between compensation and damages. The expression compensation may include a claim for damages but compensation is more comprehensive. Normally damages are given for an injury which is suffered, whereas compensation stands on a slightly higher footing. It is given for the atonement of injury caused and the intention behind grant of compensation is to put back the injured party as far as possible in the same position, as if the injury has not taken place, by way of grant of pecuniary relief. Thus, in the matter of computation of compensation, the approach will be slightly more broad based than what is done in the matter of assessment of damages. At the same time it is true that there cannot be any rigid or mathematical precision in the matter of determination of compensation."

6. In the case of *Raj Kumar v. Ajay Kumar and Anr.*, (2011) 1 SCC 343, it was held that where a Claimant suffers a permanent disability as a result of injuries the assessment of compensation under the head of loss of future earning would depend upon the effect and impact of his permanent disability on his earning capacity. Para 13 and 14 of the report are extracted hereunder: - "13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood..

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but FAO 274/1999 *Page 6 of 9* may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity."

7. The Appellant as PW-1 deposed that he remained in the hospital for about 2 months during which he was operated upon. Second operation was performed on 31.05.1985. His treatment is still continuing and he had to take leave for about a year. It is also deposed that he spent ` 60,000/- to ` 70,000/- on medicines, conveyance and special diet. Due to this accident, his promotion was affected. PW-2 SI Shiv Dhan Sharma apart from proving the leave record of the period 1981 to 1986 deposed that after the accident 3 - 4 promotional tests held by the department could not be taken by the Appellant on account of the injuries in his left leg. This is an old case where the accident took place in the year 1981. No positive evidence was brought on record during inquiry before the Tribunal as to how his promotion was affected and how much it was delayed. Though, it was stated during the course of arguments that the Appellant's batchmate had long back been promoted as Sub- Inspector but there is no evidence on record in this regard. It is borne out from the record that the Appellant's treatment continued for quite a long time and PW-2's testimony that he FAO 274/1999 *Page 7 of 9* could

not take 3 - 4 promotional tests held by the department cannot be easily brushed aside. So, I have to make a guess work that his promotion was delayed say by at least about 5 years and he suffered financial loss also on account of the same..

8. As stated earlier the Appellant was working as a Constable in Delhi Police. He cannot drive a motorcycle; he cannot even drive a bicycle. He cannot run. He will always have difficulty even in walking..

9. The Appellant who was working as a Constable in Delhi Police and was entitled to reimbursement of medical expenses / medicines obtained from an authorized hospital. He has not led any evidence nor any bill placed on record in respect of the treatment which was not paid by his employer. Still a person cannot preserve all the bills and I would assume that he spent something on the treatment..

10. In view of the injuries suffered and the treatment/operations underwent by the Appellant, I would attempt to award the compensation as tabulated hereunder: -

Sl.	Head of Compensation	Compensatio	Compensatio	No. n granted by	n granted by
1.	Pain and suffering	` 20,000/-	` 20,000/-		
2.	Medicines, conveyance	` 7,000/-	` 5,000/-		
	and special diet (medicines)	FAO 274/1999	Page 8 of 9	` 2,000/-	(conveyance) ` 5,000/- (special diet).
3.	Loss of earning capacity	` 40,000/-	` 40,000/-		because of delayed promotion.
4.	Loss of leave (187 days)	` 3,000/-	` 3,000/-		
5.	Career prospects	` 10,000/-	` 10,000/-		
6.	Disfigurement	` 25,000/-			
7.	Loss of amenities and	` 50,000/-	expectation in life	Total	` 80,000/- ` 1,60,000/-.

11. The enhanced amount of compensation i.e. ` 80,000/- shall carry interest @ 7.5% per annum from the date of filing of the petition till the realization of the amount. Respondent No.3 New India Assurance Co. Ltd. is directed to deposit the

enhanced compensation within six weeks. 25% of the enhanced compensation along with proportionate interest shall be released forthwith. Rest of the amount shall be held in a Fixed Deposit in UCO Bank, Delhi High Court Branch, New Delhi for a period of 3 years..

12. The appeal is allowed in above terms. (G.P. MITTAL) JUDGE DECEMBER 19, 2011/hs FAO 274/1999 Page 9 of 9

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