

Urmil Gulati Vs. Shiv Kumar and Others

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Court : Delhi

Decided On : May-10-2012

Judge : G.P. Mittal

Appeal No. : FAO.NO. 401 OF 2003

Appellant : Urmil Gulati

Respondent : Shiv Kumar and Others

Judgement :

G. P. MITTAL, J.

(ORAL)

1. The Appeal is for enhancement of compensation of Rs.1,14,770/- awarded to the Appellant for having suffered injuries in an accident which occurred on 18.09.1991.

2. The Appellant suffered head injury a wound on her right eye, fracture shaft humerus with radial N. Palsy (R), subtrochanteric fracture (R) femur, fracture pubic ramie(R) side, fracture both bones (R) leg and multiple wounds. Immediately after the accident, the Appellant was removed to Dr. Ram Manohar Lohia (RML) Hospital for want of satisfactory treatment. She was shifted to Sir Ganga Ram Hospital where she was operated upon by Dr. K.L. Kalra. Various documents proved on record (Exs. PW2/1 to PW2/73) would show that she remained admitted

in Government Hospital in Sunder Lal Jain Hospital and was last operated in Parmarth Mission Hospital by Dr. K.B. Raj on 09.10.1998. She remained admitted in Parmarth Mission Hospital from 08.10.1998 to 11.10.1988. It is, therefore, evident that the Appellant remained under treatment by and large for a period of seven years after the accident. A disability certificate was issued by Dr. R.M.L. Hospital on 19.01.1998 (Ex.PW7/1) showing her disability to be 25%, which is extracted hereunder:-

“Smt. Urmil Gulati aged 50 Years/Female W/o Shri Ram Sarup Gulati R/o D-21, Satyawati Colony, Ashok Vihar Ph-III, Delhi-52, has been examined vide Ortho No.33630/97 dated 1.12.97.

She is an operated case of fracture Neck femur (R) with operated case of fracture both bone leg (R) with 1” shortening of (R) hip and (R) knee with united fracture shaft Humerus (R) with mild restriction of movement. Her disability is 25% (Twenty five) percent and permanent.”

3. The compensation of Rs.1,14,770/- awarded under various heads is tabulated hereunder:-

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medical Treatment	Rs.45,270/-
2.	Disability	Rs. 49,500/-
3.	General Damages	Rs. 5,000/-
4.	Pain and Sufferings	Rs. 15,000/-
		Total Rs. 1,14,770/-

4. It was proved on record from the Appellant’s unchallenged testimony that she was doing the work of stitching. She was an Income Tax assessee since the A.Y.1980-81. In the A.Y. 1988-89, 1989-90, 1990-91 and 1991-92, she returned an Income Tax of Rs.18,300/-, 18,240/-, 18500/- and 23,100/- respectively. She deposed that on account of the injuries suffered by her, she could not continue with the work of stitching.

5. It is urged by the learned counsel for the Appellant that no compensation has been awarded for the loss of income, the compensation awarded towards permanent disability/loss of earning capacity is on the lower side; compensation towards pain and suffering is on the lower side, no compensation has been awarded towards loss of amenities in life.

LOSS OF EARNING CAPACITY:

6. During her examination, the Appellant deposed that after the accident, she was unable to see from right eye. Although, the Appellant proved hosts of documents with regard to her treatment, no document was produced to show that the Appellant suffered any loss of vision on account of the injuries suffered in the accident.

7. In *Raj Kumar v. Ajay Kumar and Anr.*, 2011 (1) SCC 343, the Supreme Court brought out the distinction between permanent disability and functional disability resulting in the loss of earning capacity. It was laid down that the compensation on account of loss of earning capacity has to be granted in accordance to the nature of job undertaken by the victim of motor accident. From the disability certificate, it is apparent that on account of the injuries suffered in the accident, she suffered from restriction of movements on account of fracture of knee and of the lower limb with right leg shortening of 1". No expert evidence was produced by the Appellant to prove the loss of earning capacity. The Claims Tribunal, however, took the loss of earning capacity to be 25% as per the disability certificate. Considering that the Appellant was doing the stitching work, I do not find any material to disagree with the view taken by the Claims Tribunal. The Appellant is, therefore, entitled to a compensation of 25% on her loss of income of Rs.23,100/- which would come to Rs.75,075/- (Rs.23,100/- X 13 X 25%).

LOSS OF INCOME:

8. The Appellant suffered from serious injuries and must not have been able to attend to the work for about a year in all including the later period when she was treated in Sunder Lal Jain Hospital and underwent surgeries in Parmarth Mission Hospital. I would thus award a compensation of Rs.23,100/- towards loss of

income.

PAIN AND SUFFERING:

9. It is difficult to measure the pain and suffering in terms of money which has been suffered by the claimant on account of serious injuries caused to him in a motor accident. Since the compensation is required to be paid for pain and suffering an attempt must be made to award compensation which may have some objective relation with the pain and suffering underwent by the victim of a motor accident. For this purpose, the Claims Tribunal and the Courts normally consider the nature of injury; the parts of the body where the injuries were sustained; surgeries (if any) underwent by the victim; confinement in the hospital and the duration of the treatment. As I have already discussed earlier, the nature of injuries, the surgeries underwent, the period of treatment, the compensation of Rs.15,000/- even in the year 1991 was totally inadequate. The same is enhanced to Rs.25,000/-.

LOSS OF AMENITIES:

10. The disability certificate and the Appellant's testimony would show that she would not only be handicapped in her professional duties, but she would face difficulty in day to day activities of life. She has to live throughout the life without her left leg, she cannot run on account of restriction in movement, she would sit with difficulty. Considering that this accident took place in the year 1991, I would award a sum of Rs.25,000/- towards loss of amenities in life.

11. The compensation awarded under other heads is not disputed.

12. Thus, there is a total enhancement of Rs.1,33,175/- which shall carry interest @ 9% per annum from the date of the filing of the Petition till its deposit.

13. The Respondent No.3 Oriental Insurance Company Ltd. is directed to deposit the enhanced amount of Rs.1,33,175/- along with interest in the name of the Appellant in the UCO Bank, Delhi High Court Branch within six weeks.

14. This accident took place in the year 1991 and the Appellant must be now 68 years. In the circumstances, the entire amount of compensation along with interest shall be disbursed to her immediately on deposit.

15. The Appeal is allowed in above terms.

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