

Arun Kumar Vs. Nand Kishore and ors.

Arun Kumar Vs. Nand Kishore and ors.

SooperKanoon Citation : sooperkanoon.com/954413

Court : Delhi

Decided On : Nov-29-2012

Judge : G.P. Mittal

Appellant : Arun Kumar

Respondent : Nand Kishore and ors.

Advocate for Pet/Ap. : Mr. K.K.Dubey

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

29. h November, 2012 + MAC. APP. 193/2011 ARUN KUMAR Appellant
Through: Mr. K.K.Dubey, Adv. versus NAND KISHORE & ORS. Respondents
Through Mr. R.B. Shami, Adv. for R-3. CORAM: HON'BLE MR. JUSTICE
G.P.MITTAL JUDGMENT G. P. MITTAL, J.

(ORAL) CM APPL.4552/2011 (Delay) 1. For the reasons as stated in the
Application, the delay of 99 days in filing the Appeal is condoned.

2. The Application is allowed. MAC. APP. 193/2011 3. The Appeal is for
enhancement of compensation of `2,91,095/- awarded by the Motor Accident
Claims Tribunal (the Claims Tribunal) in favour of the Appellant Arun Kumar for
having suffered injuries in a motor vehicle accident which occurred on 02.01.2007.

4. On 02.01.2007 at about 7:00 A.M., the Appellant was travelling on the pillion seat of a two wheeler not DL-7S-AM-4190 which was being driven by his elder brother Amit Kumar and was returning home from the Railway Station. When they reached near 100 foota road, E-Block near Primary School, Nand Nagri, they were hit by a bus not DL-1PB-4501, which was being driven by Respondent No.1 in a rash and negligent manner. The bus came on the wrong side and dashed against the two wheeler. The Appellant suffered crush injury on his left leg resulting into fracture of supracondylar and comminuted fracture of both bone left leg. The Appellant was removed to GTB hospital, Dilshad Garden where he remained admitted from 02.01.2007 to 15.01.2007. The Appellant underwent surgery during the period of hospitalization. He was discharged with advice to have daily dressing. The OPD slips Ex.PW-1/2 to PW-1/17 have been proved on record to show that the Appellant remained under treatment in GTB hospital as an outdoor patient at least till 27.11.2008. He (the Appellant) suffered 70% permanent locomotor impairment with respect of his left lower limb. The Claims Tribunal awarded a compensation of ` 2,91,095/- which is tabulated hereunder:Sl.No. Compensation under various heads incurred towards Awarded by the Claims Tribunal

Sl.No.	Compensation under various heads incurred towards	Awarded by the Claims Tribunal
1.	Expenses Treatment Medical	
2.	Expenses towards Conveyance	` 12,000/-
3.	Expenses towards Mental Pain and Agony	` 40,000/-
4.	Expenses towards better diet	` 10,000/-
5.	In lieu of losses incurred for six months salary	` 20,820/-
6.	Attendant charges	` 15,000/-
7.	Loss of earning capacity	` 1,68,000/-
Total	MAC. APP. 193/2011	` 2,91,095/-

5. In the absence of any Appeal by the driver, owner or the Insurance Company, the finding on negligence has attained finality.

6. The following contentions are raised on behalf of the Appellant:(i) At the time of the accident the Appellant was a student of 11 th standard. He was granted compensation on account of loss of income for six months on the basis of minimum wages of an unskilled worker. The loss of earning capacity was granted to him on the basis of notional income of `15,000/- per month. He ought to have been granted compensation at least on the basis of minimum wages of a Matriculate as per his qualification (towards loss of earning capacity). The loss of income should also have been granted on the basis of Minimum Wages of a Matriculate. (ii) No compensation was awarded to him on account of loss of two

academic years. Because of the serious injuries and continuous follow up treatment in GTB hospital, the Appellant failed in 11 th standard for two years. (iii) No compensation was awarded to him towards loss of amenities and loss of marriage prospects.

7. On the other hand, learned counsel for the Respondent Insurance Company urges that the Claims Tribunal awarded compensation assuming loss of earning capacity to be 70% although the disability was only in relation to the left lower limb. LOSS OF EARNING CAPACITY 8 It is not disputed that the Appellant was a student of 11th standard at the time of the accident. There was no justification for awarding loss of earning capacity, if any, on the notional income of `15,000/- per month. Even if, the Appellant was not to pursue his further studies and there were uncertainty about the profession which he was to adopt, he was entitled to compensation towards loss of earning capacity on the basis of Minimum Wages of a Matriculate, which at the time of the accident were `3900/per month.

9. It is proved on record that the Appellant suffered 70% locomotor impairment in relation to his left lower limb. The locomotor disability is a persons inability to execute distinctive activities associated with moving himself and moving the objects from place to place. Thus, the Appellant would have difficulty in moving, walking, climbing and sitting which would definitely affect his earning capacity.

10. In Raj Kumar v. Ajay Kumar & Anr., 2011 (1) SCC 343.the Supreme Court brought out the difference 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. Paras 11 and 14 of the report are extracted hereunder:

11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal

may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this Court in *Arvind Kumar Mishra v. New India Assurance Co. Ltd.* 2010 (10) SCC 25. and *Yadava Kumar v. D.M., National Insurance Co. Ltd.* 2010 (10) SCC 341. x x x x x x x 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 may not 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.

11. In the absence of any specific evidence with regard to the exact functional disability, relying on *Raj Kumar* wherein the Supreme Court took 45% disability in respect of the left lower limb as 20% loss of future earning capacity, I would take 70% locomotor impairment in relation to the left lower limb as 35% loss of earning capacity.

12. The Appellant would be entitled to an addition of 30% towards inflation on the basis of report of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559

13. The loss of future earning capacity thus comes to `3,83,292/- (3900/- + 30% x 12 x 18 x 35%). LOSS OF INCOME 14 The Claims Tribunal awarded a compensation for loss of income for six months. Since I am awarding compensation for loss of two academic years separately, the award of compensation of another six months would be duplication. Thus, no separate compensation is awarded towards loss of income for six months. LOSS OF TWO ACADEMIC YEARS 15 Appellant in Para 8 of his Affidavit Ex.PW-1/2 testified that on account of the injuries suffered by him in the accident he suffered academic loss of two years. He failed twice in 11th standard examination. He proved on record the photocopy of the mark sheet of 11th standard and 12th standard as Ex.PW-1/21 and Ex.PW-1/23 which show that the Appellant suffered loss of two academic years. The evidence adduced by the Appellant was not challenged in cross examination nor anything was adduced in rebuttal. Thus, it is established that the Appellant suffered loss of two academic years. MAC. APP. 193/2011 Minimum Wages of a Matriculate for two years amounting to `93,600/(3900/- x 12 x 2). LOSS OF AMENITIES & LOSS OF MARRIAGE PROSPECTS 16 As stated earlier, locomotor impairment is a serious disability suffered by the Appellant. He would have difficulty in moving, walking, climbing and sitting which would result in immense inconvenience to him in his day to day activities and would considerably diminish his marriage prospects. In the circumstances and keeping in view the fact that this accident took place in the year 2007, I would make a provision of `75,000/- towards loss of amenities in life and `1,00,000/- towards loss of marriage prospects.

17. No other contention has been raised.

18. The compensation awarded is re-computed as under:Sl.No. Compensation under various heads Awarded by the Claims Tribunal Awarded by this Court 1. Loss of Future Earning Capacity ` 1,68,000/- ` 3,83,292/- 2. Loss of income for six months 3. Loss of two academic years -- ` 93,600/- 4. Loss of Amenities In Life -- ` 75,000/- 5. Loss of Marriage Prospects -- ` 1,00,000/- 6. Expenses incurred towards Medical Treatment (as awarded by the Claims Tribunal) MAC. APP. 193/2011 ` 20,820/- -- `25,275/- 7. Expenses towards Conveyance (as awarded by the Claims Tribunal) ` 12,000/- ` 12,000/- 8. Expenses towards Mental Pain and

Agony (as awarded by the Claims Tribunal) ` 40,000/- ` 40,000/- 9. Expenses towards better diet (as awarded by the Claims Tribunal) ` 10,000/- ` 10,000/- 10. Attendant charges (as awarded by the Claims Tribunal) ` 15,000/- ` 15,000/- Total 19. ` 2,91,095/- ` 7,54,167/- The overall compensation is thus enhanced from `2,91,095/- to `7,54,167/-.

20. The enhanced compensation of `4,63,072/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.

21. The enhanced compensation along with interest shall be deposited with the Claims Tribunal within six weeks.

22. Sixty percent of the enhanced compensation shall be held in fixed deposit in any Nationalized Bank for a period of two years, four years, six years and eight years. Rest 40% shall be released on deposit. The Appellant would get quarterly interest on the fixed deposit.

23. The Appeal is allowed in above terms.

24. Pending Applications stand disposed of. (G.P. MITTAL) JUDGE NOVEMBER 29 2012 vk

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com