

Kanta Jain Vs. Sunil Kumar and ors

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Court : Delhi

Decided On : Nov-27-2012

Judge : G.P. Mittal

Appellant : Kanta Jain

Respondent : Sunil Kumar and ors

Advocate for Def. : Ms. Shantha Devi Raman, Mr. Sanjeet Raman

Advocate for Pet/Ap. : Mr. Navneet Goyal, Ms. Suman N. Rawat

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

22. d November, 2012 Pronounced on:

27. h November, 2012 + MAC.APP. 641/2011 KANTA JAIN Through: Appellant Mr. Navneet Goyal, Adv. with Ms. Suman N. Rawat, Adv. versus SUNIL KUMAR & ORS. Through: Respondents Ms. Shantha Devi Raman, Adv. with Mr. Sanjeet Raman, Adv. for R-3. CORAM: HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT G. P. MITTAL, J.

1. The Appeal is for enhancement of compensation of `82,840/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellant for having suffered injuries in a motor vehicle accident which occurred on 16.02.2010.

2. In the absence of any Appeal by the driver, owner or the Insurer, the finding on negligence reached by the Claims Tribunal has attained finality.

3. During inquiry before the Claims Tribunal it was claimed that the Appellant suffered fracture of right femur, dislocation of right shoulder and injuries on other parts of the body. She was initially removed to Rajendra Hospital, Sikandrabad, U.P. She was then shifted to St. Stephens Hospital where her leg was plastered and shoulder was bandaged. Since her husband had expired in this very accident; after the last rites of her husband she was admitted to Sant Parmanand Hospital on 18.02.2010 and was discharged from there on 25.02.2010. She was operated upon in the hospital and bone grafting was done. The Appellant claimed that her treatment continued for a period of three months and then she was advised to take physiotherapy which continued till she was examined in the Court. She stated that she incurred a sum of `2,50,000/- on her treatment, `25,000/- on conveyance and `30,000/- on special diet. The Claims Tribunal dealt with the issue of award of compensation in para 19 of the impugned judgment which is extracted hereunder: 19. I have gone through the material on record. The discharge summary issued by Delhi Institute of Trauma and Orthopaedics shows that the petitioner was admitted on 18.02.2010 and was discharged on 25.02.2010. She was operated on 19.02.2010. It is recorded in discharge summary that the petitioner suffered Periprosthetic fracture distal femur and dislocation of shoulder besides other injuries. Bills are for `1,45,194/-. The PW-6 has already stated that bills for a sum of `1,32,854/- has already been reimbursed by National Insurance Co. Ltd. It can be easily deduced that petitioner must have remained out of normal routine work for about 2-3 months and must have kept attendant for three months. Keeping in view the facts and circumstances, I consider the following amount to be the just compensation to the petitioner:- `50,000/-

1. Compensation towards pain and sufferings

2. Compensation towards conveyance and special Diet (without bills)

3. Medical bills (`1,45,194-`1,32,854) `10,000/`12,340/-

4. Attendant Charges for 3 months @ `3500/Per month ` 10,500/-. Therefore, in my opinion the petitioner is entitled to `82,840/which shall be the just compensation to petitioner.

4. The following contentions are raised on behalf of the Appellant:(i) The compensation awarded towards pain and suffering, conveyance and special diet is on the lower side. The Appellants treatment continued for 15 months. She was (ii) awarded compensation for engaging Attendant only for three months which was on the lower side. (iii) No compensation was awarded to her for undertaking physiotherapy. (iv) 5. The award of interest @ 7.5% per annum was on the lower side. On the other hand, learned counsel for the Respondent Insurance Company urges that the compensation awarded is just and reasonable.

6. I have before me the Trial Court record. The discharge summary mark B shows that the Appellant was operated upon on 19.02.2010 and was discharged on 25.02.2010. The operative procedure as per the discharge summary is extracted hereunder:Operative Procedure: Under combined spinal epidural anaesthesia, patient positioned supine and parts cleaned and draped. Using lateral incision, fracture shaft femur exposed. Fracture reduced with distal femoral metaphyseal plate and fixed with adequate LHS. Reduction adequate. Bone graft harvested from ipsilateral iliac crest and fixed it fracture site. Wound closed in layers and sterile dressing done.

7. The Appellants testimony that she remained as an OPD patient for three months and thereafter was undergoing physiotherapy treatment regularly was not challenged in cross-examination. From the nature of injuries, i.e. fracture of femur bone and dislocation of the shoulder itself it can be made out that she (the Appellant) would need physiotherapy to be able to move. But, at the same time, the Appellant has not produced any bills with regard to physiotherapy undertaken by her.

8. In the facts and circumstances, I award a sum of `15,000/- towards physiotherapy. The lumpsum compensation of `10,000/- awarded towards conveyance charges and special diet is increased to `15,000/each towards special diet and conveyance. The compensation awarded towards Attendant charges is

increased from three months to six months from `10,500/- to `21,000/-.

9. It is difficult to measure in terms of money the pain and suffering which is suffered by the claimant on account of serious injuries caused to her 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.

10. The Claims Tribunal in its discretion awarded a sum of `50,000/- towards pain and suffering which cannot be said to be niggardly or on the lower side. Hence, the same does not call for any interference.

11. The compensation awarded is re-computed as under:Sl. Compensation under various heads Awarded by this Court No.

1. MAC APP 641/2011 Pain and Suffering (as awarded by the Claims Tribunal) Page 4 of 6 `50,000/- 2. ` 15,000/- 3. Special Diet ` 15,000/- 4. Attendant charges for six months ` 21,000/- 5. Medical Bills (as awarded by the Claims Tribunal) ` 12,340/- Total 12. Conveyance ` 1,13,340/- The compensation is thus enhanced from `82,840/- to `1,13,340/-. RATE OF INTEREST 13 It may be noted that the Claims Tribunal awarded interest @ 7.5% per annum. This accident took place in the year 2010. Rate of interest on long-term deposit in the year 2010 were in the vicinity of 9% per annum. In Smt. Dhaneshwari & Anr. v. Tejeshwar Singh & Ors., (MAC.APP. 997/2011) decided on 19.03.2012, this Court held as under:

70. Rate of interest were in double digits in 1980s and 1990s. The interest rate started falling at the beginning of this century. They started rising and firming up since 2007. Since the rate of interest on long term deposit is now about 9% per annum, it is unreasonable to award interest @ 7.5% per annum to the victims of the motor accident.

14. In the circumstances, the Appellant ought to have been awarded interest @ 9% per annum instead of 7.5% per annum as awarded by the Claims Tribunal.

15. The enhanced compensation of `30,500/- along with interest shall be deposited by the Respondent No.3 IFFCO Tokio General Insurance Company Limited with the Claims Tribunal within six weeks and shall be released to her (the Appellant) on deposit.

16. The Appeal is allowed in above terms.

17. Pending Applications stands disposed of. (G.P. MITTAL) JUDGE NOVEMBER 27 2012 vk

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