

Master Mohan Kumar Vs. Mohd. Javed and ors.

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Court : Delhi

Decided On : Jul-16-2013

Judge : Suresh Kait

Appellant : Master Mohan Kumar

Respondent : Mohd. Javed and ors.

Judgement :

\$~20 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

16. h July, 2013 MAC.APP. 782/2006 MASTER MOHAN KUMAR Appellant
Through: Mr. S.N. Parashar, Adv. versus MOHD. JAVED & ORS.
Respondents Through: Ms. Manjusha Wadhwa, Adv. for R2. CORAM: HON'BLE
MR. JUSTICE SURESH KAIT SURESH KAIT, J.

(Oral) 1. Vide the instant appeal, appellant has assailed the judgment dated 25.07.2006 whereby, Ld. Tribunal has granted Rs.1,20,000/- as compensation towards the disability sustained due to the accident.

2. Ld. Counsel for the appellant submits that PW1 Rajkumar, father of the appellant deposed before the Ld. Tribunal that in the alleged accident, his son had become sandwich between the shutter and the van. Due to which skin on his right hand peeled off and the thumb of the right hand was amputated and fingers were damaged. He also suffered injuries on the left hand apart from other injuries.

3. Further stated that he remained admitted in GTB Hospital for 13-14 days and an operation on the right hand was performed by inserting steel rods in both the hands.

4. PW 2 Doctor from GTB Hospital deposed that MLC was prepared from their hospital and noticed multiple fractures in both the arms and a surgery was conducted on 07.11.2013. The injuries were serious in nature and, therefore the Board issued disability certificate Ex.PW1/29 certifying that the hands were deformed.

5. Ld. Tribunal while considering the facts discussed above has granted Rs.1,20,000/- for the injuries and disability occurred to the appellant.

6. Ld. Counsel appearing on behalf of the appellant submits that at the time of the accident, he was 10 years of age and was a student; and thereafter due to the deformity in both the hands, he continued to suffer the pain which affected the study of the child. This loss will continue throughout his life which cannot be compensated in any manner.

7. Ld. Counsel submits that the Ld. Tribunal has granted a meagre amount of Rs.1,20,000/- towards disability. Therefore, the compensation amount may be increased considering the aspect of just and fair compensation.

8. On the other hand, Id. Counsel appearing on behalf of respondent / Insurance Company submits that present case is of 2003 and award was passed in 2006. Considering all the facts into view, Ld. Tribunal has granted Rs.1,20,000/- as just compensation. Therefore, instant appeal may not be allowed.

9. I have heard Id. Counsels for the parties. As per the disability certificate, Ex.PW1/29, the appellant suffered permanent locomotor disability of 90% and the condition of the same is non-progressive and not likely to improve. recommended. Pertinently, the reassessment also not Therefore, from the said Certificate, permanent impairment of the appellant has been proved as 90% of both the hands. He was just 10 years of age at the time of accident. He could not continue his study. Due to permanent locomotor disability, he shall face difficulties

throughout his life. Therefore, the appellant is entitled for just and reasonable compensation.

10. The Apex Court has discussed the concept of just and reasonable compensation in various pronouncements, particularly, the parameters of assessment. In *State of Haryana & Anr. V. Jasbir Kaur and Ors.* (2003) 7 SCC 484, the Apex Court has held as under: It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be 'just and reasonable'. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza: not a source of profit; but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just. (See *Helen C. Rebello v. Maharashtra State Road Transport Corporation* : AIR1998 SC3191).

11. In view of the above, I am of the considered opinion that the Ld. Tribunal has granted a very meagre amount towards disability, keeping the age and future of the appellant.

12. Therefore, in view of the above injuries and the disability and keeping the facts and circumstances of this case, I enhance the compensation towards disability from Rs.1,20,000/- to Rs.5,00,000/-. The enhanced amount of Rs.3,80,000/- shall carry interest @ 7.5% from the date of filing of the petition till its realization.

13. The enhanced amount shall be deposited within five weeks from the date of receipt of this order with Registrar General of this Court, failing which the appellant shall be entitled for interest @ 12% per annum on delayed payment.

14. On deposit, the Registrar General of this Court is directed to deposit the amount in favour of the appellant / claimant in the form of FDR for a period of three years.

15. In view of the above, instant appeal is allowed. SURESH KAIT, J JULY 16 2013 jg

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