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

Manju and ors. Vs. Naresh Kumar and ors.

Manju and ors. Vs. Naresh Kumar and ors.

SooperKanoon Citation : sooperkanoon.com/979949

Court : Delhi

Decided On : Jul-26-2013

Judge : Suresh Kait

Appellant : Manju and ors.

Respondent : Naresh Kumar and ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on:

2. d July, 2013 Judgment delivered on:

26. h July, 2013 % + MAC.APP. No. 693/2011 MANJU & ORS. Through: ..... Appellants Mr. N.K. Jha, Advocate. Versus NARESH KUMAR & ORS. Through: ..... Respondents Ms. Archana Gaor, Advocate. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

1. The present appeal is directed against the impugned judgment dated 06.04.2011, whereby the learned Tribunal has granted the compensation as under:1)

2) 3) Loss of income----------Rs. 6,940/Pain and sufferings, loss of amenities-------Rs.50,000/Special diet & conveyance charges---------- Rs.10,000/Total Rs.66,940/- 2. Brief facts of the case are that on 10.07.2007 at about 3.40 pm, the deceased was travelling in DTC Bus bearing not DL-1PB-6839

and was going towards his residence from Azadpur. When the aforesaid bus reached opposite Gate Nos. 4 and 5, Delhi Industrial Area Bus Stand, the driver,i.e., respondent No.1 stopped his bus at the bus stand. When the deceased was alighting from the said bus, suddenly respondent No.1/driver started his bus rashly and negligently with a sudden jerk due to which the deceased fell down in the bus itself with great force and sustained multiple injuries on his body. He was removed to the hospital, where he remained admitted and finally discharged on 03.08.2007. Unfortunately, the deceased was expired on 18.09.2007. The post-mortem examination on the body was conducted at Babu Jagjivan Ram Memorial Hospital, Jahangirpuri, Delhi vide Post-Mortem Report No. 946/07.

3. For the rash and negligent driving and the injuries sustained by the deceased, a criminal case vide FIR No. 551/07 under Sections 279/337 IPC was registered at Police Station Samaypur Badli, Delhi against respondent No1/ the driver of the offending bus.

4. Learned counsel appearing on behalf of the appellants has submitted that the compensation amount granted by the learned Tribunal cannot be termed as just and fair compensation as envisaged under the Motor Vehicles Act and the same would warrant to be enhanced.

5. He submitted that the accident of the deceased had a direct connection to his death and the learned Tribunal has wrongly decided that the deceased died after a gap of more than one and a half months, therefore, the death cannot be held due to the said accident.

6. PW2 Dr. Suresh Kumar, In-charge, Department Orthopaedics, Maharishi Valmiki Hospital, Pooth Khurd, Delhi has deposed as under:I have brought the discharge slip of patient Ramdev Thakur, who was admitted in our hospital on 10.07.2007 and discharged and referred to higher center/Dr. Baba Saheb Ambedkar Hospital for further management on 17.07.2007. He was diagnosed as fracture neck femur right and compound fracture calcanium left side (left heal CLW over left heal 4 x 1 x .5 cm, Tendoachi Intact, crepitation +, distal pulsation +, toes movement +). The copy of relevant record including discharge slip is Ex.PW-2/1 (colly.) (5 sheets). As per hospital, record at the time of admission the patients

chest was clear and he was having Random Blood Sugar (PP) 525 mg % on 14.07.2007 and the patient was referred for the management to physician of the hospital.

7. The witness has specifically stated in his cross-examination that the deceased was not suffering from Tuberculosis of chest. He also stated that as per the record, there were no symptoms which showed that the injuries sustained by the injured were sufficient to cause his death.

8. PW3 Dr. Krishna, Sr.Resident (Orthopaedics), Dr. Baba Saheb Ambedkar Hospital, Rohini, Delhi has deposed as under:I have brought the record file of patient Ramdev, 30 years male. The said patient was admitted in our department as a case of fracture neck of femur right side with open fracture calcaneum left side and fracture 5th metatarsal left foot on 17.07.2007. The said patient was discharged on 03.08.2007. The patient was also diagnosed as a diabetes mellitus and some pulmonary changes and urinary tract infection as per record. The said patient was treated conservatively for diabetes, UTI and fractures. For fracture neck femur, the patient was treated with upper tibial skeletal traction. As per our record, the patient was not operated. The patient was not ambulatory. The copy of relevant record including discharge card is Ex.PW-3/1 (colly.) (5 sheets).

9. In the cross-examination, this witness has deposed that as per the record at the time of discharge, the condition of the patient was satisfactory, therefore he was discharged from the hospital.

10. Since issue No. 1 is not disputed by the appellant, therefore, the same is not discussed herewith.

11. Issue No. 2 reads as under:2) 12. Whether the petitioners are entitled to compensation and if so what extent and from which of the respondents? OPP Learned counsel for the appellants has categorically submitted that both the doctors named above have stated that the deceased was never treated for Tuberculosis, therefore, the possibility of tuberculosis problem, as opined by the learned Tribunal is ruled out.

13. He further submitted that though on the post-mortem report Ex. PW1/R3-1, it is casually written that deceased was died due to tuberculosis, however, he emphasized that the deceased remained admitted twice in two different hospitals and none of the hospital had treated him for tuberculosis, therefore, the learned Tribunal has erred while coming to the conclusion that death of the deceased was not the direct cause of the accidental injuries. For this reason, the learned Tribunal has neither granted proper relief considering him as an injured nor granted any relief on account of his death due to the said accident.

14. On the other hand, learned counsel appearing on behalf of the respondent/Insurance Company has submitted that keeping in view the aforesaid statements of PW2 and PW3, no X-ray of chest was taken. He was diagnosed as a diabetic mellitus and some pulmonary and urinary tract infection as per record. He was also treated conservatively for diabetes, UTI and fractures. Moreover, he died after more than two months from the date of the accident, therefore, his death was not caused directly due to the injuries sustained by him in the accident. He also submitted that the injuries suffered by the deceased were not sufficient to cause death, therefore, the learned Tribunal has rightly granted the compensation.

15. I have heard the learned counsel for the parties and have perused the record.

16. Admittedly, the accident took place on 10.07.2007 and deceased expired on 18.09.2007, i.e., after two months of the accident. As per the medical record, due to the accident, the deceased suffered multiple fractures and was taken to Maharishi Valmiki Hospital, where he remained admitted from 10.07.2007 to 17.07.2007 and thereafter shifted to Baba Saheb Ambedkar Hospital, New Delhi, where he remained admitted from 17.07.2007 to 03.08.2007.

17. The question before this Court is whether the accident was the direct cause of the death of the deceased or not? 18. As per the deposition of PW2 Dr. Suresh Kumar, the deceased remained in their hospital from 10.07.2007 to 17.07.2007 and he was diagnosed as fracture neck femur right and Compound fracture calcanium left side (left heal CLW over left heal 4 x 1 x .5 cm, Tendoachi Intact, crepitation +, distal pulsation +, toes movement +). The witness further deposed that at the time of the admission of the patient, his chest was clear. In the cross-

examination also, he stated that patients chest was clear and he was having blood sugar, therefore, he was referred for the management to physician of the hospital.

19. PW3, Dr. Krishna deposed that apart from the fracture sustained in the accident he was diagnosed as a diabetes mellitus, some pulmonary changes and urinary tract infection.

20. Moreover, case of the respondents is not that he was treated for tuberculosis at any of the hospital, therefore, the learned Tribunal has wrongly considered that death of the deceased was due to tuberculosis and it was not the direct cause of the accidental injuries.

21. No doubt, victim hailed from a poor family, therefore, he remained admitted in a Government hospital for seven days in the first instance and thereafter, for sixteen days for the second time.

22. Generally, in the Government hospital, the persons remain admit only in critical conditions and not otherwise, whereas, the private hospitals keep admitted persons whose condition is not so critical. Hence, if the deceased remained admitted in the hospital, one can easily make out that the injuries suffered by him were so grievous in nature as he was first treated in Maharishi Valmiki Hospital almost for a week; thereafter referred to higher centre, i.e., Baba Saheb Ambedkar Hospital for further management, where he remained admitted for more than two weeks. He was discharged from the hospital and died within two months from the accident.

23. Keeping in view the relief granted by the learned Tribunal, I am of the opinion that the learned Tribunal has failed to consider the case of the deceased either as an injured or as a death case.

24. Taking into view the accidental injuries, treatment taken by the deceased and his death within two months of the accident, I am of the considered opinion that the deceased died due to the injuries caused in the accident. Though PW2 has specifically stated that the injuries were not so which were sufficient to cause death, I note the said observation had been made when the deceased admitted in

the hospital at the first instance. Subsequently, may be either due to infection or intensification of the injuries, the deceased died within two months of the accidental injuries.

25. No proof of income of the deceased has been produced by the appellants, therefore, as per the minimum wages prevalent at that time, the learned Tribunal has rightly considered his income as Rs.3,470/- per month.

26. At the time of the accident, deceased was 30 years of age and was survived by his wife and five children, therefore, 1/5 th would be deducted towards personal expenses. Hence, applying the principles laid down in the case of Sarla Verma v. DTC and Ors. 2009 (6) SCC 121.the multiplier would be taken as 17.

27. In view of dictum of Rajesh & Ors. Vs. Rajbir Singh, (2013) Scale 563, I grant the relief as under:Loss of income Future prospects (50%) Personal expenses (1/5th of Rs.5205) Loss of dependency (4164x12x17) Loss of love and affection Loss of consortium Loss of Estate Funeral expenses Total compensation 28. Rs. 3,470/Rs. 1,735/Rs. 1,041/Rs.8,49,456/Rs.1,00,000/Rs.1,00,000/Rs. 10,000/Rs. 25,000/----------Rs.10,84,456/----------I hereby make it clear that the compensation awarded by this Court shall be in addition to the compensation awarded by the learned Tribunal for injuries suffered by the deceased.

29. The compensation amount shall carry interest at the rate of 9% per annum from the date of the filing of the appeal till its realization.

30. The respondent/Insurance Company is directed to deposit the entire compensation amount with upto date interest within a period of four weeks, failing which respondent/Insurance Company shall be liable to pay penal interest at the rate of 12% per annum on delayed payment.

31. The instant appeal is allowed in the above terms. SURESH KAIT, J.

JULY 26 2013 sb

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