

+ FAO 467/2001Date of Decision: 19th November, 2009

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HIMANSHU

..... Appellant

Through : Mr. B.B. Jain, Adv.

versus

KARAMJIT SINGH

..... Respondent

Through : Mr. Kamaldeep, Adv.
for R-3.**CORAM :-****THE HON'BLE MR. JUSTICE J.R. MIDHA**

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

JUDGMENT (ORAL)

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.2,75,000/- has been awarded to the appellant. The appellant seeks enhancement of the award amount.

2. The accident dated 18th August, 1983 resulted in compound fracture of shaft femur left leg, compound fracture both bones left leg, compound fracture of ulna right with moregic shock. The appellant's left leg had to be amputated below the knee level. The appellant was admitted in the hospital on the date of the accident. He remained hospitalized from 18th August, 1983 to 28th October, 1983,

19th December, 1983 to 26th December, 1983 and again from 3rd July, 1984 to 2nd August, 1984 as per the medical record – Ex.PW1/1, Ex.PW1/2 and Ex.PW2/3. The appellant has become permanently disabled to the tune of 60%. The disability certificate – Ex.PW1/A and Ex.PW2/4 describes the disability of the appellant to be post-traumatic surgical amputation of left lower extremity at below knee level.

3. The appellant was studying in XIIth Standard in Bal Bharti Air Force School at the time of the accident. His father was Group Captain in Air Force and the appellant also had the aim of joining the Air Force. However, the appellant could not continue his studies because of the accident in question. He somehow learnt computers and joined a computer job work earning Rs.2,000/- per month. The appellant's matrimonial prospects were also reduced due to the accident in question.

4. The learned Tribunal has awarded a sum of Rs.75,000/- towards medical expenses, artificial limbs already replaced and to be replaced in future and special diet and conveyance and Rs.2,00,000/- towards non-pecuniary damages. The total compensation awarded is Rs.2,75,000/-.

5. The learned counsel for the appellant has urged the following grounds to challenge the impugned award:-

- (i) The compensation be awarded for loss of income.
- (ii) The compensation be awarded for reduction of matrimonial prospects.

- (iii) The compensation for pain and suffering and loss of amenities of life be awarded.
- (iv) The compensation for expenditure on conveyance and special diet be awarded.
- (v) The compensation on account of medical expenses be enhanced.

6. With respect to the compensation for loss of income, the appellant appeared in the witness box as PW-2 and deposed that he had passed XIth Standard from Bal Bharti Air Force School and he used to score 70% - 80% marks. The appellant further deposed that his father was Group Captain in Air Force and he wanted to join the Air Force but because of the accident he could not study further and his dream of joining the Air Force was shattered. He passed intermediate by correspondence in 1987 and could not study thereafter. The appellant further admitted that he learnt computers in 1997 and joined a petty job of computers and was earning Rs.2,000/- per month. The loss of earning capacity of the appellant is taken to be 60%. The appellant started earning Rs.2,000/- per month in 1997 which is taken to be 40% of his earning capacity meaning thereby the appellant would have earned Rs.5,000/- per month if he had not suffered the disability by the accident in question. The loss of income is, therefore, taken to be Rs.3,000/- per month (Rs.5,000 – Rs.2,000).

7. The appellant was aged 19 years at the time of the accident and the appropriate multiplier at the age of 19 is 18. The loss of income of the appellant is, therefore, computed to be Rs.6,48,000/- (Rs.3,000 X 12 X 18).

8. With respect to the medical expenses incurred by the appellant on his treatment, the learned Tribunal has awarded a sum of Rs.75,000/- towards the medical expenses. The learned counsel for the appellant submits that the appellant spent a sum of Rs.50,000/- on his treatment during the initial period which was proved by bills, Ex.PW2/8 to Ex.PW2/63. It is further submitted that besides the above expenditure, the appellant got artificial leg costing Rs.6,000/- and the life span of that leg was about 2½ years and it was replaced every 2½ years. The appellant had replaced six artificial legs at the cost of Rs.36,000/-. Against the claim of Rs.86,000/-, the learned Tribunal has awarded Rs.75,000/- which does not call for any interference. However, the award of Rs.75,000/- shall be treated only towards the medical expenses and the artificial limb implanted by that time. It shall not include the compensation towards the special diet and conveyance.

9. The appellant has suffered amputation of leg and has to incur expenditure on conveyance for the whole life and he may not be able to use the public transport for travelling. Rs.50,000/- is awarded towards the conveyance and Rs.15,000/- is awarded towards special diet.

10. The learned counsel for the appellant submits that after the filing of this appeal, on 23rd March, 2004, the appellant got the artificial limb replaced from M/s Otto Bock Health Care India Pvt. Ltd. at the cost of Rs.58,821/-. It is further submitted that the artificial limb of better quality with a lifelong span is now available and the appellant has taken the quotation of Rs.2,30,600/- from M/s Otto Bock Health Care India Pvt. Ltd. for artificial limb. The appellant has led additional evidence by appearing in the witness box and he has proved the expenses of Rs.58,821/- on the artificial limb by Ex.P-1 and the quotation of M/s Otto Bock Health Care India Pvt. Ltd. is exhibited as Ex.P-2. It is further submitted that there shall be maintenance cost of Rs.6,000/- every six months on the said artificial limb. The appellant has also examined the witness from M/s Otto Bock Health Care India Pvt. Ltd. who appeared in the witness box and proved the invoice of Rs.58,821/- dated 5th April, 2004 as Ex.P-3. The receipts of the said payment by the appellant have been proved as Ex.P-4 and Ex.P-5.

11. From the statement of the appellant recorded by this Court and the witness from M/s Otto Bock Health Care India Pvt. Ltd. and Ex.P-1 to P-5, it has been proved by sufficient evidence that the appellant incurred an expenditure of Rs.58,821/- on the artificial limb implanted on 23rd March, 2004 and that the appellant would require a further

expenditure of Rs.2,30,600/- for implantation of artificial limb with maintenance cost of Rs.6,000/- every six months.

12. In these facts and circumstances, Rs.58,821/- is awarded to the appellant towards the artificial limb implanted on 23rd March, 2004 and Rs.3,00,000/- is awarded for implantation of the artificial limb costing Rs.2,30,600/- with six monthly maintenance cost at the rate of Rs.6,000/-.

13. Considering that the appellant has yet to take the artificial limb, the appellant shall not be entitled to interest on Rs.3,00,000/- and the payment in this regard shall be released to M/s Otto Bock Health Care India Pvt. Ltd. after the implantation of the artificial limb.

14. The learned Tribunal has awarded a sum of Rs.2,00,000/- as non-pecuniary damages. The appellant is entitled to non-pecuniary damages on account of amputation under following four heads:-

- (i) Compensation on account of pain and suffering
- (ii) Compensation on account of loss of amenities of life.
- (iii) Compensation on account of disfiguration; and
- (iv) Compensation on account of reduction of matrimonial prospects.

15. In the case of **Oriental Insurance Co. Ltd. vs. Satish Sharma (2008) ACJ 2259**, this Court examined all the previous judgments with respect to the non-pecuniary compensation awarded in the case of permanent disability

and held that the Courts have been awarding about Rs.3,00,000/- under the heads of non-pecuniary damages for amputation of leg with permanent disability of 50% and above. The findings of this Court are reproduced hereinunder:-

“17. From the aforesaid judicial decisions, a trend which emerges is that between the years 1985 and 1990, the courts have been awarding about Rs.3,00,000/- under the head ‘non-pecuniary damages’ for amputation of leg resulting in permanent disability of 50 per cent and above.”

16. Following the aforesaid judgment, compensation of Rs.2,00,000/- awarded by the learned Tribunal towards non-pecuniary damages is enhanced to Rs.3,00,000/- which shall include the following heads:-

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| (i) | Compensation for pain and suffering | - | Rs.1,00,000/- |
| (ii) | Compensation for loss of amenities of life | - | Rs.1,00,000/- |
| (iii) | Compensation for disfiguration | - | Rs.50,000/- |
| (v) | Compensation for loss of marriage prospects | - | Rs.50,000/- |

17. The appellant is entitled to total compensation of Rs.13,81,821/- (Rs.6,48,000/- towards loss of income + Rs.75,000/- towards medical expenditure incurred before the passing of the award + Rs.58,821/- incurred by the appellant for implantation of artificial leg in March, 2004 + Rs.3,00,000/- towards purchase of artificial limb costing Rs.2,30,600/- and half yearly maintenance @ Rs.6,000/- +

Rs.1,00,000/- for pain and suffering + Rs.1,00,000/- for loss of amenities of life + Rs.50,000/- for disfiguration and Rs.50,000/- for loss of marriage prospects).

18. The appeal is allowed and the award amount is enhanced from Rs.2,75,000/- to Rs.13,81,821/-. The learned Tribunal has awarded interest @9% per annum which is not disturbed on the original award amount of Rs.2,75,000/-. With respect to the artificial limb implanted on the appellant in March, 2004 for which he made payment of Rs.58,821/- on 8th/23rd March, 2004, the interest shall be only for the period from 24th March, 2004 up to the date of payment and with respect to the artificial limb to be implanted in future, there shall be no interest on Rs.3,00,000/- awarded hereinabove. On the remaining enhanced award amount, the rate of interest shall be 7.5% per annum from the date of filing of the petition till realization.

19. The entire award amount along with interest be deposited by respondent No.3 with UCO Bank, Delhi High Court Branch A/c Himanshu through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 30 days.

20. Upon the aforesaid deposit being made, the UCO Bank is directed to release a sum of Rs.2,00,000/- to the appellant by transferring the said amount to his Saving Bank Account. The remaining amount be kept in fixed deposit for a period of five years on which monthly interest be paid to him by

automatic credit to his Saving Bank Account. No loan, advance or withdrawal be permitted to the appellant without the permission of this Court.

21. The aforesaid amount includes a sum of Rs.3,00,000/- awarded to the appellant for purchase of the artificial limb from Ms. Otto Bock Health Care India Private Limited. The UCO Bank shall ensure that a sum of Rs.3,00,000/- shall not be released to the appellant and this amount shall be released directly to M/s Otto Bock Health Care India Private Limited after the artificial limb is implanted and the invoice along with a certificate certifying the implantation submitted by M/s Otto Bock Health Care India Private Limited is submitted to the UCO Bank.

22. The Otto Bock Health Care India Private Limited has submitted an estimate of Rs.2,30,600/- for implantation and Rs.6,000/- for half yearly maintenance. M/s Otto Bock Health Care India Private Limited shall provide lifelong maintenance of the artificial limb for which a sum of Rs.70,000/- shall be released to them at the time of implantation of the artificial limb.

23. Let an acceptance by M/s. Otto Bock Health Care India Private Limited be placed in this regard before the next date of hearing.

24. List for directions on 16th December, 2009.

25. Copy of this order be given 'Dasti' to learned counsel for both the parties under signature of Court Master.

26. Copy of this order be also sent to M/s Otto Bock Health Care India Private Limited. Dasti copy be given to learned counsel for the appellant who shall serve the same on M/s. Otto Bock Health Care India Private Limited.

J.R. MIDHA, J

NOVEMBER 19, 2009
aj/mk