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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ MAC.APP.475/2004

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Date of decision: 19th August, 2009

HEMANT NANDA Appellant
Through : Mr. Rajeev Saxena, Adv.

versus

VINOD KUMAR & ORS. Respondents
Through : Mr. S.L. Gupta, 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.3,34,400/- has been awarded to the appellant. The appellant seeks enhancement of the award amount.

2. The accident dated 19th November, 1999 resulted in grievous injuries to the appellant. The appellant was travelling on his two wheeler scooter when the offending truck crushed him under its wheels. The left arm of the appellant just below the shoulder was amputated by a surgery performed on him after the accident. The disability of the appellant as per the certificate, Ex.PW-18 issued by All India Institute of Medical Sciences is 80%.

3. At the time of the accident, the appellant was working as Sales Manager with Jagdamba Glass House drawing a salary of Rs.5,500/- per month. The appellant came in the witness box as PW-2 and deposed that he was working as Sales Manager earning Rs.5,500/- per month. The appellant also proved his secondary and senior secondary certificate as Ex.PW-19 and Ex.PW-20. The employer of the appellant appeared in the witness box as PW-3 and deposed that the appellant was her employee as Sales Manager and was drawing a salary of Rs.5,500/- per month. PW-3 produced 12 vouchers in respect of the salary paid to the appellant for the period from January, 1999 to December, 1999 which were exhibited as Ex.PW3/1 to Ex.PW3/12. PW-3 also produced the attendance register in respect of the appellant for the period from April, 1999 to March, 2000 and the photocopies of the same were exhibited as Ex.PW3/13 to Ex.PW3/24. In cross-examination, PW-3 admitted that the appellant was not working with her after the accident.

4. The learned Tribunal disregarded the testimony of PW-2 and PW-3 as well as Ex.PW3/1 to PW3/24 on the short ground that PW - 3 was not paying Income Tax and her shop was not registered under the Shop Establishment Act. The learned Tribunal took the income of the deceased according to the minimum wages at Rs.2,800/- and applied the multiplier of 18 to compute the loss of income at Rs.3,02,400/-. The appellant has suffered 80% permanent disability but the loss of earning capacity was taken to be 50%. The learned Tribunal awarded

Rs.2,000/- towards the medical expenses, Rs.2,000/- towards conveyance and Rs.30,000/- towards non-pecuniary damages. The total compensation awarded to the appellant is Rs.3,34,400/-.

5. The learned counsel for the appellant submits that the learned Tribunal erred in disregarding the testimony of PW-2 and PW-3 and Ex.PW3/1 to Ex.PW3/24. The learned counsel submits that the appellant was working as Sales Manager earning Rs.5,500/- per month and the loss of income be computed on the said basis after taking the future prospects into consideration.

6. The learned counsel for the appellant further seeks enhancement of compensation towards medical expenses, conveyance and special diet. The learned counsel also seeks enhancement of the non-pecuniary damages.

7. With respect to the occupation and income of the appellant, there is sufficient evidence on record that the appellant was working as a Sales Manager with Jagdamba Glass House at the time of the accident and was earning a salary of Rs.5,500/- per month. Ex.PW3/1 to Ex.PW3/12 are the vouchers in respect of the salary paid to the appellant for the period from January, 1999 to December, 1999 and Ex.PW3/13 to Ex.PW3/24 are the photocopies of the attendance register in respect of the appellant for the period from April, 1999 to March, 2000.

8. The appellant cannot be punished for the non-registration of the shop of the employer or the non-payment of the Income Tax by the employer. The employer is liable for the consequences of

his default of non-payment of Income Tax but the employee cannot be punished for the same. It has been sufficiently proved that the appellant was working as Sales Manager drawing a salary of Rs.5,500/- per month and there is no rebuttal to the evidence in this regard. The income of the appellant at the time of the accident is, therefore, taken to be Rs.5,500/- per month. The appellant had a permanent job and, therefore, 50% is added towards the future prospects and the income of the appellant for computation of compensation is taken to be Rs.8,250/- per month (Rs.5,500 + Rs.2,750).

9. The appellant has suffered 80% permanent disability in relation to his left upper limb. The learned Tribunal has taken the loss of earning capacity to be 50% in respect of the whole body. The presumption drawn by the learned Tribunal in this regard is correct. The learned Tribunal has applied the multiplier of 18 to compute the loss of income. The appellant was aged 28 years at the time of the accident and the appropriate multiplier according to the recent judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129** is 17. Applying the multiplier of 17 and treating the loss of earning capacity to be 50%, the loss of income is computed to be Rs.8,41,500/- (Rs.8,250 X 12 X 17 X 50%).

10. The learned Tribunal has awarded Rs.2,000/- towards the medical expenses. The appellant's left arm was crushed under the offending truck and he underwent surgery for amputation. The appellant remained hospitalized from 19th November, 1999 to

25th November, 1999. The complete medical record of the appellant is on record. The appellant has placed on record medical bills to the tune of Rs.22,020/- against which the learned Tribunal has awarded only Rs.2,000/-. The expenditure on treatment is, therefore, enhanced from Rs.2,000/- to Rs.22,020/-.

11. The appellant claimed Rs.15,000/- towards expenditure incurred on conveyance for the visiting doctors. The appellant is also entitled to future conveyance as he is not in a position to either drive any vehicle or travel by public vehicle. However, the learned Tribunal observed that Rs.15,000/- claimed by the appellant for visiting to the doctors and coming back is on a higher side and awarded only Rs.2,000/-. The compensation towards the conveyance is assessed at Rs.1,000/- per month and the multiplier of 17 is applied to compute the loss at Rs.2,04,000/-.

12. The learned Tribunal has awarded a compensation of Rs.30,000/- towards the non-pecuniary damages which is on a very lower side. Reference in this regard may be made to the judgment of this Court in the case of **Oriental Insurance Co. Ltd. vs. Vijay Kumar Mittal, MAC.APP.No.228/2006 decided on 11th May, 2007** in which this Court examined all the previous judgments and held as under:-

“20 From the afore noted judicial decisions, a trend which emerges is that between the years 1985 to 1990, 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% and above.”

13. Rs.1,00,000/- is awarded towards pain and sufferings and Rs.1,00,000/- is awarded towards loss of amenities of life.

14. The appellant is entitled to total compensation of Rs.12,67,520/- (Rs.8,41,500 + Rs.22,020 + Rs.2,04,000 + Rs.1,00,000 + Rs.1,00,000).

15. The appeal is allowed and the award amount is enhanced from Rs.3,34,400/- to Rs.12,67,520/-. The learned Tribunal has awarded interest @8% per annum which is not disturbed on the original award amount. However, on the enhanced award amount, the rate of interest shall be @7.5% per annum from the date of filing of the petition till realization.

16. The enhanced award amount along with interest be deposited by respondent No.3 in the name of UCO Bank A/c Hemant Nanda, Delhi High Court Branch within 60 days.

17. The order for disbursement of the enhanced award amount shall be passed on the next date.

18. List on 20th October, 2009.

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

20. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) through the UCO Bank, High Court Branch under the signature of Court Master.

J.R. MIDHA, J

AUGUST 19, 2009
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