

Date of Decision: 19th May, 2009

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R.N. SHARMA Appellant
Through : Appellant in person.

versus

ASHOK GAUTAM & ORS. Respondents
Through : Ms. Suman Bagga, Adv.
for R-2.

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.91,300/- has been awarded by the learned Tribunal. The appellant seeks enhancement of the award amount.

2. On 29th October, 2002, the appellant was crossing the road opposite Nirman Bhawan when he was hit by Car bearing registration No.DL-7CA-9577 driven rashly and negligently by respondent No.1.

3. The appellant suffered fracture of Vth Metatarsal base of his left foot for which he was plastered initially for three days and then for four weeks. The appellant also suffered

injuries on left hand. His left ring and middle fingers were strapped.

4. The appellant appeared in the witness box as PW1 and deposed that he initially visited Dr. Vipul Jain who gave first aid and advised x-ray which was got done by Precision Diagnostic Centre. The appellant thereafter attended Prasham Ortho Clinic where fresh x-ray was done and the fracture of Vth Metatarsal base of left foot was found for which the appellant was plastered for three days. After opening the said plaster, a fresh plaster was put for four weeks by Prasham Ortho Clinic. On 5th November, 2002, the appellant attended Dr. Ram Manohar Lohia Hospital where he was again x-rayed. On 5th November, 2002, the appellant visited Dr. Dhar for second opinion, where the fractured foot was replastered. The plaster was removed after eight weeks on 6th January, 2003 and the appellant was advised physiotherapy. Since the pain continued, the appellant visited Prasham Ortho Clinic on 19th April, 2003 where he was again x-rayed and some displacement was noticed by the doctor.

5. The doctor advised the appellant for medical arch support which was purchased from Manas Prosthetic & Orthotic Clinic. The appellant is regularly using medical arch support which costs about Rs.400/- and has to be replaced every three months. However, no amount has been awarded by the learned Tribunal for the said expenditure. Rs.10,000/-

is awarded to the appellant towards the cost of medical arch support.

6. The appellant was unable to walk properly and put load on his left foot. The appellant underwent physiotherapy for about two years. The appellant proved the medical record as well as the expenses on treatment as Ex.PW-1/1 to Ex.PW-1/31.

7. The appellant produced PW-2 who was the attendant employed by the appellant from November, 2002 to July, 2003 at a salary of Rs.3,000/- per month due to the inability to attend to his daily routine due to the plaster fixed on his leg.

8. The appellant also produced the driver as PW-3 who was initially employed at a monthly salary of Rs.4,500/- w.e.f. June, 2004 and subsequently the salary was increased to Rs.5,500/- per month from July, 2005. The appellant was unable to drive the vehicle and, therefore, had employed the driver to drive his vehicle.

9. The learned Tribunal has awarded a sum of Rs.4,150/- on account of medicines and medical treatment. The appellant submits that he incurred expenditure of Rs.19,000/- vide Ex.PW1/6 paid to South Ex Orthopaedic Clinic. Ex.PW1/6 is the original certificate signed by Dr. M.L. Dhar, Consultant Orthosurgeon who has certified that he attended the appellant on 5th November, 2002 and gave the walking plaster to the appellant for eight weeks and the cost

of medical consultation and procedure was Rs.6,000/- and he advised the appellant for physiotherapy and Rs.13,000/- was paid to the physiotherapist and the total expenditure incurred by the appellant was Rs.19,000/-.

10. The learned Tribunal has not awarded the aforesaid amount to the appellant on the ground that Ex.PW1/6 does not bear the date and revenue stamp. Ex.PW1/6 is sufficiently corroborated by the oral testimony of the appellant and, therefore, the appellant has sufficiently proved the expenditure of Rs.19,000/- on his treatment.

11. The appellant further submits that he incurred a further sum of Rs.3,300/- towards the physiotherapy charges paid to Nanda Vanam Health Centre vide receipts Ex.PW1/19, Ex.PW1/20 and Ex.PW1/21 but the learned Tribunal neither considered the said documents nor awarded the said amount. Ex.PW1/19, Ex.PW1/20 and Ex.PW1/21 are original receipts of payment made to Nandavanam Health Centre and, therefore, a further sum of Rs.3,300/- is awarded to the appellant towards the cost of treatment.

12. The appellant's left foot remained in plaster from 29th October, 2002 up to 6th January, 2003 and the appellant took physiotherapy thereafter due to which his movement was confined. The appellant employed an attendant for a period of three months at a salary of Rs.3,000/- per month as he was unable to attend to his household and other work. The appellant produced the attendant in the witness box as PW2

to prove the employment as well as the amount paid by him to the attendant. The appellant also employed a driver as he was unable to drive the vehicle due to the fracture and the plaster. The appellant has claimed Rs.5,500/- towards the salary paid to the driver.

13. The learned Tribunal has not awarded any amount towards the salary of the attendant and the driver on the ground that the said amount has not been shown in the Income Tax Return and the documentary evidence with respect to the proof of salary paid has not been placed on record. The appellant submits that the Income Tax Return – Ex.PW1/27 shows the salary of Rs.60,000/- to the employees and Ex.PW1/31 shows the salary of Rs.90,000/- to the employees. It has been proved by sufficient evidence that the appellant had suffered fracture of his left foot which remained in plaster for more than eight weeks and he was unable to drive and, therefore, had to employ an attendant and a driver. There is no rebuttal to the evidence led by the appellant.

14. The appellant is awarded a sum of Rs.9,000/- towards the salary paid to the attendant for three months. With respect to the salary of the driver, the appellant submits that he is still employing a driver. However, the salary of the driver can be awarded only for the period the appellant was unable to drive. Although, the plaster of the appellant was removed after eight weeks, he could not drive the vehicle for

at least five months, and therefore, lump sum amount of Rs.20,000/- is awarded to the appellant towards the salary paid to the appellant for employing the driver for the said period.

15. With respect to the loss of income, the learned Tribunal has awarded a sum of Rs.60,000/- towards the loss of income for four months calculated at the rate of Rs.15,000/- per month. The learned Tribunal has taken the income of the appellant as Rs.15,000/- per month from the Income Tax Return for the year 2003-04.

16. The learned counsel for the appellant submits that the income of Rs.1,55,352/- for the year 2003-04 is the net income after depreciation of car, computer and other items and the income should have been taken into consideration without taking the depreciation. If the deduction towards depreciation is excluded, the income of the appellant for the year 2002-03 would come to Rs.2,13,963/-. The monthly income would be approximately Rs.18,000/- per month. The compensation towards loss of income is, therefore, enhanced from Rs.60,000/- to Rs.72,000/- (Rs.18,000 x 4).

17. The learned Tribunal has awarded Rs.15,000/- towards pain and suffering to the appellant, Rs.5,000/- towards compensation for loss of enjoyment and amenities of life and Rs.5,000/- towards special diet. Considering the nature of injuries suffered by the appellant and the period for which his movement was confined and was unable to attend his official

work, compensation for pain and suffering is enhanced to Rs.15,000/- to Rs.25,000/-, the compensation for loss of enjoyment and amenities of life is enhanced from Rs.5,000/- to Rs.20,000/- and the compensation for special diet is enhanced from Rs.5,000/- to Rs.10,000/-.

18. The appellant is entitled to a total compensation of Rs.1,94,597/- (Rs.10,000 + Rs.4,150 + Rs.19,000 + Rs.3,300 + Rs.2,147 + Rs.10,000 + Rs.9,000 + Rs.20,000 + Rs.72,000 + Rs.25,000 + Rs.20,000).

19. The appeal is accordingly allowed. The award amount is enhanced from Rs.91,300/- to Rs. 1,94,597/- along with interest @7.5% per annum from the date of filing of the petition till realization.

20. Respondent No.2 is directed to deposit the award amount with the learned Tribunal within 30 days. Upon such deposit being made, the learned Tribunal is directed to release the award amount to the appellant without any restriction of fixed deposit.

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

J.R. MIDHA, J

MAY 19, 2009

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