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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: May 20, 2010

Date of Order: July 02, 2010

+ MAC Appeal 19/2010

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Shyam Sunder

Through: Mr. O.P. Mannie, Advocate

02.07.2010

...Appellant

Versus

Krishna Kumar & Anr.

Through: nemo

...Respondents

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. The present appeal has been filed by the appellant against an award dated 23rd October 2009 passed by learned Tribunal whereby the learned Tribunal awarded a sum of Rs.2,64,000/- to the appellant with interest @ 7.5% from the date of filing of claim petition till realization. The appellant has assailed the award on the ground that the compensation awarded by the Tribunal was inadequate.

2. The appellant met with an accident on 20th December 2005, when a dumper truck bearing number HR 38 K 7085 hit the appellant when appellant was standing at the bus stand waiting for the bus. The appellant, on account of this accident, suffered fracture of femur bone and also of nasal bone. He remained hospitalized with effect from 20th December 2005 till 12th January 2006 and thereafter from 3rd June, 2006 to 6th June 2006. The appellant at the time of accident was employed as a doctor with Central Jail Hospital, Rohini as Junior Resident and his contract of service was to expire in January

2006. He was drawing a salary of Rs.22,391/- per month. After recovery from injuries, the appellant joined service with UP Government at the post of Medical Officer at basic salary of Rs.16,880/- and gross salary, more than what he was getting at Rohini Hospital, Delhi. The appellant was treated at Government Hospital. He produced medical bills of Rs.1500/-. The Tribunal awarded a sum of Rs.7,000/- to the appellant towards medical expenses and special diet, conveyance etc. Since the appellant got reemployed with effect from August 2006, learned Tribunal awarded loss of income for 8 months i.e. from December 2005 to July 2006. Although the appellant did get salary from his employer i.e. Jail Hospital, Rohini for December 2005, a sum of Rs.1,71,128/- was awarded to the appellant equivalent to 8 months salary after deduction of income tax. Since the appellant had suffered 48% disability of his lower limbs, the Tribunal awarded Rs.25,000/- towards pain and sufferings and Rs.60,000/- for loss of amenities and enjoyment of life. Thus, the total compensation awarded to the appellant was Rs.2,64,000/-.

3. The award is assailed by the appellant on the ground that the Tribunal wrongly concluded that the disability of the appellant had not affected the earning capacity of the appellant. It is stated that if the appellant had not met with the accident, he would have earned Rs.43,804/- per month since the appellant was having an offer of job of resident doctor in Delhi and as a doctor in Delhi he would have got salary of Rs.43,804/- per month. The other contention of the appellant is that because of permanent disability of his both a lower limbs appellant was not able to walk properly and the Tribunal granted inadequate sum towards his pain and sufferings and loss of comforts of life. Appellant had also to engage an attendant for the period when he remained confined to bed for which no amount was allowed by the Tribunal. The Tribunal also failed to take into consideration that the appellant, on account of accident, could not appear and take competitive examination for admission to MD which affected his career.

4. A perusal of award would show that the Tribunal had considered these aspects. The appellant had raised the plea of non appearing in competitive examination for admission to MD due to accident. The Tribunal and the Tribunal found that the appellant had appeared for entrance examination of MD previously several times but failed to clear the same. So, it cannot be said that if he had appeared this time he would have cleared the same. Thus, there was no loss of opportunity or loss of academic career. The Tribunal also observed that the basic salary of the appellant at Jail Hospital, Rohini was Rs.9400/- per month at the time of accident. After 8 months of accident, he got a government job in UP with basic salary of Rs.16,880/- per month. The Tribunal rightly held that appellant had not suffered loss of earning capacity due to accidental injuries. The Tribunal also observed that since the appellant belonged to noble profession of medical service, his physical injury would not affect his capacity or capabilities to perform his duties in the medical field, which was evident from the fact that he got a better job soon after the accident with UP Government.

5. I consider that the Tribunal awarded adequate, just and fair compensation to the appellant. The award passed by the Tribunal does not require interference by this Court. I find no force in this appeal. The appeal is hereby dismissed.

June 02, 2010
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SHIV NARAYAN DHINGRA J.