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IN THE HIGH COURT OF DELHI AT NEW DELHI

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F.A.O. No.480 of 2003 & C.M. Appl. No.5601 of 2008

24.05.2010

MASTER FEROZ

..... Appellant

Through: Mr. S.N. Parashar, Advocate.

Versus

RAJINDER KUMAR & ORS.

..... Respondents

Through: Ms. Shantha Devi Raman, Adv. for R-3.

Reserved on: 19th May, 2010
Pronounced on: 24th May, 2010

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?

J U D G M E N T

C.M. Appl. No.5601 of 2008

This is an application on behalf of the appellant under Order IX Rule 4 CPC for restoration of the appeal which was dismissed for non-prosecution on 4th February, 2008.

For the reasons stated in the application, the same is allowed and appeal is restored to its original number.

The application stands disposed of.

F.A.O. No.480 of 2003

1. The present appeal has been filed for enhancement of compensation on behalf of the injured by next friend. The injured at the time of accident, i.e., on 26th September, 2001, was a child aged around 11 years. He fractured his right leg in the accident and was treated at GTB Hospital. The father of the injured appeared as a witness and stated that apart from taking treatment from GTB Hospital, treatment was also taken from a private hospital and an amount between Rs.15,000-Rs.20,000/- was spent. However, no bills of private treatment were produced nor the name of doctor of the Hospital from whom treatment was taken disclosed. The Tribunal allowed a sum of Rs.500/- to the

injured towards purchase of medicines, etc. The Tribunal further allowed a sum of Rs.15,000/- to the injured on account of physical pain, suffering and mental trauma and an amount of Rs.2,500/- was allowed on the ground that child could not go to school for three months. Thus, a total compensation of Rs.18,000/- along with interest @ 8 per cent per annum on it from the date of filing of petition till realization was allowed.

2. During arguments in appeal, counsel for the appellant only pressed the issue that the Tribunal did not award adequate compensation for loss of education. It is submitted that one year of the child got spoiled due to the accident. This argument is not tenable. The accident had taken place on 26th September, 2001. The child thus, if studying, would have got admission in the school either in May, 2001 or latest by July, 2001. No evidence was produced before the court that the child did not take exam that year. Since it was a case of fracture, the leg of the child was put in cast. The child was free to study at home. He had visited GTB Hospital initially soon after the accident and then on 3rd October, 2001, as per the record. In cases of fracture, the cast is put normally for six weeks to eight weeks. The joining of bones in case of children of growing age is very fast since that is the age of bone formation. Thus, if the child had wanted to study, there was no one, who could have stopped the child from studying and appearing in examination.

3. I find no ground to enhance the compensation on the ground of loss of educational year since no evidence was placed before the Tribunal in this respect. The appeal is dismissed.

SHIV NARAYAN DHINGRA J.

MAY 24, 2010
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