

+ MAC.APP.No.306/2007Date of Decision: 5th February, 2010

%

KUMAR RITVIJ

..... Appellant

Through : Mr. C. Mohan Rao, Adv.

versus

BHAWAN KUMAR JHA & ORS.

..... Respondents

Through : Mr. P.N. Talwar, Adv.

CORAM :-**THE HON'BLE MR. JUSTICE J.R. MIDHA**

- | | | |
|----|---|------------|
| 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.1,20,000/- has been awarded to the appellant. The appellant seeks enhancement of the award amount. Respondent No.2 has filed cross-objections seeking reduction of the award amount.

2. The accident dated 2nd January, 2001 resulted in grievous injuries to the appellant. The appellant was a pillion rider on a two wheeler scooter driven by his father. On 2nd January, 2001 at about 3:20 p.m., the said scooter was hit by Ceilo car bearing No.HR-26G-3857 on the crossing of I-Avenue Road towards Sarojini Nagar Market.

3. The appellant was aged 16 years at the time of the

accident and he suffered compound fracture of left shaft femur bone besides peeling of skin and ligaments and abrasions on many parts of the body. The appellant was operated at St. Stephen's Hospital where a steel rod was inserted and he was confined to bed for six months.

4. The learned Tribunal has awarded Rs.5,000/- towards special diet, Rs.5,000/- towards conveyance, Rs.15,000/- towards future expenses, Rs.75,000/- towards loss of salary suffered by the mother who took leave to take care of the appellant and Rs.20,000/- towards pain and suffering. The total compensation awarded is Rs.1,20,000/-.

5. The learned counsel for the appellant has urged the following grounds at the time of hearing of this appeal:-

- (i) Medical expenses of Rs.41,838/-, not reimbursed by the employer of the appellant's father, be awarded.
- (ii) The compensation of Rs.44,000/- towards loss of fees paid for IIT Engineering coaching be awarded.
- (iii) The compensation of Rs.2,00,000/- towards loss of earning capacity be awarded.
- (iv) The compensation for special diet be enhanced from Rs.5,000/- to Rs.13,000/-.
- (v) The compensation for future expenses be enhanced from Rs.15,000/- to Rs.40,000/-.
- (vi) Rs.5,000/- be awarded for physiotherapy.
- (vii) Rs.18,000/- be awarded for full time maid for six

months.

(viii) The compensation be awarded for loss of amenities of life.

(ix) The compensation be awarded for disfiguration.

(x) The rate of interest be enhanced from 6% per annum to 7.5% per annum.

6. The learned counsel for respondent No.3 has urged at the time of hearing of this appeal in support of his cross-objections that the award of Rs.75,000/- to the mother of the appellant towards loss of salary be set aside.

7. With respect to the claim of Rs.41,838/- by the appellant towards medical expenses not reimbursed by the employer, no evidence has been led to prove that the employer has not reimbursed Rs.41,838/- and, therefore, no amount can be awarded to the appellant under this head.

8. With respect to the claim of Rs.44,000/- of the appellant towards loss of fees paid to IIT Engineering for coaching, the appellant paid Rs.6,500/- to Vidya Mandir and Rs.37,500/- to FIITJEE. The Assistant Accountant of Vidya Mandir appeared in the witness box as PW-6 and deposed that the appellant paid Rs.6,500/- vide Ex.PW6/A. The officer of FIITJEE appeared as PW-10 and deposed that the appellant qualified the admission test for coaching in July, 2000 and paid Rs.37,500/- vide receipt - Ex.PW10/1. PW-10 further deposed that the appellant attended the course initially for six months but he could not attend the course from January,

2001 to May, 2001 on account of the accident but he attended the course thereafter for remaining period.

9. From the statement of PW-6 and PW-10 and documents - Ex.PW6/A and Ex.PW10/1, it stands proved that the appellant paid a sum of Rs.6,500/- to Vidya Mandir and Rs.37,500/- to FIITJEE. The coaching course with FIITJEE was for two years out of which the appellant could not attend the course for six months. The appellant could not get admission in IIT and the loss of coaching classes for six months due to the accident made entire coaching redundant and, therefore, the appellant suffered loss of Rs.44,000/- towards the payment made to Vidya Mandir and FIITJEE. Rs.44,000/- is awarded to the appellant towards loss of fees paid for coaching of the Engineering course.

10. The appellant has claimed Rs.2,00,000/- towards loss of earning capacity due to the injuries suffered in the accident. There is no permanent disability suffered by the appellant due to the accident in question and, therefore, the claim for loss of earning capacity is rejected.

11. The appellant remained confined to bed for a period of six months which has been proved by Ex.P-9/20 to Ex.P-9/23. Considering the confinement of the appellant to bed for six months, the compensation of Rs.5,000/- towards special diet is enhanced to Rs.10,000/-.

12. The appellant claimed Rs.40,000/- towards future expenses for removal of the rod for which the learned

Tribunal has awarded a sum Rs.15,000/-. No evidence has been led by the appellant to prove the expenditure of Rs.40,000/-. The learned counsel for the appellant submits that judicial notice be taken of the fact that removal of the rod would cost even more than Rs.40,000/-. More than nine years have passed after the accident and the rod has not been removed till now. Considering that the rod implanted in the leg of the appellant would require removal/replacement at some stage and the cost thereof could not be less than Rs.40,000/-, the compensation of Rs.15,000/- awarded by the learned Tribunal is enhanced to Rs.40,000/-.

13. With respect to claim of Rs.5,000/- towards the physiotherapy, considering that the appellant suffered fracture of femur bone of right thigh in which rod was inserted and physiotherapy is mandatory for such cases, Rs.5,000/- is awarded to the appellant towards the physiotherapy.

14. With respect to the claim of Rs.18,000/- towards the full time maid for six months, no receipt of payment made has been proved by the appellant. The claim of Rs.18,000/- is, therefore, rejected. The learned Tribunal has already awarded Rs.75,000/- to the mother of the appellant towards leave taken by her and, therefore, no further amount for attending the appellant is warranted.

15. The learned counsel for Respondent No.2 seeks setting aside the award of Rs.75,000/- by the learned Tribunal to the

appellant towards loss of salary due to leave taken by her mother to attend the appellant. The leave of 152 days from 2nd January, 2001 to 2nd June, 2001 was proved by the witness from Kendriya Vidyalaya who appeared as PW-5 and proved the record – Ex.PW5/A to Ex.PW5/C. PW-5 further deposed that the leave of 152 days availed by the mother of the appellant was without pay. The award of Rs.75,000/- to the appellant is, therefore, upheld.

16. The learned Tribunal has not awarded any compensation for loss of amenities of life and disfiguration, Rs.15,000/- is awarded for loss of amenities of life and Rs.15,000/- is awarded towards disfiguration.

17. The appellant is entitled to total compensation of Rs.2,29,000/- (Rs.10,000 + Rs.5,000 + Rs.40,000 + Rs.75,000 + Rs.20,000 + Rs.44,000 + Rs.5,000 + Rs.15,000 + Rs.15,000)

18. The learned Tribunal has awarded interest @6% per annum which is on a lower side. Following the judgment of the Hon'ble Supreme Court in the case of **Dharampal vs. U.P. State Road Transport Corporation, III 2008 ACC (1) SC**, the rate of interest is enhanced from 6% per annum to 7.5% per annum.

19. The appeal is allowed and the cross-objections are dismissed. The award amount is enhanced from Rs.1,20,000/- to Rs.2,29,000/- along with interest @7.5% per annum from the date of filing of the petition till realization.

20. The enhanced award amount along with interest be deposited by respondent No.2 with UCO Bank A/c Kumar Ritvij, Delhi High Court Branch through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 30 days.

21. Upon the enhanced award amount being deposited, the UCO Bank is directed to keep 50% of the same in the fixed deposit for a period of six months with cumulative interest.

22. The remaining amount be released immediately to the appellant by transferring the same to his Saving Bank Account.

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

24. 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

FEBRUARY 05, 2010

aj