

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: May 18, 2010

Date of Order: 3rd June, 2010

MAC APP. 325/2010 & CM Appl.9277/2010

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03.06.2010

MOHD ZAHID

. ... Petitioner

Through: Mr. N.K. Jha, Advocate

Versus

AJIT KUMAR & ORS.

... Respondents

Through:

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. This appeal has been preferred by the claimant/injured assailing the award dated 29th January, 2010 on the ground that the compensation awarded to the claimant was insufficient.

2. The claimant met with an accident on 29th August, 2007 with Bus No. DL-1P-A-7308 and received compound fracture grade III of femur and degloving injury. He remained admitted in LNJP Hospital from 29th August, 2007 to 26th November, 2007. Thereafter he remained an OPD patient of LNJP Hospital from 9th January, 2008 to 30th August, 2008 for

repair of POP Cast. It is not disputed that he received entire treatment at LNJP Hospital free of cost. He, however, had to purchase some medicines from the market and he placed on record total bills of Rs. 6,433/-. The Tribunal awarded him a sum of Rs. 7,000/- towards cost of medicines and treatment.

3. The injured claimed that he was a self employed person and used to make silver goods and earn around Rs. 6,000/- per month. However, he did not place on record any document in support of his claim nor did he examine any witness in support of this claim. He did not place on record any certificate showing his educational qualification. His wages were, therefore, considered to be that of an unskilled labour as on the date of accident i.e. around Rs. 3600/- per month.

4. The Doctor had given him disability certificate showing that he had suffered 58% disability in relation to his right lower limb (right leg) of permanent nature and non-progressive. The Tribunal assessed his permanent disability in respect of entire body to be 35% and relied on his testimony that his age was 39 years as on the date of accident. The Tribunal applied a multiplier of 15 and calculated loss of income as Rs. 2,26,800/-. He was awarded a sum of Rs. 10,000/- for loss of amenities of life, Rs. 30,000/- for pain and suffering, Rs. 8,000/- for conveyance and Rs. 8,000/- for special diet. Thus a sum of Rs. 2,89,800/- was

awarded to the claimant along with interest @ 7.5% per annum from the date of filing of petition till the realization of the amount.

5. It is submitted by the counsel for the petitioner that the Tribunal failed to take into consideration future rise in income and future prospects and the compensation awarded by the Tribunal was, thus, on the lower side. The interest awarded was also low. It should have been 9 per cent instead of 7.5 per cent. He further submitted that the Tribunal awarded a meager amount of Rs. 30,000/- only on account of pain and suffering. It was also submitted that while calculating the loss of income the Tribunal wrongly took 35% disability in respect of entire body of the petitioner whereas the disability certificate was of 58% in relation to right lower limb. He submitted that due to this disability the appellant would not be able to work and therefore disability should have been taken as 100%. It is also submitted that the income of the appellant should have been taken as Rs. 6,000/- per month instead of Rs. 3600/- per month and the compensation amount of Rs. 7,00,000/- should have been awarded.

6. It is settled law that the compensation should be just and fair compensation to compensate the injured for loss of future income keeping in view the injury suffered by the injured. The nature of vocation of the injured, age of the injured and the adoptability of the injured to other

profession are the relevant factors. The compensation is not to be awarded so as to become a windfall.

7. The injured in his claim petition has stated that he was a silver goods maker. Silver goods & silver ornaments are made by hands while sitting and they are not made by legs. Under these circumstances, no fault can be found with the Tribunal's order considering the total disability of the injured to the extent of 35% in view of the fact that disability of the injured was 58% in respect of right leg alone.

8. It is settled law that where a person has no proof of income or gives no evidence in respect of his income, the minimum wages is the criteria to be applied and this is the criteria which has been applied by the Tribunal. Thus, the award cannot be faulted on this ground. The award of interest @ 7.5% awarded by the Tribunal is justified in view of the Judgment of Hon'ble Supreme Court in *Sarla Varma & Ors. vs. Delhi Transport Corporation & Anr.*; (2009) 6 SCC 121 case. There can be no straight jacket formula for awarding compensation in respect of pain and suffering. This has to be left to the discretion of the Tribunal, where the case is tried. This discretion has to be exercised by the Tribunal, judiciously considering all facts and circumstances. Every Judge has his own notions of awarding compensation for pain and suffering and some subjectivity is bound to be there. Merely because Judge at High Court

has different notions of pain and suffering than that of Tribunal, the quantum for pain and suffering should not be altered. The discretion exercised by the Tribunal cannot be substituted by the discretion of the appellate court or the next court.

9. I find no reason to entertain this appeal. The appeal is hereby dismissed.

June 03, 2010
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SHIV NARAYAN DHINGRA, J.