

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

Date of Reserve: June 1, 2010

Date of Order: 3rd June, 2010

MAC APP No. 356/2010

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03.06.2010

SHRI BHUPENDER KUMAR

..... Appellant

Through: Mr. Jatinder Kamra, Advocate

versus

SHRI VINOD ETC.

..... Respondent

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 assailing the award dated 11th February, 2010 on the ground that the compensation awarded by the Tribunal was inadequate and insufficient.

2. The claimant suffered a permanent disability of 37% in relation to his right leg in the accident which took place on 4th April, 2005. He was awarded a compensation of Rs. 2,70,000/- by the Tribunal. In the appeal the plea taken by the appellant is that the Tribunal wrongly considered his

disability of 37% in the right leg as over-all disability of 20% and awarded compensation on the basis of 20% disability. It is submitted that the appellant was working as a cook just before the accident and his leg was an important aspect of his profession because a cook has to work standing. The appellant also contended that the amount of Rs. 8,000/- awarded by the Tribunal towards special diet and conveyance was inadequate. Similarly, the amount of Rs. 20,000/- awarded for pain and agony was inadequate. The loss of earning awarded as Rs. 18,300/- was not reasonable. The interest awarded @ 7.5% per annum was also not proper.

3. A perusal of the award would show that the appellant had failed to prove his employment and income before the Tribunal with the result that the Tribunal considered the income of the appellant on the basis of minimum wages i.e. Rs. 3044.90 per month. Since the appellant had not been able to work due to accident for about six months, when he was under treatment, the Tribunal granted loss of income @ minimum wages for the period of six month amounting to Rs. 18,300/-. For calculating future loss of income, the Tribunal took into account the present minimum wages, doubled the same, and took average of the two and rounded it off to Rs. 4600/- per month. The Tribunal took over all disability of the body of the appellant to 20% since only one leg was

partially damaged and the appellant was in a position to carry on his normal day to day activities, although, with some difficulty. The Tribunal applied a multiplier of 18, which is the maximum multiplier under 2nd Schedule of the M.V. Act, 1938 and granted Rs. 1,99,000/- as damages towards loss of earning capacity.

4. I consider that there was no other better mode of calculating the damages. The Tribunal had been rather generous to the appellant and in terms of *Sunil Kumar Vs. Ram Singh Gaud & Ors, IV (2007) ACC 716 SC*, Tribunal could have deducted 1/3rd of the amount towards personal expenses etc. The Tribunal granted sufficient compensation towards medical treatment, special diet and conveyance, pain and suffering and loss of amenities of life. The total compensation of Rs. 2,70,300/- granted by the Tribunal, in no way can be said to be inadequate.

5. I find no force in the appeal. The appeal is dismissed.

SHIV NARAYAN DHINGRA,J

June 03, 2010

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