

\$~25

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

%

Decided on: 17.10.2019

+ MAC.APP. 549/2019, CM APPL. 22777/2019 & CM APPL. 22778/2019

SHIV SHANKAR MEHTO

..... Appellant

Through: Ms. Aakanksha Kaul and Mr.
Prabudh Singh, Advs.

versus

MARKANDEY MISHRA

..... Respondent

Through: Mr. Biswajit Swai and Mr. Praveen
Mishra, Advs.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. On 13.05.2019, the following order was passed:

“The appellant is aggrieved by award of compensation of Rs. 1,71,166/- to the victim. The learned counsel for the appellant submits that the documents submitted by the respondent are doubtful, inasmuch as he could not have been admitted to two hospitals simultaneously. He is shown to have been admitted in a government hospital i.e. Jag Pravesh Chandra Hospital on 28.08.2016 and discharged on 06.09.2016. However, simultaneously another document shows his admission in Walia Nursing

and Maternity Home, Laxmi Nagar on 03.09.2016 and discharge on 07.09.2016. It obviously cannot be for the same person. If it were, there would be a doubt on which document was to be relied upon. In the circumstances, the learned Trial Court imposing a liability of Rs. 82,894/-, towards medical expenses, is curious. Furthermore, there is no evidence apropos how long the injured was incapacitated from work, so as to grant him loss of wages for four months, at the rate of minimum wages.”

2. The photocopy of the date of discharge (page 34 of the paperbook) appears to be 06.09.2016. However, the learned counsel for the claimant has produced the original discharge slip which upon a bare glance shows that the photocopy is not a correct reflection of the original document. The date of discharge is evidently 03.09.2016. The original slip has also been shown to Ms. Kaul, the learned counsel for the appellant and she too agrees that indeed the date of discharge is 03.09.2016. The injured was thereafter admitted to Walia Nursing and Maternity Home, Laxmi Nagar, where he was treated. A bill of Rs. 82,894/- was raised which was awarded to the claimant.

3. In the circumstances, the contention apropos the claimant being in two places simultaneously is untenable. The award of Rs. 82,894/- towards ‘medical expenses’ shall remain undisturbed. However, the learned counsel for the appellant submits that the award of Rs. 38,272/- towards ‘loss of wages’ is unsubstantiated; the learned Tribunal has assumed that he would be entitled to compensation towards ‘loss of earnings’ because he was incapacitated for a period of four months.

4. It was the case of the claimant that he was working as a recovery inspector at M/s Malawa Finance Company, 15, Gokhle Market, Mori Gate, Delhi and was earning Rs. 12,000/- per month. His claim for the said loss would have to be substantiated by the employer's statement that the claimant was not paid any money for the period of four months, during which he was incapacitated and/or recuperating. It is equally possible that he may have been paid the salary for the said period. In the absence of any proof of 'loss of salary', the grant of compensation of Rs. 38,272/- towards 'loss of wages' is unjustified. Accordingly, it is set aside.

5. The appellant next contends that the award of Rs 10,000/- towards 'conveyance and 'special diet' and Rs. 10,000/- towards 'attendant charges' for the period of four months is unsubstantiated.

6. The Court is of the view that the claimant having undergone an operation, wherein a steel rod was inserted into his right lower limb and tightened with screws, he would definitely require special diet and conveyance charges to visit the hospital, doctors and other places, for rehabilitation therapy and other procedures. He would also require an attendant for some time. In the circumstances, the compensation on the aforesaid heads calls for no interference.

7. The appellant is stated to be an impoverished person who earns a living by making window blinds, therefore he seeks reduction of the quantum of the award.

8. In view of the said request, the learned counsel for the respondent states upon instructions from Mr. Praveen Mishra, who is present in the Court and is the relative of the respondent, that a reduction of Rs. 10,000/- may be made.

9. Accordingly, let Rs. 10,000/- be reduced and no interest will be paid on the entire quantum.

10. After making the deduction as afore directed, let the entire amount be paid in two equal instalments of four weeks each. The first instalment shall be paid directly into the appellant's bank account in three weeks from the date of receipt of copy of this order.

11. The appeal is disposed-off in the above terms.

OCTOBER 17, 2019

AB

NAJMI WAZIRI, J

न्यायमेव जयते