

Mohan Shah Vs Mohd. Maqsood and Others

Court: Delhi High Court

Date of Decision: April 17, 2012

Citation: (2012) 4 TAC 123

Hon'ble Judges: G.P. Mittal, J

Bench: Single Bench

Advocate: S.N. Parashar, for the Appellant; Shalini Upadhyay, for R-3, for the Respondent

Final Decision: Allowed

Judgement

G.P. Mittal, J.

The Appellant Mohan Shah seeks enhancement of compensation of Rs. 2,20,000/- awarded to him for having suffered compound fracture of pelvic region, compound fracture pubicremi and compound fracture of both the bones of right leg, Grade II, in an accident

which occurred on 04.08.2005. It was proved on record that the Appellant was admitted in Lok Nayak Jai Parkash Narain Hospital from

04.08.2005 to 08.09.2005 and again from 04.10.2005 to 18.10.2005. The Appellant underwent several surgeries and steel plates were fixed in

the leg to fix compound fracture. The Appellant was also treated by Dr. Brijesh Kumar Singh in Patna (Bihar), the place to which the Appellant

belonged.

2. The compensation awarded by the Motor Accident Claims

Tribunal (the Claims Tribunal) is tabulated hereunder:-

Sl. Compensation under various Awarded by the

No. heads Claims Tribunal

1.

Medicines and Medical Treatment Rs. 20,000/-

2.

Loss of Income Rs. 32,000/-

3. Loss of Earning Capacity due to NIL

Disability

4.

Loss of Amenities of Life Rs. 1,00,000/-

5.

Pain and Suffering Rs. 50,000/-

6.

Conveyance & Special Diet Rs. 18,000/-

Total Rs. 2,20,000/-

3. The contentions raised on behalf of the Appellant are:-

(i) The Appellant was working as a Carpenter, his claim for loss of income for ten months as also for loss of earning capacity should have been

decided on the basis of his monthly income @ Rs. 4,000/-.

(ii) The Appellant was not granted any compensation towards permanent disability, although the Appellant's earning capacity was substantially

affected on account of 30% disability in respect of right knee.

(iii) The compensation of Rs. 1,00,000/- awarded towards loss of amenities in life is lower and should be enhanced.

4. On the other hand, it is urged by the learned counsel for Respondent No.3 Insurance Company that the compensation awarded is just and

reasonable and does not call for any interference.

5. In his Affidavit Ex.PW-1/A, the Appellant claimed that he was employed as a Carpenter in Caram Board Factory of Shri K.D. M. Mahajan at

337, Paharganj, New Delhi. He deposed that he was earning Rs. 4,000/- per month. No documentary evidence was produced by the Appellant

from his employer. In this view of matter, the best evidence having not been produced, it would be difficult to rely on the Appellant's testimony that

he was drawing a salary of Rs. 4,000/- per month, especially when this part of his testimony was challenged in cross-examination. But, at the same

time, his occupation as a Carpenter was not disputed in cross-examination. Therefore, the Claims Tribunal ought to have taken the minimum wages

of a skilled worker for the purpose of computation of the income. The minimum wages of a skilled worker on the date of accident were Rs. 3589/-

per month rounded off to Rs. 3600/-. The Claims Tribunal on the basis of the material on record held that the Appellant was unable to attend to his

work for a period of about ten months. He was, therefore, entitled to a compensation of Rs. 36,000/- (3600/- x 10) instead of Rs. 32,000/-

awarded by the Claims Tribunal for loss of his income.

6. The Appellant in his testimony proved his Disability Certificate Ex.PW-1/5. The Claims Tribunal declined to take the same into account as the

doctor had not been examined. The Disability Certificate however, was verified by the Respondent Insurance Company during the course of this

Appeal and the same was found to be genuine. As per the Disability Certificate Ex.PWÅ~Â¿Â½1/5, the Appellant suffered post traumatic stiffness of

right knee resulting into his disability of about 30%. The Civil Surgeon Cum-Chief Medical Officer, Saran (Chapra) who was the head of the

Medical Board and had issued the Disability Certificate did not specify whether this permanent disability was in respect of his right lower limb or

was in respect of the whole body. The Disability Certificate shows that there was post traumatic stiffness of right knee. Evidently, this disability

cannot be taken to be in respect of the whole body but it was in respect of his right lower limb only.

7. I have already observed earlier that the Appellant's vocation of a Carpenter was not disputed in cross-examination. No expert evidence has

been produced by the Appellant to show the impact on his earning capacity on account of the disability suffered by him. In the circumstances, this

Court is left with the option to make a guess work to award a just compensation. A Carpenter by profession has to be very active and he has to

use both his hands and both the legs to cut the wood and to give shape to it. The extent of stiffness has not been given in the Disability Certificate.

In the circumstances, I would hold that there must be an impact of about 15% on the Appellant's earning capacity. He was, therefore, entitled to a

compensation of Rs. 1,03,680/- (3600/- x 12 x 16 x 15%) on account of loss of earning capacity. I accordingly award the same.

8. A compensation of Rs. 1,00,000/- was awarded towards the loss of amenities in life which, to my mind, was quite liberal. In Govind Yadav Vs.

The New India Insurance Company Limited, compensation of just Rs. 1.5 lacs was awarded towards loss of amenities and loss of marriage

prospects in case of the amputation of right lower limb resulting into 70% permanent disability in an accident which occurred in the year 2004.

9. This accident took place in the year 2005. The compensation of Rs. 1,00,000/- towards loss of amenities in life cannot be said to be low. The

same does not call for any interference.

10. In view of the above, the compensation is enhanced from Rs. 2,20,000/- to Rs. 3,27,680/-.

11. The enhanced compensation of Rs. 1,07,680/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its deposit with

the Registrar General of this Court.

12. Respondent No.3 New India Assurance Company Limited is directed to make the deposit of the enhanced compensation alongwith interest

within six weeks. Since this accident took place almost seven years back, the enhanced compensation shall be released in favour of the Appellant

immediately on deposit.

13. The Appeal is allowed in above terms. Pending applications also stand disposed of.