

* **HIGH COURT OF DELHI : NEW DELHI**

MAC APPEAL No.248 of 2004

% Judgment reserved on: 22nd April, 2008

Judgment delivered on: 29th April, 2008

Sh. Indersen Chhatwal
S/o Late Sh. Agya Ram
R/o. A-74, Second Floor,
Yojna Vihar, Delhi Appellant.

Through: Mr. R.S. Juneja, Adv.

Vs.

1. M/s. National Insurance Co. Ltd.
32, Community Center,
Naraina Industrial Area, Phase-I,
New Delhi

2. Sh. Sukhdev Singh
S/o. Sh. Surat Singh
R/o. Vill. Chamyari, P.S. Ajnala,
Distt. Amritsar, Punjab
C/o. Smt. Surender Kaur
A-59, Tegor Garden Extn.
New Delhi.

3. Smt. Surinder Kaur
R/o. A-59, Tegor Garden Extn.
New Delhi Respondents

Through: Ms. R.O. Bhutia, Adv.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

The present appeal has been filed by the appellant against the impugned judgment dated 19-02-04 passed by Sh. M.C. Garg, Judge, Motor Accident Claims Tribunal (for short as "Tribunal"), Karkardooma Court, Delhi in suit no. 448 of 2002, for the enhancement of the compensation amount.

2. In a nutshell, the facts relevant for the purpose of dealing with this appeal are as follows:

3. The appellant aged about 64 years has retired from Delhi Administration as a lecturer. He sustained grievous injuries in a road side accident which occurred on 11.04.01 when the appellant was riding his scooter bearing no. DL3SH-0344 while coming from Pitam pura to Rohini and had reached near Prashant Vihar Crossing. He was hit by a truck bearing no. DL-1GB-1227 which at the relevant time was being driven by respondent no.2 in a rash and negligent manner and the said truck is owned by the respondent no.3 and insured with the respondent no.1 (insurance company).

4. Vide the impugned judgment, the learned Tribunal awarded a sum of Rs.2,55,000/- towards pecuniary as well

as non pecuniary damages along with interest @ 7% p.a. as compensation to the appellant from the date of filing of the petition i.e. 18.09.02 till the date of realization.

5. Aggrieved thereby, the appellant has filed the present appeal before this Court.

6. It has been contended by Learned Counsel for the appellant that the Tribunal erred in multiplication of the years and granting the benefit to the appellant. The Tribunal has calculated the amount of Rs.60,000/- towards the permanent disability suffered by him due to the injury for the period of 1-1/2 year and has not given any reason why the appellant was deprived for the benefit of 7 years which is from the age of 64 to 70. The appellant is having good health and expected to enjoy the fruit of life up to the age of 75 years. Even now after the retirement from the service, the appellant has joined the legal profession and is in practice. The appellant was deprived the benefit of 5-1/2 years without any reason. Therefore, the appellant is entitled for the amount of Rs.2,20,000/- for the period of 5-1/2 years along with the interest from the date of filing of the petition till realization of the amount.

7. On the other hand, it has been contended by learned Counsel for the respondent that the case of appellant is full

of contradiction as in column 11 of the claim petition, the nature of the injuries are crush and grievous one, whereas during the course of evidence, petitioner has stated that he has suffered from permanent disability. The Permanent disability Certificate though has been issued by Government Hospital, but appellant has undergone treatment in Jaipur Golden Hospital, which is a private hospital and as such no reliance can be put on Disability Certificate. Moreover, it has been alleged by the appellant that he has been imparting tuitions to 10th or 12th class students and earning Rs.10,000/- per month, but no proof with respect to income has placed on record nor any student has been examined, who has taken the tuition from the appellant.

8. In a plethora of cases the Hon'ble Apex Court and various High Courts have held that the emphasis of the courts in personal injury and fatal accidents cases should be on awarding substantial, just and fair damages and not mere token amount. In cases of personal injuries and fatal accidents, the general principle is that such sum of compensation should be awarded which puts the injured or the claimants in case of the fatal accidents matter, in the same position as he would have been, if accident had not taken place.

9. In examining the question of damages for personal injury, it is axiomatic that pecuniary and non-pecuniary heads of damages are required to be taken in to account. In this regard the Supreme Court in **Divisional Controller, KSRTC v. Mahadeva Shetty, AIR 2003 SC 4172**, has classified pecuniary and non-pecuniary damages and has held that:

“Compensation must be ‘just’ and it cannot be a bonanza.”

10. Further Apex Court in *R.O. Hattangadi v. Pest Control (India) Pvt. Ltd.*; (AIR 1995 SC 755) laying the principles posited:

“Broadly speaking, while fixing the amount of compensation payable to a victim of an accident the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e. on account of injury the claimant may not be able to walk, run

or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.”

11. The appellant has produced the Permanent Disability certificate issued by the Government Hospital, Delhi, to show that he sustained grievous injuries which resulted into a permanent disability to the extent of 73% in his lower limb.

12. Coming to the injuries, the Tribunal has awarded a sum of Rs.1,20,000/- towards the expenses; Rs.25,000/- for special diet & conveyance; Rs. 10,000/- for mental pain and sufferings; Rs.40,000/- for the loss of income for one year; Rs.60,000/- on account of permanent disability to the extent of 73% in respect of lower limb to the appellant, which in my view, are just and proper.

13. Appellant has not brought on record any evidence to show that he was imparting tuitions to 10th and 12th class students individually and in groups and was earning about Rs.10,000/- p.m. Further, the accident has not effected the earning capacity of the appellant, since he suffered injury in right ankle and there is no medical evidence on record to show that a person whose profession is to impart tuitions to students would be unable to carry on tuition work due to

injuries in ankle. Admittedly, now appellant is carrying on his regular work in legal profession, so it cannot be said that appellant has been unable to do any work or there is any loss of earning for the future due to this accident. Keeping in view all the facts and circumstances brought on record, I am of the view that damages to the tune of Rs.2,55,000/- as awarded by the learned tribunal are just and adequate.

14. As regards the award of interest @ 7% per annum by the Tribunal, I do not find any justification for increasing the same to 18% p.a., as there has been variation in the rate of interest in various decisions given by the Supreme Court.

15. In ***Abati Bezbaruah v. Deputy Director General, Geological Survey of India***, (2003) 3 SCC 148, the Apex Court has observed as under;

“The question as to what should be rate of interest, in the opinion of this Court, would depend upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time.”

16. In view of the above decision, I am of the opinion that the award of interest @ 7% cannot be considered to be lower side. There cannot be any dispute that in many other judgments of the Supreme Court it has granted lower rate

of interest also at 6.5% and in some cases it has been 7.5% and in some other matters it is 9% as well. I am, therefore, not inclined to interfere in the discretion exercised by the Tribunal in awarding 7% interest on the award amount.

17. The Tribunal has rightly considered all the aspect and awarded a total compensation of Rs.2,55,000/- with interest @ 7% , under various heads. Therefore, there is no need to interfere with the findings of the Tribunal.

18. Accordingly, no infirmity can be found with the order of learned Tribunal and the compensation awarded by the Tribunal is just and adequate.

19. The present appeal is, therefore, dismissed.

20. No orders as to costs.

**V. B. GUPTA
(JUDGE)**

**29th April, 2008
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