

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO NO.118/02

Judgment reserved on: 13.03.2008

Judgment delivered on: 04.05.2009

Geeta Sharma

.....Appellant

Through Mr.O.P.Goyal, Adv

Versus

Tarun Kumar & Ors.

..... Respondents

Through: Mr.Pankaj Seth, Adv

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? NO

2. To be referred to Reporter or not? NO

3. Whether the judgment should be reported in the Digest? NO

KAILASH GAMBHIR, J.

1 The present appeal arises out of the award of compensation passed by the Learned Motor Accident Claim Tribunal on 26.11.01 for enhancement of compensation. The learned Tribunal awarded a

total amount of Rs. 1,46,900/- with an interest @ 9% PA for the injuries caused to the claimant appellant in the motor accident.

2. The brief conspectus of facts is as under:

3. On 24.6.95 appellant Smt.Geeta Sharma was going on her two wheeler scooter bearing registration no. DL 2SF 6708 to her mother's residence and when she reached near Kamal Restaurant, Anand Parbat there was a red light and she stopped. In the meantime a tempo bearing registration no. HR 47 1112 being driven in rash and negligent manner by Respondent no.1 came from behind and hit against the appellant's scooter. The appellant was dragged and in that process she suffered 30% disability.

4. A claim petition was filed on 16.8.95 and an award was passed on 26.11.01. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. The appellant/claimant has claimed enhancement through this appeal. Sh.O.P.Goyal counsel for the appellant urged that the award passed by the learned Tribunal is inadequate and insufficient looking at the circumstances of the case. He assailed the said judgment of Learned Tribunal firstly, on the ground that the tribunal erred in not awarding any compensation for permanent disability suffered by the appellant and he claimed Rs.2.00 lacs for the same. It is further

submitted that the appellant suffered 30% disability due to fracture of ribs and one ununited rib and multiple mal united ribs on both sides. Ld.Tribunal has not acted upon the evidence of PW5 and Ld. Tribunal ought to have taken the disability as 30% and accordingly the loss of income amount should have been awarded. The Counsel also expressed his discontent on the amount of compensation granted towards **medical expenses**. He claimed an amount of Rs.2,00,000/- towards the medical treatment and expenses. The claimant even if has not able to produce medical bills to claim the stated amount, but he contended that looking at the facts and circumstance of the case the learned Tribunal should have considered awarding that amount. Enhancement to Rs.2,00,000/- is also claimed towards **conveyance**. It is further claimed that no amount has been awarded by the Tribunal for the termination of pregnancy due to injuries suffered by her and she claimed Rs.10,00,000/- on this account. She further claimed Rs.3,00,000/- on account of **mental pain & suffering**.

6. I have heard Ld.counsel for the appellant and the respondent and perused the record.

7. 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 cases should be on awarding substantial, just and fair damages and

not mere token amount. In cases of personal injuries the general principle is that such sum of compensation should be awarded which puts the injured in the same position as he would have been, had accident not taken place. 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 into account. In this regard the Supreme Court in **Divisional Controller, KSRTC v. Mahadeva Shetty, (2003) 7 SCC 197**, has classified pecuniary and non-pecuniary damages as under:

“**16.** This Court in *R.D. Hattangadi v. Pest Control (India) (P) Ltd.* 9 laying the principles posited: (SCC p. 556, para 9)

“ 9 . Broadly speaking while fixing an 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.”

8. In the instant case the tribunal has awarded Rs.80,000/- for expenses towards medicines/medical treatment; Rs.5000/- for special diet and conveyance expenses; Rs.11,900/- for loss of leave and Rs.50,000/- for pain suffering.

9. On perusal of the award, it becomes manifest that the appellant had placed on record various bills Ex.P1 to Ex.P45, which comes to a total of Rs.79,978/-. The Ld.tribunal has rounded off the same and awarded Rs.80,000/- for medical treatment. The Tribunal rightly discarded the medical bills when have totally unrelated with the injuries sustained by the appellant. I do not find any infirmity in the order in this regard and the same is not interfered with.

10. As regards conveyance expenses & special diet, nothing has been brought on record. The appellant suffered multiple fracture of ribs, multiple abrasions, contusions and lacerated wound, periscapular haematoma of spleen, subcapsular haematoma right lobe of liver and contusion of liver. The tribunal after taking note of the fact that no cogent evidence has placed on record to prove expenses incurred towards conveyance and special diet awarded Rs.5000/-. However, looking into the nature of injuries suffered by her, I am inclined to enhance the same to Rs.20,000/- (Rs.10,000/- for conveyance and Rs.10,000/- for special diet).

11. As regards mental pain & suffering, the tribunal has awarded Rs. 50,000/- to the appellant. The appellant sustained fracture of ribs and her ribs were removed. As per her deposition she has even suffered abortion as at the time of accident she was pregnant for three months. In such circumstance, I feel that the compensation towards mental pain & suffering is on lower side and therefore same deserves to a separate amount of Rs.50,000/- is awarded towards loss of three months foetus.

12. As regards the compensation towards loss of earning due to permanent disability, I feel that the tribunal has not erred in not awarding the same. The appellant has placed certificate showing 30% permanent disability. Perusal of the certificate reveals that this certificate has been issued by a private practitioner. It has not been issued by Government Hospital and Board of Doctors constituted by the Medical Superintendent. The Tribunal has discussed the evidence of Dr.SPS Gujral, Orthopaedic Surgeon who was running his clinic under the name and style, of 'Fracture Clinic' much in details and found the same untrustworthy. No explanation come forth as to why disability certificate obtained from Ganga Ram Hospital where she was admitted twice. I am not inclined to award any amount on this count as the appellant failed to prove her permanent disability to any ratio much less to the extent of 30%.

13. As regards medical attendants, no witness who attended the appellant has been examined before the Tribunal. Even as per the deposition made by the appellant before the Tribunal she has not deposed that she employed any attendant during the period she remained under treatment. I am not inclined to award any amount on this count,

14. As regards **loss of earnings**, the Tribunal has awarded Rs.11,900/-considering her income to be Rs.2643/- p.m for 4 ½ months. She was a Telephone operator in INS Sena Bhawan and Superintendent has been examined by her from office who has stated that she suffered loss of leaves for 4 ½ months. I do not find any infirmity in the order passed by the Tribunal in this respect and the same is not interfered with.

15. As regards future loss in earning capacity, the appellant could not prove the disability certificate as per Law. Even the disability certificate placed on record has not been issued by the Medical Board of Doctors any Government Hospital or even from the hospital where she was under treatment. Therefore, I am not inclined to award any amount on this count.

16. As regards the issue of interest that the rate of interest of 9% p.a. awarded by the tribunal is on the lower side and the same should be enhanced to 18% p.a., I feel that the rate of interest

awarded by the tribunal is just and fair and requires no interference. No rate of interest is fixed under Section 171 of the Motor Vehicles Act, 1988. The Interest is compensation for forbearance or detention of money and that interest is awarded to a party only for being kept out of the money, which ought to have been paid to him. Time and again the Hon'ble Supreme Court has held that the rate of interest to be awarded should be just and fair depending upon the facts and circumstances of the case and taking in to consideration relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time and other economic factors. In the facts and circumstances of the case, I do not find any infirmity in the award regarding award of interest @ 9% pa by the tribunal and the same is not interfered with.

17. In view of the foregoing, Rs. 80,000/- is awarded for expenses towards treatment; Rs.20,000/- for special diet and conveyance expenses; Rs.50,000/- for loss pain and suffering; Rs.50,000/- for loss of feotus and Rs.11,900/- for loss of leaves.

18. In view of the above discussion, the total compensation is enhanced to Rs.2,11,900/- from Rs.1,46,900/- along with interest on the differential amount @ 7.5% per annum from the date of institution of the petition till realisation of the award and the same

shall be paid to the appellant by the respondents as directed by the tribunal within 30 days of this order.

19. With the above directions, the present appeal is disposed of.

04th May, 2009

KAILASH GAMBHIR, J