

+ **FAO No.133/2002**

% Judgment delivered on:06.04.2009

versus

**CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR**

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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 |

KAILASH GAMBHIR, J.

1. The present appeal arises out of the award passed by the Learned Motor Accident Claim Tribunal. The learned Tribunal awarded a total amount of Rs. 1,26,000/- with an interest @ 9% PA for the injuries caused to the claimant appellant in the motor accident. Feeling

not satisfied with the quantum of compensation the appellant preferred this appeal.

2. The brief conspectus of facts is as under:

Appellant claimant Sh. Naveen Kumar Gupta, aged about 20 yrs at the time of the accident was working on service cum commission basis with M/s Singal's Dairy & M/s Madho Pershad Sanjay Aggarwal. On 7th September 1990, the appellant claimant along with his friend Sh. Hemant Kumar was coming from Kotla Mubarakpur near South Extension and was proceeding to Sarojini Nagar Market in his Maruti Car bearing license plate No. DDC-2570. On reaching Laxmi Bai Nagar, on Brigadier Hoshier Singh Marg, a car bearing license plate No. 77CD-23, driven by Nand Gopal Raj came towards the appellant's car at a very fast speed from opposite side. The accident took place when the offending vehicle was trying to overtake a truck moving ahead and crossed the yellow traffic light signal causing head on collision with the car of the appellant. The maruti car was thrown on the footpath by such a forceful impact. The impact was so grave that the appellant sustained multiple fracture of right lower leg, two upper teeth of the appellant were broken and he also sustained subluxation of survival bones. He also sustained various cuts and lacerated wounds on whole

of the body. He was removed to AIIMS from the place of accident where he remained admitted for two months. He further continued to take follow-up treatment for around 8 months.

3. The appellant claimant claims enhancement through this appeal. The 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 the Learned Tribunal firstly, on the ground that the tribunal erred in assessing the income of the appellant at Rs. 2,000/- PM and he raised the said contention on the basis of the oral evidence of the appellant himself and PW6, stating that the same should have been Rs. 5,000/-. Based on this, it is further contended that the loss of income should also be enhanced, accordingly. The Counsel also expressed his discontentment on the amount of compensation granted towards medical expenses. He contended that an amount of Rs. 1,00,000 towards the medical treatment and expenses should have been awarded by the tribunal. The claimant appellant is not able to produce medical bills to claim the stated amount, but he contended that looking at the facts and circumstance of the case and considering that the claimant was treated by three surgeons separately, the learned

Tribunal should have considered while awarding that amount. Enhancement is also claimed on the ground that only a sum of Rs. 7,000/- is awarded towards conveyance instead of the claim of Rs. 24,000/- to 25,000/-. Amount towards the special diet is also sought to be enhanced from Rs. 5,000 to 24,000/-. The Tribunal awarded a sum of Rs. 30,000/- towards mental pain & suffering but the counsel showed his discontent to that as well and averred that it should have been Rs. 1,00,000/-. For permanent disablement also he sought enhancement from Rs. 20,000/- to Rs. 1,00,000. Amount towards expenses incurred in repairing the damage to the car is also pleaded through this appeal. Further the counsel submitted that the counsel erred in awarding an interest of 9% instead of 18% pm.

4. Nobody has been appearing for the respondents.

5. I have heard the counsel for the appellant and perused the award.

6. 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, 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 in to 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.”

7. In the instant case the tribunal has awarded Rs. 20,000/- for expenses towards medicines; Rs. 5,000/- for special diet; Rs. 7,000/- for conveyance expenses; Rs. 24,000/- for keeping medical attendants; Rs. 30,000/- for mental pain and sufferings; Rs. 20,000/- towards permanent disability and loss of amenities and Rs. 20,000/- on account of loss of earnings.

8. On perusal of the award, it is manifest that the appellant had placed on record various bills for purchase of medicines, x-ray charges, consultation charges, Ex PW10/1 to Ex. PW10/29, which comes to a total of Rs. 9098/-. The appellant had also placed on record medical bills, Ex. PW10/31 to Ex. PW10/34, issued by R.D. Memorial Therapy Clinic for a sum of Rs. 7225/-. As regards medical expenses, the tribunal took cognizance of the fact that the appellant sustained serious injuries in his spine and his right femur and thus awarded Rs. 20,000/- even though the appellant could not prove that he had incurred Rs.20,000/- towards medical expenses. I do not find any infirmity in the order in this regard and the same is not interfered with.

9. As regards conveyance expenses, the appellant had examined Sh. Rajinder Kumar, PW-7, who stated that he was a TSR driver of TSR bearing registration no. DER 8489, which was engaged by the appellant since 8/9/1990 @ Rs. 100/- per day for two months and thereafter he took petitioner to the hospital as per meter charges. He also deposed that he also used to take the family of the appellant to and fro the hospital when the appellant was admitted in the hospital. He further stated in his deposition that after two months he took appellant to and fro the hospital at least 7-8 times @ Rs. 50/-. The tribunal after taking notice of this fact and in the absence of any cogent evidence awarded Rs. 7,000/- for conveyance expenses. I do not find any infirmity in the order in this regard as well and the same is not interfered with.

10. As regards special diet expenses, although nothing was brought on record by the appellant to prove the expenses incurred by him towards special diet but still the tribunal took notice of the fact that since the appellant sustained serious injuries in his spine and his right femur thus he must have consumed protein-rich/special diet for his early recovery and awarded Rs. 5,000/- for special diet expenses. I do

not find any infirmity in the order in this regard and the same is not interfered with.

11. As regards mental pain & suffering, the tribunal has awarded Rs. 30,000/- to the appellant. The appellant sustained multiple fracture of right lower leg, his two upper front teeth were broken, he suffered subluxation of cervical bone apart from various cuts and lacerated wounds on the body. In such circumstance, I feel that the compensation towards mental pain & suffering should be enhanced to Rs. 50,000/-.

12. As regards permanent disablement and loss of amenities of life, the tribunal has awarded Rs. 20,000/-. No disability certificate was brought on record by the appellant. In the facts of the present case the same appears to be on the lower side. The appellant sustained multiple fracture of right lower leg, his two upper front teeth were broken, he suffered subluxation of cervical bone apart from various cuts and lacerated wounds on the body. His leg has shortened by $\frac{1}{2}$ an inch and his face is disfigured by scars. I feel that Rs. 50,000/- would serve the interest of justice and the same is allowed to the appellant as regards permanent disablement and loss of amenities of life.

13. As regards expenses incurred in repairing the car, the appellant placed on record report of surveyor, Sh. Bahadur Singh dated 25/11/1991 to the effect that he inspected the maruti car bearing registration no. DDC 2570 on 21/11/1991 and it was 1987 model and was transferred on 16/11/1989 and had found the parts of the car replaced. The appellant had also brought on record the bills Ex. PW10/38 and PW10/38 issued by Amar Motors worth Rs. 16,377/-; bills Ex. PW10/40 and PW10/41 issued by Vikas Motors worth Rs. 3,281/- bill Ex. PW10/44 worth Rs. 504/- and bill Ex. PW10/43 issued by Jindal Motors worth Rs. 606/-. He also placed the insurance passbook according to which, the said vehicle was comprehensively insured. The appellant examined himself as PW10 and deposed that he had spent Rs. 22,000/- in getting the car road worthy but nothing was brought on record to show whether the appellant had claimed and received the amount for making the car roadworthy from the insurer of the aforesaid maruti car bearing registration no. DDC 2570. Thus, the tribunal rightly did not allow any compensation in this regard. It is no more res integra that for arriving at a particular figure on each of the heads of damages, the claimant is duty-bound to produce relevant materials, on the basis of which, a determination could be made, as to what would be the best compensation. In the absence of any cogent

or reliable material on record, I do not wish to award any compensation in this regard.

14. As regards loss of earnings the appellant had submitted that he was in the employment of M/s Singhal's Dairy and M/s Madho Pershad thereby earning Rs. 3900/-pm and Rs. 2500/- pm as salary and Rs. 7100/- as commission at the time of the accident. Proprietor of M/s Singhal's Dairy PW5 appeared and deposed that the petitioner was working as a supplier of milk products with them. PW6 Sh. Madho Pershad deposed that the appellant was working for them on commission basis from 7:00 am to 11:00 am and was earning Rs. 2,000/- to 2,500/- pm. In the absence of any cogent evidence, the tribunal assessed the income of the appellant at Rs. 2000 pm and assessed loss of earnings for 10 months at Rs. 20,000/-. It is no more res integra that mere bald assertions regarding the income of the deceased are of no help to the claimants in the absence of any reliable or cogent evidence being brought on record. The thumb rule is that in the absence of clear and cogent evidence pertaining to income of the deceased learned Tribunal should determine income of the deceased on the basis of the minimum wages notified under the Minimum Wages Act. In the facts of the present case, the tribunal ought to have

assessed the income of the appellant in accordance with the minimum wages of a semi-skilled workman. The minimum wages on the date of the accident, were Rs. 891/- per month and thus loss of income would come to Rs. 8910/- for ten months. On applying the said principle at this stage, the compensation under this head will dwindle down and considering the fact that the award has not been challenged by the respondent. Therefore, in the interest of justice, the award is not interfered with in this regard and compensation towards loss of income is taken at Rs. 20,000/- as awarded by the tribunal.

15. 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 12% 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.

16. Therefore, Rs.20,000/- is awarded towards medical expenses; Rs.7,000/- towards conveyance expenses; Rs.5,000/- towards special diet expenses, Rs.50,000/- towards mental pain & sufferings; Rs.50,000/- towards permanent disability & loss of amenities of life & Rs.20,000/- towards loss of income.

17. In view of the above discussion, the total compensation is enhanced to Rs. 1,52,000/- from Rs. 1,26,000/- along with interest @ 7.5% per annum on the enhanced compensation from the date of institution of the petition till realisation of the award and the same should be paid to the appellant by the respondent insurance company.

18. With the above direction, the present appeal is disposed of.

06.04.2009

KAILASH GAMBHIR, J.