

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

+ **FAO No. 15/2002**

Judgment reserved on: 25.1.2008
% Judgment delivered on: 27.4.2009

Suresh Kumar Wadhawan Appellant
Through: Mr. O.P. Goyal, Advocate

versus

Dharamvir Singh & Ors. Respondents
Through: Nemo.

**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? | 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 04.10.2001 for enhancement of compensation. The learned Tribunal awarded a total amount of Rs.50,100/- 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 21.6.86 appellant Suresh Kr Wadhwan alongwith his father Madan Lal Wadhawan was going in a Maruti Car DIC 3675 from Taj Palace towards his residence on the Ring Road at a normal speed on their correct hand side of the road and when they reached opposite Raj Rifle Centre, a Jeep no. DEP 1282 suddenly emerged from Raj Rifle Centre Gate without any indication or horn driven by Respondent no.1 rashly and negligently and hit the maruti car due to which the car was extensively damaged and the petitioner sustained grievous injury on his face and his right eye was seriously injured and started bleeding profusely.

4. A claim petition was filed on 18.12.86 and an award was passed on 4.10.01. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. OP Goyal counsel for the appellant/claimant urged that the tribunal ought to have awarded a sum of Rs.5,00,000/- for loss of vision and loss of right eye suffered by the appellants. Tribunal ought to have awarded him for conveyance on this account. The Tribunal ought to have awarded a sum of Rs.2.00 lac as special damages on account of the expenses incurred during trial and Rs.1.00 lac as cost of medicines which the appellant has to take during the later part of his life. It is further submitted that separate damages of Rs.5.00 lac ought to have awarded to the appellant for his inability to drive a vehicle. It is further submitted that the Tribunal erred in taking the earning of the injured as Rs.800/-

per month and it ought to have been taken as Rs.7000/- p.m and a sum of Rs.15,00,000/- should have been awarded towards future loss of income and Rs.10,00,000/- toward loss of income. It is further averred that a sum of Rs.1,00,000/- should have been awarded for permanent disability and Rs.2.00 lac towards expenses incurred on the treatment of the appellant against a sum of Rs.20,486/-. Even bill amount comes to Rs.37,869/-. Amount towards **expenses incurred in repairing the damage** to the car is also pleaded through this appeal to the extent of Rs.36,840/-. Further the counsel pleaded that the counsel erred in awarding an **interest** of 9% pa instead of 15% pa.

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

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 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.”

8. In the instant case the tribunal has awarded Rs.20,486/- for medical expenses including medicines; Rs.3000/- for special diet; Rs.3000/- for conveyance expenses; Rs.20,000/- for mental pain and sufferings; & Rs.3,600/- towards loss of earnings.

9. On perusal of the award, it is manifest that the appellant had placed on record various bills which comes to a total of Rs. 20,486/-. Some of the bills placed by the appellant do not belong to the present accident. I do not find any infirmity in the order in this regard and the same is not interfered with.

10. As regards conveyance expenses, nothing has been brought on record. The appellant suffered injury in his eye & other parts of the body in the accident. The tribunal after taking notice of this fact and in the absence of any cogent evidence awarded Rs.3000/- for conveyance expenses. This case pertained to the year 1987. I inclined to award Rs.5000/- for conveyance expenses.

11. 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 eye he must have also consumed protein-rich/special diet for his early recovery and awarded Rs.3000/- . I enhance the same to Rs.5000/- for special diet expenses.

12. As regards mental pain & suffering, the tribunal has awarded Rs. 20,000/- to the appellant. The appellant sustained injury in his eye and other parts of the body including leg. In such circumstance, I feel that the compensation towards mental pain & suffering should be enhanced to Rs. 30,000/-.

13. As regards the compensation towards permanent disability, I feel that the tribunal has not erred in not awarding the same. There is no disability certificate issued by the competent board of doctors available on file. The plea for compensation under this head is declined.

14. As regards expenses incurred in repairing the damaged car, the

appellant has not placed any bill for repairing the car on file. It is admitted by the appellant in the pleading that part of the damages to the car has been paid by the insurance company. I do not find any infirmity in the order passed by the Tribunal and the same is not interfered with. As 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 compensation. In the absence of any cogent or reliable material on record, I do not wish to award any compensation in this regard.

15. As regards loss of amenities, Compensation for loss of amenities of life compensates victim for the limitation, resulting from the defendant's negligence, on the injured person's ability to participate in and derive pleasure from the normal activities of daily life, or the individual's inability to pursue his talents, recreational interests, hobbies or avocations. In essence, compensation for loss of expectation of life compensates an individual for loss of life and loss of the pleasures of living. I feel that the tribunal erred in not awarding the same and in the circumstances of the case same is allowed to the extent of Rs.5000/-.

16. As regards **loss of earnings**, no proof regarding income of the appellant was brought on record. The tribunal assessed notional income of the appellant at Rs.600/- pm at the time of accident and awarded Rs. 3600/- towards loss of income, the period during which the appellant could not work. The Tribunal has committed no error in awarding

compensation for six months @ Rs.600/- p.m. I find no infirmity in the order and the same is not interfered with.

17. 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 15% 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.

18. In view of the foregoing, Rs. 20,486/- is awarded for expenses towards treatment; Rs.5000/- for special diet; Rs.5000/- for conveyance expenses; Rs.3600/- for loss of wages; Rs.5000/- for loss of amenities and enjoyment of life & and Rs.30,000/- for pain and sufferings.

19. In view of the above discussion, the total compensation is enhanced

to Rs.69,086/- from Rs.50,100/- along with interest on 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 and within 30 days of this order.

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

April 27, 2009

KAILASH GAMBHIR, J