

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No. 214/2002

Judgment reserved on: 9.4.2008
Judgment delivered on: 27.4.2009

Rajinder Singh Appellant.
Through: Mr. J.S. Kanwar, Adv.

versus

Narender 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 02.01.02 for enhancement of compensation. The learned Tribunal awarded a total amount of Rs. 13,010/- 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 7.8.98, at about 2.45 p.m, the claimant was hit by a bus bearing registration no. UP 14D 7305 at Khichripur Bridge and sustained grievous injury including fracture of frontal region. The said bus came from the side of Ghaziabad and hit a car, thereafter it hit the claimant and then the railing of Khichripur Bridge as well as a truck. He was admitted in Safdarjung Hospital for treatment and remained under treatment till 10.8.98. The claimant suffered permanent disability which resulted in adversely affecting the future quality of life of the claimant.

4. A claim petition was filed on 15.9.98 and an award was passed on 02.01.02. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. The appellant claimant claims enhancement through this appeal. Sh. J.S.Kanwar counsel for the appellant claimant 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 has not awarded any compensation towards conveyance, special diet and loss of amenities and he has stated that Rs.10,000/- should have been awarded under the head conveyance and Rs.10,000/- under the head special diet. The Tribunal

awarded a sum of Rs. 10,000/- towards mental pain & suffering but the counsel shows his discontent to that as well and averred that it should have been Rs. 50,000/-. For Loss of Amenities he also has sought a sum of Rs.50,000/-.

6. Nobody has been appearing for the respondents.

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

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 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."

9. In the instant case the tribunal awarded Rs.3310/- for expenses towards medicines and Rs.10,000/- towards pain and suffering. No amount of compensation has been awarded towards conveyance, special diet and loss of amenities.

10. On perusal of the award, it is manifest that the appellant placed on record various bills, which comes to a total of Rs. 3,308.76. The appellant also placed on record medical bills, Ex.P3 to Ex.P12, issued by various medical stores for a sum of Rs.3308/76. As regards medical expenses, the tribunal took cognizance of the fact that the appellant sustained head injuries and awarded the expenses incurred by the claimant towards medicines for a sum of Rs.3310/-. It is well settled that while 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 case of

pecuniary damages, loss of earning or earning capacity, medical, hospital and nursing expenses, the loss of matrimonial prospects, if proved, are required to be considered and 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. But considering that the appellant sustained head injury in the left frontal region and remained under treatment for 3 days and is still suffering, and also suffered various wounds on the body even in the absence of any proof that the appellant incurred expenses more than the amount awarded by the tribunal, I feel that the compensation in this regard should be enhanced to Rs. 5,000/-.

11. As regards conveyance expenses, nothing has been brought on record. The appellant sustained head injury in the left frontal region and remained under treatment for 3 days and is still suffering, and also suffered various wounds on the body. The tribunal after taking notice of this fact and in the absence of any cogent evidence did not award any amount towards conveyance expenses. It is evident from the facts that claimant must have spent some money on conveyance after accident for going to hospital, which the tribunal did not consider. I therefore, award Rs.5,000/- towards conveyance to the claimant.

12. As regards special diet expenses, nothing was brought on record by the appellant to prove the expenses incurred by him towards special diet and the tribunal has not awarded any amount under this head. The

appellant sustained head injury in the left frontal region and remained under treatment for 3 days and is still suffering, and also suffered various wounds on the body and also considering that the appellant at the time of the accident was of 12 years of age and also considering that for early recovery he must have spent some amount on protein rich diet, I therefore, award a sum of Rs.5000/- towards special diet.

13. As regards mental pain & suffering, the tribunal has awarded Rs. 10,000/- to the appellant. The appellant sustained head injury in the left frontal region and remained under treatment for 3 days and is still suffering, and also suffered various wounds on the body. In such circumstance, I feel that the compensation towards mental pain & suffering should be enhanced to Rs.20,000/-.

14. As regards the compensation towards permanent disability, I feel that the tribunal has not erred in not awarding the same because no disability certificate has been filed on record.

15. As regards loss of amenities, Compensation for loss of amenities of resulting from the defendant's negligence, affects 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. Considering that the appellant sustained injuries in his left frontal region and remained under treatment for 3 days and is still suffering, 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.20,000/-.

16. Therefore, from the above discussion, Rs.5,000/- is awarded for expenses towards medicines; Rs. 5,000/- for conveyance expenses; Rs. 5,000/- for special diet; Rs. 20,000/- towards loss of amenities of life and Rs.20,000/- towards pain and sufferings.

17. In view of the above discussion, the total compensation is enhanced to Rs.55,000/- from Rs.13,010/- 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 respondent no. 3 as directed by the tribunal and within 30 days of this order.

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

April 27, 2009

KAILASH GAMBHIR, J.