

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

+ **FAO No. 216/2002**

Judgment reserved on: 28.2.2008
% Judgment delivered on: 27.4.2009

Navita Vashishth Appellant
Through: Mr. O.P. Goyal, Advocate

versus

Mohd. Rashid & 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 07.012002 for enhancement of compensation. The learned Tribunal awarded a total amount of Rs. 8,05,405/- 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 03.10.95 the appellant Mrs. Navita Vashisht who is a Post Graduate in Economics and a young girl of 25 years was riding on a motorcycle no. DL 8S H 8206 from Faridabad to Pritampura, Delhi. Appellant was pillion rider while the motorcycle was being driven by her husband Sandeep Vashisht. At about 4/4.15 p.m they were waiting on the red-light signal at Maharani Bagh crossing on the ring road. In the meanwhile a crane bearing registration no. DL 1G A 2559 being driven in a rash and negligent manner by respondent no.1 Mohd. Rashid came from behind and dashed against the stationary motorcycle. As a result of the impact the motorcycle as well as its occupants fell down on the road. The right leg of the appellant was run over by the front wheel of the crane. Initially the left leg was amputated below the knee but the surgery had to be performed over again and the amputation was done three inches above the knee.

4. A claim petition was filed on 22.1.96 and an award was passed on 07.01.02. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. OP Goyal counsel for the appellant/claimant contended that the tribunal erred in assessing the **income** of the claimant appellant at Rs.5000/- PM and he made the said contention on the basis of testimony of the appellant, stating that the same should have been Rs.11,000/- p.m. Based on this, it is further contended that the **loss of income** should also be enhanced, accordingly. It is further contended that the

tribunal erred in considering the loss of earning capacity to 35% only, whereas as per certificate of disability it is 80%. The Counsel also expressed his discontent on the amount of compensation granted towards **medical expenses**. He urged for an amount of Rs.1,25,000/- towards the medical treatment and expenses. 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 the fact that the claimant's leg was amputated, the learned Tribunal must have considered awarding that amount. Enhancement is also claimed on the ground that a sum of just Rs. 10,000/- is awarded towards **conveyance** instead of the claim of Rs. 10,00,000/-. The Tribunal awarded a sum of Rs.1,00,000/- towards **mental pain & suffering** but the counsel shows his discontent to that as well and averred that it should have been Rs.2,00,000/-. For **permanent disablement** also he claimed Rs.5.00 lacs whereas no compensation has been awarded on this account. It is further averred that the tribunal should have awarded a sum of Rs.10.00 lac for future prospects and enjoyment of life. Ld. Counsel also claimed a sum of Rs.2000/- p.m for domestic help for a period of 35 years. Enhancement is also sought for artificial limb to Rs.4,09,930/-. Further the counsel pleaded that the Tribunal erred in awarding an **interest** of 9% pa instead of 18% pa. It is further contended that the tribunal also went wrong in ordering 75% of the amount awarded to be kept in a fixed deposit for a period of 25 years and he

claimed that 25% of the awarded amount be kept in FDR for five years.

6. Nobody appeared for respondents.

7. I have heard the counsel for the appellant and have 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 has awarded Rs. 90,000/- for expenses towards medicines & treatment; Rs.5000/- for special diet; Rs. 10,000/- for conveyance expenses; Rs.1,00,000/- for mental pain and sufferings; and Rs.3,15,000/- on account of loss of earning capacity/permanent disability to the extent of 35%, Rs.90,270/- for purchase of two artificial limbs, Rs.1,00,000/- for engaging domestic help, Rs.50,000/- for loss of amenities of life, loss of life expectancy, frustration etc.

10. On perusal of the award, it is manifest that the appellant had placed on record various bills which comes to a total of Rs. 75,044/-. As regards medical expenses, the tribunal took cognizance of the fact that the appellant sustained serious injuries and her leg was amputated and awarded Rs.90,000/-for her treatment. No interference is made in this regard.

11. As regards conveyance expenses, nothing has been brought on record. The appellant suffered serious injuries and her right leg was amputated. The tribunal after taking notice of this fact and in the absence of any cogent evidence awarded Rs.10,000/- for conveyance

expenses. No interference in this regard is warranted.

12. 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 she must have also consumed protein-rich/special diet for her early recovery and awarded Rs.5000/-. The right leg of appellant was amputated. I am not inclined to interference with the award in this regard.

13. As regards mental pain & suffering, the tribunal has awarded Rs. 1,00,000/- to the appellant. The appellant sustained grievous injuries and her right leg was amputated. In such circumstance, I feel that the compensation towards mental pain & suffering does not require any interference.

14. As regards the compensation towards permanent disability & future loss of income, I feel that the tribunal has erred in not awarding the same. The income of the appellant was duly proved at Rs.5,000/- pm. Further on perusal of the award it is manifest that the income of the injured was Rs.5000/- p.m. She suffered 80% disability. There has been consistent rise in the earnings of the injured over the period of time and therefore, the future prospects of the appellant should also be considered. The age of the appellant at the time of the accident was 25 years and the 80% disability of the appellant was duly proved on record

and the Tribunal awarded Rs. 3,57,000/- in this regard. Considering that no dispute in this regard is raised by the respondents no interference is made in this regard.

15. As regards medical attendants, no evidence has been brought on record expect that the statement of the appellant. Ld. Tribunal has awarded Rs.1,00,000/- for engaging domestic help. I do not find any infirmity in this order passed by the Ld. Tribunal on account of domestic help and the same is not interfered with.

16. As regards loss of amenities due to permanent disability, 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.2,5,000/-.

17. As regards **loss of earnings during treatment**, proof regarding income of the appellant was brought on record. Thus, the Tribunal rightly did not allow compensation in this regard.

18. As regards purchase of artificial limb, the tribunal has awarded

Rs.90,270/- for purchase of two artificial limbs. I am inclined to award expenses for one more artificial limb and accordingly the amount in this respect is enhanced to Rs. 1,35,405/-.

19. 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 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, 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.

20. As regards the deposit of 75% of award amount being deposited in FDR, in view of the the decision of the Apex Court in **Lilaben Udesing Gohel vs Oriental Insurance Co. Ltd. 1996 ACJ 673 (SC)**, I feel that the Tribunal committed no error. Be that as it may, she can always withdraw the same upon taking permission from the Tribunal in case of

any exigency. Thus, no interference is made in this regard.

21. In view of the foregoing, Rs.90,000/- is awarded for expenses towards treatment; Rs.5,000/- for special diet; Rs.10,000/- for conveyance expenses; Rs. 25,000/- for loss of amenities and enjoyment of life & Rs.50,000/- for permanent disability; Rs.3,57,000/- for loss of future income; Rs.1,35,405/- for purchase of artificial limbs; Rs.1,00,000/- for attendant charges and Rs.1,00,000/- for pain and sufferings.

22. In view of the above discussion, the total compensation is enhanced to Rs.8,72,405/- from Rs.8,05,405/- 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 and within 30 days of this order.

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

April 27, 2009

KAILASH GAMBHIR, J