

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

FAO No. 172/2000

Judgment reserved on: 23.04.2008

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Judgment delivered on: 06.04.2009

Smt Sitara Begum

..... Appellant

Through: Mr. J.S. Kanwar, Adv.

versus

Rishi Pal & Ors.

..... Respondent

Through: None.

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 passed by the Learned Motor Accident Claim Tribunal on 11th November 1999 for enhancement of compensation. The learned Tribunal awarded a total amount of Rs. 13,336/- with an interest @ 12% PA for the injuries caused to the claimant appellant in the motor accident.

2. The brief conspectus of facts is as under:

3. On 28th November 1991, Sitara Begum was crossing Loni Road and when she reached at footpath, a maruti car came from the direction of Loni Road at a very high speed, driven rashly and negligently by the driver Rishi Pal. As a result of the impact, the lady received grievous injuries and she was admitted in GTB Hospital. Ms. Sitara Begum sustained fractures on both sides of the neck bone and fracture of the right hip bone.

4. Sh. J.S. Kanwar, counsel for the appellant claimant claims through this appeal that looking at the circumstances of the case the award passed by the learned Tribunal is inadequate and insufficient. He assails the said judgment of Learned Tribunal on following grounds: firstly, it was contended that the learned Tribunal erred in assessing

the loss of income at an amount of Only Rs. 1,336/- and the same was paid for only one and a half months whereas the claimant appellant was unable to join her work for 2 years. Learned counsel for the appellant contended that the tribunal should have awarded Rs. 1,80,000/- on account of loss of income for 2 years. The Counsel also expresses his discontent on the amount of compensation granted towards medical expenses. He claimed an amount of Rs. 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 received severe injuries including three fractures, the learned Tribunal should have considered awarding Rs. 25,000 specially in the time when medicines and medical treatment is becoming so expensive. Enhancement is also claimed on the ground that no amount is granted towards the special diet and conveyance charges and a meager sum of Rs. 10,000 is awarded as a cumulative sum for medical expenses and special diet. The Tribunal awarded a sum of Rs. 2,000/- towards mental pain & suffering and has not passed it as a special head as per the method followed by courts. The counsel shows his discontent to that as well and argues that it should have been Rs. 1,00,000/-. It is further contended that no award is made for

the non-pecuniary damages for mental pain and suffering and loss of amenities. Further, the counsel pleaded that the tribunal erred in awarding an interest of 12% pa from 20.11.97 instead of awarding from 24.1.92 that was the date of the institution of the claim petition, thus the Tribunal erred in law by not awarding it from the date of institution of the suit.

5. Nobody has been appearing for the respondent.

6. I have heard the counsel for the appellant and have 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 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.”

8. In the instant case the tribunal has awarded Rs. 10,000/- for the cost of treatment, purchase of medicines; special diet and for conveyance expenses; Rs. 2000/- for pain and agony and Rs. 1336/- on account of loss of earnings.

9. As regards the loss of income of the appellant due to the accident, the tribunal has observed that the appellant averred that her

collar bone and hip bones were fractured. She further stated that she remained in GTB Hospital for about a week and thereafter was admitted in Gopal Nursing Home for 10/12 days. She averred that she was sewing clothes for an export company on contract basis and was earning Rs.1500pm. She also stated that she got her collarbone plastered, which was removed after 6 weeks. The appellant did not bring on record to prove that she was doing the said work of sewing clothes. The appellant also did not bring on record anything to prove her income and the period during which she could not do her work. In the absence of the same the tribunal has assessed the loss of earnings of the appellant for one and a half months with the aid of the Minimum Wages Act for the wages of an unskilled workman at Rs. 1336/-. I feel that the tribunal did not err in assessing the loss of earnings of the appellant for one and a half months with the aid of the Minimum Wages Act for the wages of an unskilled workman at Rs. 891/- p.m. in the absence of any cogent evidence on record to assist the court in assessing the loss of income. Therefore, the same is not interfered with.

10. Award for pain and suffering compensates victim for the physical and mental discomfort caused by the injury. Pain is physical; suffering is emotional. While pain is the physiological response to certain stimuli,

suffering is psychological or emotional response to pain. The tribunal awarded Rs. 2,000/- towards pain and sufferings and I feel that in the facts of the present case, since the appellant underwent an operation and also suffered the pain due to the accident, I feel that the amount towards pain and sufferings be enhanced to Rs. 25,000/-.

11. As regards Rs. 10,000/- being awarded for the cost of treatment, purchase of medicines; special diet and for conveyance expenses. In the circumstance the case as discussed above I feel that the same is on the lower side in view of the injuries suffered by the victim and the same should be enhanced to Rs. 25,000/-.

12. As regards loss of amenities, same is awarded for the defects due to which the injured is unable to live a normal life for whatever the span, due to the accident. I feel the same should have been awarded by the tribunal at Rs. 10,000/-.

13. On the ground that the interest has been awarded to the appellant only from 20/11/1997 in place of the date of filing of the petition i.e. 24/1/1992, in this regard the tribunal observed that the appellant filed the claim petition on 24/1/1992 but moved the application for impleading the insurance company on 30/1/1995 and even then she failed to serve the insurance company on various dates and it was only on 19/11/1997 that the appellant got served the

insurance company and thus the tribunal did not allow interest for the period from 24/1/1992 to 19/11/1997. I consider that tribunal has given sufficient reason for not awarding the interest of the above said period. Nobody can be permitted to take benefit of its wrong. Thus the finding of the tribunal in this regard is upheld.

14. Compensation cannot be granted on the whims and fancies of the appellant. Legislature and Courts have laid down a proper formula and method to be followed in quantifying amount of compensation.

15. Therefore, Rs. 1336/- is awarded for loss of earnings; Rs. 25,000/- for pain & sufferings; Rs. 25,000/- for medical expenses, special diet and conveyance expenses and Rs. 10,000/- for loss of amenities.

16. In view of the above discussion, the total compensation is enhanced to Rs. 61,336/- from Rs. 13,336/- with interest @ 7.5% p.a. on the enhanced compensation from the date of filing of the present petition till realisation and the same should be paid to the appellant by the respondent insurance company.

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

06.04.2009

KAILASH GAMBHIR, J.