

+ **FAO No. 185/2000**

Subodh Rai & Ors. Appellants
Through: Mr. O.P. Mannie, Advocate

Ch. Charan Singh & Ors. Respondents
Through: Mr. Pradeep Gaur, Adv

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

1. The present appeal arises out of the award of compensation passed by the Learned Motor Accident Claim Tribunal on 17/2/2000 for enhancement of compensation. The learned Tribunal awarded a total

amount of Rs. 68,000/- 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. That on 30.12.1993, the appellant was coming from Kanti Nagar and was going to his residence on cycle and when at about 9.15 p.m. he reached in front of Hero Honda show Room Main Road, Kanti Nagar, Delhi, he was paddling his cycle on his proper left hand side at a slow speed then at that very time a Bus bearing registration No. DL-1P-5324 driven by respondent No. 1 rashly and negligently at a fast speed came from behind and hit the appellant with a great force as a result of which the appellant suffered injuries on his person due to the rash and negligent driving of respondent No. 1 while driving his bus bearing registration No. DL-1P-5324.

4. A claim petition was filed on 29/11/94 and an award was passed on 17/2/2000. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. O.P. Mannie counsel for the appellant claimant urged that the tribunal erred in not awarding compensation for permanent disability when it should have been assessed in view of the testimony of PW5 Dr.

Anjani Kr. Aggarwal and claimed Rs. 4,32,000/- as amount towards reduction in earning capacity/permanent disability. He also maintained that the tribunal erred in not assessing the income of the claimant appellant at Rs. 5,000/- PM which was duly proved by him. The counsel also averred that the tribunal ought to have applied the multiplier of 18 as per the II Schedule and should have considered future increase in income as well. Based on this, it is further contended that the loss of income should also be enhanced, accordingly. The Counsel also sought enhancement towards medical expenses, future medical expenses, special diet and conveyance expenses and claimed compensation for matrimonial obligation and disfigurement. It was contended that the Tribunal ought to have awarded a sum of Rs. 3,00,000/- towards mental pain & suffering and Rs. 2,00,000/- towards loss of amenities of life. Further the counsel pleaded that the counsel erred in awarding an interest of 12% pa instead of 15% pa.

6. Per Contra Mr. Pradeep Gaur counsel for the respondent insurance company refuted the above contentions and urged that the award passed by the tribunal is just and fair and does not require interference by this court.

7. I have heard the counsel for the parties 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. 5,000/- for expenses towards medicines; Rs. 15,000/- for future medical expenses; Rs. 4,000/- for special diet and conveyance expenses; Rs. 15,000/- for mental pain and sufferings; Rs. 10,000/- for loss of expectation of life; and Rs. 18,576/- on account of loss of earnings for 1 year.

10. On perusal of the award, it is manifest that the appellant was under treatment from 1996 till January 1999 as deposed by Dr. Anjali Kr. Aggarwal, PW5. She also deposed that the appellant was suffering from posttraumatic stricture urethra and thus, a reconstruction operation was done at AIIMS. The appellant had placed on record various bills Exs. P45 to 98, which comes to a total of Rs. 3,733/-. As regards medical expenses, the tribunal took cognizance of the fact that the appellant sustained serious injuries in the accident and suffered

multiple abrasions on right arm and knee; abrasions on chin; penetrating wound in perineum extending till anus and posttraumatic stricture urethra, for which, a reconstruction operation was done at AIIMS and awarded Rs. 5,000/- even though the appellant could not prove that he had incurred the said amount towards medical expenses. I do not find any infirmity in the order in this regard and the same is not interfered with.

11. As regards conveyance expenses and special diet expenses, nothing has been brought on record. The tribunal took cognizance of the fact that the appellant sustained serious injuries in the accident and suffered multiple abrasions on right arm and knee; abrasions on chin; penetrating wound in perineum extending till anus and posttraumatic stricture urethra, for which, a reconstruction operation was done at AIIMS and also considering that he must have also consumed protein-rich/special diet for his early recovery, in the absence of any cogent evidence awarded Rs. 4,000/- for conveyance expenses. I do not find any infirmity in the order in this regard and the same is not interfered with.

12. As regards mental pain & suffering, the tribunal has awarded Rs. 15,000/- to the appellant. The appellant suffered multiple abrasions on right arm and knee; abrasions on chin; penetrating wound in perineum extending till anus and posttraumatic stricture urethra, for which, a reconstruction operation was done at AIIMS. In such circumstance, I feel that the compensation towards mental pain & suffering should be enhanced to Rs. 50,000/-.

13. As regards the compensation towards permanent disability, I feel that the tribunal committed no error in not awarding the same since nothing was brought on record to prove the permanent disability.

14. As regards loss of amenities, resulting from the defendant's negligence, which affects the injured person's ability to participate in and derive pleasure from the normal activities of daily life, and the individual's inability to pursue his talents, recreational interests, hobbies or avocations. Considering that the appellant suffered amputation of his toe, I feel that the tribunal erred in not awarding compensation under this head and in the circumstances of the case same is allowed to the extent of Rs. 25,000/-.

15. As regards loss of earnings, no proof regarding income of the appellant was brought on record. 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 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. The tribunal rightly assessed the income of the appellant in accordance with the minimum wages of a semi-skilled workman, notified under The Minimum Wages Act on the date of the accident, which was Rs. 1,548/- per month and thus loss of income for an year came to Rs. 18,576/-. Thus, no interference is made in the award in this regard.

16. As regards future treatment expenses, nothing came on record to prove the amount required for future treatment, but the tribunal still awarded Rs. 15,000/-. I do not feel inclined to interfere in the award in this regard.

17. As regards the issue of interest that the rate of interest of 12% p.a. awarded by the tribunal is on the lower side, 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, 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 @ 12% pa by the tribunal and the same is not interfered with.

18. As regards compensation for failure to perform matrimonial obligations and compensation for disfigurement, nothing has been brought on record that the appellant after the accident would not be able to perform marital obligations or has suffered some disfigurement, thus, the tribunal did not commit any error in not awarding the same.

19. In view of the foregoing, Rs. 5,000/- is awarded for expenses towards medicines; Rs. 15,000/- for future medical expenses; Rs. 4,000/- for special diet and conveyance expenses; Rs. 50,000/- for mental pain and sufferings; Rs. 10,000/- for loss of expectation of life; Rs. 25,000/- towards loss of amenities; and Rs. 18,576/- on account of loss of earnings for 1 year.

20. In view of the above discussion, the total compensation is enhanced to Rs. 1,27,576/- from Rs. 68,000/- 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 within 30 days of this order.

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

April 27, 2009

KAILASH GAMBHIR, J.