

+ **FAO No. 393/2002**

Judgment reserved on: 21.02.2008
Judgment delivered on: 27.04.2009

versus

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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 26.03.02 for enhancement of compensation. The learned Tribunal awarded a total amount of Rs. 2,00,651/25 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 30.3.94 the appellant was going on a cycle to his residence after finishing his duty from Ms. Shyam Optical near Radhu Palace

Cinema, Shahdara, Delhi. When he reached near Shashi Garden Jhuggies on Kotla Road, at around 9/10 p.m., four seater No.DLR 572 being driven by respondent no.1 in a rash and negligent manner came from the side of Kalyanpuri at a very high speed and hit him. The appellant fell down on the road and sustained fracture in his left leg, abrasion on left shoulder, injury on his left upper arm and multiple injuries on all over the body. His cycle was also damaged in the accident.

4. A claim petition was filed on 21.7.94 and an award was passed on 26.03.2002. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh.Anil Agarwal counsel for the appellant claimant claims enhancement through this appeal. The counsel 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 erred in assessing the **income** of the claimant appellant as overtime wages have not been considered. It is submitted that loss of wages for two years should have been awarded. The Ld. Tribunal has erred in calculating for 6 months wages @Rs.1800/- as Rs.8400/- whereas it should have been RS.10,800/- It is further averred that average income of the appellant ought to have considered as Rs.4050/-. He further claimed that loss of earning has wrongly been considered as 25% whereas permanent disability is less

than 40%. The Counsel also expressed his discontent on the amount of compensation granted towards **medical expenses**. He claimed an amount of Rs.40,000/- 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 was treated for fracture in leg and steel rod was inserted, the learned Tribunal should have awarded that amount. Enhancement is also claimed on the ground that a sum of just Rs. 1000/- is awarded towards **conveyance** instead of the claim of Rs. 20,000/-. Amount towards the **special diet** is also sought to be enhanced from Rs. 2000/-to Rs.30,000/-. The Tribunal awarded a sum of Rs.50,000/- towards **mental pain & suffering** but the counsel shows his discontent to that as well and averred that it should have been Rs. 1,00,000/-.

6. I have heard counsel for the parties 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 awarded Rs. 1551/25 for expenses towards medicines; Rs.2000/- for special diet; Rs.1000/- for conveyance expenses; Rs.50,000/- for mental pain and sufferings and loss of quality of life; Rs. 1,37,700/- on account of permanent disability to the extent of 25% and Rs. 8400/- on account of loss of earnings.

9. On perusal of the award, it becomes manifest that the appellant

had placed on record various bills Ex.P1 to P17, which comes to a total of Rs. 1551.25/-. The appellant suffered fracture in leg and steel rod was inserted. The appellant was treated in Govt. hospital. The steel rod inserted in the leg and other medicines are used to be purchased from the open market. The bills available on file does not include the bill for steel rod. I therefore enhance the amount to Rs.5000/- for medical expenses.

10. As regards conveyance expenses, nothing has been brought on record. The appellant suffered fracture in his leg. The tribunal after taking notice of this fact and in the absence of any cogent evidence awarded Rs.1000/- for conveyance expenses. The accident has taken place in the year 1994. The amount for conveyance expenses is enhanced to Rs.5000/-.

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 his leg thus he must have also consumed protein-rich/special diet for his early recovery and awarded Rs.2000/- for special diet expenses. I am inclined to enhance the same to Rs.5000/-.

12. As regards mental pain & suffering & loss of quality of life, the tribunal has awarded Rs. 50,000/- to the appellant. The appellant

sustained fracture in his leg. In such circumstance, I feel that the tribunal has committed no error in awarding the same and the order passed by the Tribunal is not interfered with.

13. As regards future loss of earning capacity and permanent disability, the Tribunal has awarded a sum of Rs.1,37,700/-. The Tribunal has taken the monthly income of the appellant as Rs.1800/- p.m. The plea of the Ld.counsel for the appellant cannot be considered since the overtime income is not a fixed income. The disability of 25% has been considered by the tribunal for assessing the loss of income. The plea of Ld.counsel for the appellant cannot be taken into consideration because the disability shown in the medical certificate is for a particular limb and not for the whole body. I feel that the order passed by the Tribunal in this respect requires no interference.

14. 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.1800/- pm and awarded Rs.8400/- towards loss of income for 6 months year, the period during which the appellant could not work. On multiplying 1800x6 the amount comes to RS.10,800/- and therefore compensation towards loss of income is taken at Rs.10,800/-.

15. In view of the foregoing, Rs.5000/- is awarded for expenses towards treatment; Rs.5000/- for special diet; Rs.5000/- for conveyance expenses; Rs.10800/- for loss of wages; Rs.50,000/- for pain and suffering and loss

of quality of life and Rs.1,37,700/- for future loss in earning capacity.

16. In view of the above discussion, the total compensation is enhanced to Rs.2,13,500/- from Rs.2,00,651/25 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.

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

April 27, 2009

KAILASH GAMBHIR, J