

IN THE HIGH COURT OF DELHI AT NEW DELHI
FAO NO.276/2000

Judgment reserved on: 7.3.2008

Judgment delivered on:27.4.2009

Devdutt

.....Appellant

Through Mr.O.P.Mannie, Adv

Versus

Madan & 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 07.03.2000 for enhancement of compensation. The learned Tribunal awarded a total amount of Rs.1,08,782/04 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 7.3.93 at about 5 p.m, appellant Dev Dutt was hit by Tempo

bearing registration no. HR 26A 7190 at Mandoli Chungi opposite bus stand at Wazirabad Road, Delhi. The tempo was being driven at a very high speed in rash and negligent manner by respondent no.1 Madan. As a result of the impact, the appellant received serious injuries on his person. His right leg had to be amputated on account of injuries received in the right leg. The appellant became permanent disabled.

4. A claim petition was filed on 21.5.93 and an award was passed on 7.3.2000. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh.O.P.Mannie counsel for the appellant/claimant 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 averred for enhancement on the ground that a sum of just Rs. 2000/- is awarded towards **conveyance & special diet** instead of the claim of Rs.3000 for conveyance and Rs.18,000/- for special diet. He also prayed for future conveyance since the appellant has suffered 40% disability. Ld. Tribunal has failed to appreciate that appellant has suffered 40% disability and he claimed compensation for reduction in marriage prospects. It was further urged that the Tribunal has erred in not paying any compensation on account of reduction in earning capacity and future prospects of the appellant. It was further urged that the Tribunal has erred in taking into account a sum of RS.1342/- p.m for working out damages on account of disability

and Tribunal ought to have taken into consideration the future advancement in the career. The Tribunal has erred in not awarding towards **mental pain & suffering** and the counsel shows his discontent to that. It was further submitted that Ld. Tribunal has erred in not paying any compensation for the loss of amenities of life, damages for loss of expectation of life, inconvenience, hardship, discomfort etc as well as disfigurement and for loss of studies. Further the counsel maintained that the counsel erred in awarding an **interest** of 12% pa instead of 18% pa.

6. Nobody appeared for the respondents.

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

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.3716.44 for expenses towards medicines; Rs.2000/- for special diet & conveyance; and Rs.1,03,065/60 for damages on account of disability.

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. 3716/44. As regards medical expenses, the tribunal has awarded on the basis of the bills placed on record. I do not find any infirmity in the order in this regard and the same is not interfered with.

11. As regards conveyance, nothing has been brought on record. The

appellant suffered amputation of his right leg below knee injuries. The tribunal after taking notice of this fact and in the absence of any cogent evidence awarded Rs.2000/- for conveyance expenses including special diet. I enhance the same to Rs.5,000/- towards conveyance to the appellant.

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 and thus he must have also consumed protein-rich/special diet for his early recovery and awarded Rs.2000/- for special diet including conveyance. Taking into consideration the amputation suffered by the appellant and that he must have taken high protein diet, I enhance the same to Rs.5,000/-.

13. As regards mental pain & suffering, the tribunal has erred in not awarding any amount in this respect. The appellant suffered amputation in his right leg below knee. In such circumstance, I feel that the compensation towards mental pain & suffering should be granted at Rs. 50,000/-.

14. As regards the compensation towards disfigurement, considering that the appellant has become permanently disabled and his right leg was amputated due to which his body got disfigured. I feel that a sum of Rs.25,000/- should be granted for disfigurement of body.

15. As regards loss of amenities due to disablement, 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. 20,000/-.

16. As regards loss of studies, no material has been placed by the appellant on file to prove that the appellant was studying at the time of accident. However as per the petition his age has been mentioned as 13 years and that he is a student. Even nothing has been pleaded in the plaint in this respect. As per the testimony of PW1 appellant he has deposed in his testimony that at the time of accident he was studying in class 6th. He could not go to school for about 8 months. He lost his studies for about one year. Considering the above testimony, I grant a sum of Rs. 25,000/- to the appellant for loss of his studies for one year.

17. As regards marriage prospectus, the appellant has to live with his amputated leg and he might or might not get spouse for marriage. I award a sum of Rs.20,000/- on this account.

18. As regards **damages on account of disability**, the appellant was a student at the time of accident and he was not earning anything. He suffered 40% disability for a particular limb which can be considered 25% for the whole body. Since there is no proof regarding income of the appellant, I take into account the notional income of Rs.15,000/- p.a of non-earning person. The appellant was 13 years of age at the time of accident. The appropriate multiplier is 15 at the age of 13 years. The loss of earning capacity @25% comes to Rs.3750/-p.a and after applying multiplier of 15, the amount for damages on account of disability comes to Rs.56,250/-. But considering that no dispute in this regard is raised by the respondents, no interference in this regard is made in the award.

19. As regards the issue of interest that the rate of interest of 12% 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, change of economy, 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.

20. In view of the foregoing, Rs.3716/- is awarded towards medicines; Rs.5,000/- towards conveyance, Rs. 5,000/- towards special diet; Rs.50,000/- towards pain and suffering, Rs.25,000/- towards disfigurement; Rs.20,000/- towards amenities of life; Rs.25,000/- for loss of studies ; Rs.20,000/- for marriage prospectus and Rs.1,03,065.60 for damages due to disability.

21. In view of the above discussion, the total compensation is enhanced to Rs.2,56,781/- from Rs.1,08,782.04 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.

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

April 27, 2009

KAILASH GAMBHIR, J.