

+ **FAO No. 31/2000**

Shri Lal Chand Kapoor Appellant
Through: Mr. O.P. Mannie, Adv.

Naik Arjun Singh & Ors. Respondents
Through: Nemo.

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 dated 13th September, 1999 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 95,100/- along with interest @ 12% per annum to the claimant.

2. The brief conspectus of the facts is as follows:
3. The appellant claimant Sh. Lal Chand, aged about 36 years was going to his residence along with his wife on scooter bearing registration No. DDR-7521 from Ram Manohar Lohia Hospital. On reaching near Parade Road, a military truck bearing registration No. 8CD-43874Y suddenly without giving any horn or indication tried to turn the truck towards Manaksha Road. Due to the reckless and negligent driving of the driver of the military truck, it hit the scooterist, causing the riders to fall. The truck ran over the left leg of the claimant appellant resulting into the serious injuries to his leg and other compound injuries. The injured were rushed to the Ram Manohar Lohia Hospital in the said truck itself.
4. A claim petition was filed on 7th April 1989 and an award was made on 13th September 1999. Aggrieved with the said award enhancement is claimed by way of the present appeal.
5. The appellant has assailed the said award on quantum of compensation. Sh. O.P. Mannie, counsel for the appellant contended that the tribunal erred in awarding Rs. 25,000/- towards Non Pecuniary damages and claims that the same must

have been more looking at the facts of the case and loss suffered by the appellant claimant. Further he contended that the Learned Tribunal erred in not paying any compensation for the injuries received by the appellant claimant and the Tribunal should have awarded at least Rs. 50,000/- for the injuries sustained in the said accident. It was also argued by the counsel that the tribunal erred in not awarding any compensation on account of permanent disability suffered by the appellant claimant. Keeping in view that the appellant has suffered permanent disability to the extent of 50% the learned tribunal ought to have awarded at least Rs. 50,000/- on this count. Further he contended that the Tribunal erred in awarding interest @ 12% p.a. only and it is urged that the same should have been @ 18% p.a. The counsel also pleaded compensation for the loss of enjoyment of life and amenities and for loss of expectation of life.

6. Nobody has been appearing for the respondents.

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

8. In 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."

9. On perusal of the award, it can be seen that the Learned Tribunal has awarded the compensation after estimating the monthly income of the Appellant Claimant at Rs. 1,800/- P.M. which, he was earning while working as Assistant Steward at Chefair Restaurant, Palam Airport. Accordingly, the tribunal has awarded a compensation of Rs. 45,000/- towards the loss of salary for the unpaid leave of the appellant claimant i.e. for 749 days as proved on the record. Towards the medical expenses incurred by the appellant, the tribunal has awarded Rs. 121.35/- as the appellant could produce bills, ex. PW1/3A-1 to A31 only for that much amount towards the medical expenditure including the cash memo and bills of hospital and medicines. However, the appellant claims an amount of Rs. 20,000/- towards medical expenses and Rs. 3,800/- for collyber shoes, which he has to procure each year. The tribunal has also granted Rs. 25,000/- towards special diet, conveyance charges etc. looking at the facts and circumstances of the case and in absence of any

documentary evidence for the same on the record. The appellant claimant has claimed an amount of Rs. 70,000/- for the same. Tribunal further awarded non pecuniary damages towards the mental pain and suffering and shortening of life span, to the tune of Rs. 25,000/.

10. The Tribunal has relied on the leave certificate of the claimant showing total leave taken from the work as 837 days. However, 10 days sick leave and 55 days leave with pay was deducted. Then the salary certificate is relied upon for the estimation of salary for the purpose of calculation of the loss of salary. Further the tribunal has relied upon the medical certificate of Doctor from Safdarjang Hospital stating that the claimant appellant has incurred 50% total disability for life. The appellant also produced a medical bill.

11. As regards compensation of Rs. 25000/- for pain and agony suffered by the injured appellant, I feel that the same is inadequate. The appellant remained hospitalized for 5 months at initial stage and he remained confined to bed and could not attend office for 837 days as per the leave certificate issued by his employer, which was submitted as Ex. PW1/1, thus

compensation towards pain and agony is enhanced to Rs. 1,00,000/-.

12. The tribunal has awarded Rs. 45,000/- on account of loss of earnings. On perusal of the award it is manifest that the appellant remained confined to bed and could not attend to his service for the period 20/10/1988 to 03/02/1991, i.e. 837 days. Out of the said period of 837 days he was granted leave without pay for 749 days, sick leaves for 10 days and leave with pay for 55 days. Therefore, the tribunal awarded compensation only for the period of 749 days, the period for which he was granted leave without pay. Placing reliance on the salary certificate of the appellant which was duly proved on record as Ex. PW1/3, the income of the appellant was taken as Rs.1800/- pm since allowance of Rs.100/- per day was not proved by the appellant and thus the tribunal awarded Rs. 45,000/- as loss of income. I do not find any infirmity in the award on this account and the same is not interfered with.

13. As regards medical expenses, the tribunal has awarded Rs. 121.35 towards medical expenses on the basis of the documents duly produced on record as Ex. PW3/3A24 to Ex. PW1/3A-27. I feel that the compensation in this regard is on the lower side. Although, it is the duty of the appellant to produce the medical

bills and assist the court in awarding compensation in this regard but in the instant case, the tribunal ought to have considered that the appellant claimant suffered 50% permanent disability and thus, must have spent some amount towards medical expenses, the award on this account is enhanced to Rs. 10,000/-.

14. As regards the compensation towards disability, I feel that the tribunal erred in not awarding the same. The income of the appellant was duly proved at Rs. 1800/- pm. The age of the appellant at the time of the accident was 36 years and the 50% disability of the appellant was duly proved on record as Ex. PW1/2. AS per second schedule the multiple prescribed at the age of 36 is of 16. Therefore, after considering all these factors, the compensation towards disability is awarded at Rs.1,72,800 ($1800 \times 50/100 \times 12 \times 16$) to the appellant.

15. As regards yearly expenses towards celler shoes, conveyance and special diet, nothing has been brought on record but still the tribunal has awarded Rs. 25,000/- in this regard and I feel that the same is just and fair and requires no interference.

16. The tribunal has not awarded any compensation towards loss of amenities and loss of expectation of life and the same is awarded at Rs. 50,000/- on this account.

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 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 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. Therefore, Rs. 1,00,000/- is awarded towards pain and agony; Rs. 45,000/- towards loss of earnings; Rs.10,000/- towards medical expenses; Rs.1,72,800/- towards 50% permanent disability; Rs. 25,000/- towards cellyber shoes, conveyance expenses and special diet & Rs. 50,000/- towards loss of amenities and loss of expectation of life.

19. Accordingly, the total compensation comes out as Rs. 4,02,800/-.

20. In view of the above discussion, the total compensation is enhanced to Rs. 4,02,800/- from Rs. 95,100/- with interest @ 7.5% per annum on the enhanced compensation from the date of filing of the petition till realisation and the same should be paid to the appellant by the respondents.

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

6.4.2009

KAILASH GAMBHIR, J