

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

+ **FAO No. 1/2001**

Judgment reserved on: 4.2.2008

Judgment delivered on 6.4.2009

Sh. Chander Pal Appellant
Through: Mr. Y.R. Sharma, Adv.
versus

Sh. Sehzaad Ansari & Ors. Respondents
Through: Mr. Kanwal Chaudhary, Adv.

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? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J.

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1. The present appeal arises out of the award of compensation passed by the Learned Motor Accident Claim Tribunal on 19th September 2000 for enhancement of compensation. The learned Tribunal awarded a total amount of Rs. 1,25,000/- with an interest @

10% PA for the injuries caused to the claimant appellant in the motor accident.

2. The brief conspectus of facts is as under:

On 10th July 1992, the appellant Mr. Chander Pal, aged about 42 years at the time of the accident, was riding his bicycle from his house. At around 2:25 P.M. the appellant reached M.B. Road Near Hamdard when he was hit by a truck bearing registration No. DL 1L 0949 being driven in a rash and negligent manner. The front wheel of the truck ran over the right foot of the appellant and it had to be amputated after 2 yrs of accident. In this regard, a claim petition was filed on 22nd December 1992 and an award was passed on 19th September 2000. Aggrieved with the said award enhancement is claimed by way of the present appeal.

3. Sh. Y.R. Sharma, counsel for the appellant urged that the award passed by the learned Tribunal is inadequate and insufficient looking at the circumstances of the case. He assailed the judgment of Learned Tribunal firstly, on the ground that the tribunal erred in assessing the loss of income of the claimant appellant. It is argued that the appellant had to take leave for 3 years from his work and thus loss of income for

entire period has to be awarded by the learned Tribunal. He made the said contention on the basis of the statement of P.W. 6 and Ex. P.W. 6/1. The counsel also expressed his discontent on the amount of compensation granted towards medical expenses. He claimed an amount of Rs. 50,000 towards the medical treatment and expenses. The claimant appellant was not able to produce medical bills to claim the stated amount, but he contended that he could present medical bills for an amount of about Rs. 25,000/- and that looking at the facts and circumstance of the case and the nature of injuries sustained by the appellant, the learned Tribunal ought to have considered awarding the said amount. Enhancement is also claimed on the ground that a mere sum of Rs. 5,000/- is awarded towards conveyance instead of the claim of Rs. 10,000/- . The Tribunal awarded a sum of Rs. 1,00,000/- towards mental pain & suffering and loss of amenities and expectation of life, but the appellant showed his discontent to that as well and averred that it should have been Rs. 2,00,000/-. He further pleaded that the Tribunal erred in not awarding any compensation towards permanent disablement and the same should be awarded. As per the counsel, Tribunal also erred in not awarding any amount towards the special diet which should have been granted. Compensation for the

services rendered by an attendant said to be kept for a period of about 3 years is also sought. Cycle allowance which the appellant used to get before the accident occurred is also claimed and a claim of Rs. 20,000/- in this respect is made.

4. Per Contra, Mr. Kanwal Chaudhary counsel for the Respondent Insurance Company urged that the impugned award suffers from no infirmity and deserves no interference. In furtherance of his arguments, the learned counsel for the Insurance Company pleaded that for the medical expenses, the learned Tribunal adequately compensated the appellant in the impugned award. It is submitted by the counsel that appellant could not bring on record bills for the entire amount claimed. It was further pleaded in this regard that the appellant could not even prove on record that treatment received by him for the urine infection or the knee fusion was in any way related to injuries suffered in the said accident. It is further pleaded that the amount paid towards conveyance charges, pain and suffering and other non pecuniary heads is also sufficient and adequate and requires no interference. On the point of loss of salary, it is argued by the counsel for insurance company that the Appellant failed to show on record that for which period he could not attend his job and was not

paid the salary. On the point of compensation for personal assistance also, it is urged that there is no cogent proof in that regard to show that an attendant was kept for a salary of 1,000/- P.M. which was half of his own salary and for how long his services were availed.

5. I have heard both the counsel and perused the award.

6. 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 in 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 the 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 into 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.”

7. In the instant case the tribunal has awarded Rs. 20,000/- for expenses towards medicines; Rs. 5,000/- for conveyance expenses; and Rs. 1,00,000/- for mental pain and sufferings, loss of amenities and loss of expectation of life.

8. On perusal of the award, it is manifest that the appellant had placed on record various medical bills as Ex. PX 1 to 66. As per Ex. PX 37A dated 30/9/1999 a purchase of a single item of Rs. 770/- has been made towards artificial limb. Further, according to the deposition of PW4 Doctor Deepak Joshi, the appellant paid Rs. 4,500/- for amputation

of his right toe of right leg. It has also come on record that the right leg of the appellant below knee was amputated in the year 1994. Again, PW7 Doctor P.K. Kohli deposed that after 5 years of the accident the appellant was admitted in the hospital for knee surgery as well as urine infection and for the same the appellant incurred Rs. 16,385/-. Since the appellant could not prove that the treatment under PW7 Dr. Kohli was anyhow related to the accident, therefore, the tribunal took cognizance of the sole fact that the right leg of the appellant below knee was amputated and awarded Rs. 20,000/-. Even though the appellant could not prove that he had incurred Rs.20,000/- towards medical expenses yet I feel that the said amount is on the lower side considering the gravity of the sufferings of the appellant. I feel that the tribunal ought to have awarded at least Rs.30,000/- in this regard. The enhancement is made under this head of compensation by this Court.

9. It has come on record in the deposition of the appellant that after every three months he requires an artificial limb costing Rs. 770/-. But the same has not been supported by any cogent evidence, but still Rs. 5,000/- is awarded towards future medical expenses.

10. As regards conveyance expenses, nothing has been brought on record. In the accident, the front wheel of the truck ran over the right foot of the appellant claimant. Earlier, only right toe of the right foot was amputated but after a gap of about 2 years the entire right leg below knee was amputated. The tribunal after taking note of this fact and in the absence of any cogent evidence awarded Rs. 5,000/- for conveyance expenses. I do not find any infirmity in the order in this regard and the same is not interfered with.

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 ought to have taken notice of the fact that since the appellant sustained serious injuries in the accident and his entire right leg below knee was amputated thus he must have also consumed protein-rich/special diet for his early recovery and should have at least awarded Rs. 5,000/- for special diet expenses. Also, PW4 Dr. Deepak Joshi deposed that the appellant was recommended protein rich diet by him. In these circumstances, I find infirmity in the order in this regard and therefore, the award of Rs.5,000/- is made in this regard.

12. As regards mental pain & suffering, loss of amenities and loss of expectation of life, the tribunal has awarded Rs. 1,00,000/- to the appellant. In the accident, the front wheel of the truck ran over the right foot of the appellant claimant. Earlier, only right toe of the right foot was amputated but after a gap of about 2 years the entire right leg below knee was amputated and thus suffered 40% permanent disability as per the deposition of PW8 Dr. V.K. Sharma of Safdurjang Hospital. Compensation for loss of amenities of life compensates victim for the shortcomings, defects or restrictions 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. In such circumstance, I feel that the compensation towards mental pain & suffering, loss of amenities and loss of expectation of life, as awarded by the tribunal is just and fair.

13. As regards the compensation towards permanent disability, I feel that the tribunal has erred in not awarding the same. It has come on record that in the accident, the front wheel of the truck ran over the

right foot of the appellant claimant. Earlier, only right toe of the right foot was amputated but after a gap of about 2 years the entire right leg below knee was amputated and thus suffered 40% permanent disability as per the deposition of PW8 Dr. V.K. Sharma of Safdurjang Hospital. According to the PW 6 Sh. Ram Phal the appellant drew his last salary in Nov 1996 and since December 1996 he has not been getting anything from his employer. The said witness deposed that the appellant joined services with DDA on 5/6/1980 at a salary of Rs. 196 and he drew his last salary for November 1996 at Rs. 2592/-. On account of 40% disability due to which the appellant was unable to do any work in his office, the tribunal ought to have awarded some compensation. The injured was around 42 years of age at the time of accident. As per second Schedule, at the age of 42, the multiplier of 15 has been prescribed. Thus taking into account the income of Rs. 2592/- p.m. and disability to the extent of 40%, the compensation on account of permanent disability comes to Rs. 1,86,624/- ($2592 \times 12 \times 40/100 \times 15$).

14. As regards medical attendants Sh. Rajpal PW6 stated as on 24/7/1997 that he was working as an attendant for the appellant and used to get Rs. 800 per month, in the year 1992-1994 and since

January 1995 he was getting Rs.1,000pm plus food and clothings and he used to work 24 hrs. for the appellant. He deposed that he helped the appellant for his natural calls and in his other daily routine. He also stated that he used to go to purchase medicines from the market and other items required by the appellant. The appellant has claimed compensation towards attendant charges incurred by the appellant from August 1992 to December 1997 @ Rs. 800 per month, for the year 1992-1994 and Rs.1,000pm from January 1995 to December 1995. But, no documentary proof was given in this regard. I feel that since the appellant's right leg below knee was amputated he must have required assistance of some person. But it does not seem correct that the appellant took assistance of an attendant since the time of the accident. The right leg below knee of the appellant was amputated in the year 1994 and I feel that the compensation under this head should be awarded from the time the right leg below knee of the appellant was amputated. In the facts of the present case, Rs. 5,000/- is awarded in this regard.

15. As regards loss of earnings, the income of the appellant was duly proved at Rs. 2908/- pm by Pw 6 Sh. Ram Phal, Head Clerk, DDA. The appellant met with the accident on 10/7/1992. The age of the appellant

at the time of the accident was 39 years and the 40% disability of the appellant was duly proved on record as per the deposition of PW8 Dr. V.K. Sharma of Safdurjang Hospital. According to the said witness PW 6, Sh. Ram Phal, the appellant drew his last salary in Nov 1996 and since December 1996 he has not been getting anything from his employer. But nothing was brought on record to prove as to for which period the appellant was on leave and as to whether he was being paid any salary for the said period or not. Therefore, after considering all these factors, the compensation towards loss of earnings has rightly not been awarded by the tribunal.

16. In view of the foregoing, Rs. 30,000/- is awarded towards medical expenses, Rs. 5,000/- towards future medical expenses, Rs. 5,000/- towards conveyance expenses, Rs. 5,000/- towards special diet, Rs. 1,00,000/- towards mental pain & suffering, loss of amenities & loss of expectation of life; Rs. 1,86,624/- towards permanent disability & Rs. 5,000/- towards medical attendants' fee.

17. In view of the above discussion, the total compensation is enhanced to Rs. 3,36,624/- from Rs. 1,25,000/- along with interest @ 7.5% per annum on the enhanced compensation from the date of

institution of the petition till realisation of the award and the same should be paid to the appellant by the respondent insurance company.

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

6.4.2009

KAILASH GAMBHIR, J.