

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO NO.110/2001

Judgment reserved on: 21.02.2008

Judgment delivered on: 04.05.2009

Sh.Mangal

.....Appellant

Through Mr.YR Sharma, Adv

Versus

Sh.Kale Singh & ors.

..... Respondents

Through: Sh.Pradeep Gaur,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? | 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 14/11/2000 for enhancement of compensation. The learned Tribunal awarded a

total amount of Rs. 60,000/- 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. On 16.2.87 at about 4.30 p.m the appellant was going towards Badarpur side from Kalkaji Mandir side on his cycle at a slow speed on his left hand side. When he reached near Kalkaji DTC Depot Anandmaya Marg, at that time a truck bearing no. DEG 8619 came from Kalkaji side at a very fast speed and struck against the petitioner. Due to the forceful impact the front right wheel of the said truck passed over the right leg of the appellant and he received compound fracture in his right leg. The accident was caused due to rash and negligent driving of the offending truck driven by its driver.

4. A claim petition was filed on 14/8/1987 and an award was passed on 14/11/2000. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. Y.R. Sharma counsel for the appellant claimant urged that the tribunal erred in not assessing the income of the claimant appellant at Rs. 3,940/- PM after considering future increase of income of the appellant. He contended that the award towards conveyance charges, special diet expenses and medical expenses should be enhanced to Rs.

1,00,000/-. The counsel also urged that the tribunal should have awarded Rs. 50,000/- towards loss of amenities of life. The counsel maintained that the tribunal should have also awarded compensation towards reduction in income and should have awarded compensation towards permanent disability considering it to the extent of 18%. The counsel also averred that the tribunal erred in awarding interest for a period of 8 years only and same should be allowed from the date of filing of the petition till realisation.

6. Per contra, Mr. Pradeep Gaur, counsel for the respondent insurance company submitted that the award passed by the tribunal is just and fair and does not require any 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. 10,000/- for expenses towards medicines and Rs. 50,000/- towards loss of income,

present and future, considering the disability and pain and sufferings suffered by the appellant.

10. On perusal of the award, it is manifest that the appellant had not placed on record any medical bill to prove the expenses towards the same. But the tribunal after considering the nature of injuries in this regard, awarded Rs. 10,000/- 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 and special diet expenses, nothing has been brought on record. In the absence of any cogent evidence, I consider that taking into account the nature of injuries suffered by the injured a compensation in the sum of Rs.5000/- shall meet the ends of justice.

12. As regards mental pain & suffering, the tribunal has not awarded any compensation to the appellant. The appellant suffered fracture on the right leg due to the accident and remained admitted in the hospital for one month and during that period his injured leg was operated upon and wounds on the other parts of the body. In such circumstance, I feel that the compensation towards mental pain & suffering should be awarded at Rs. 25,000/-.

13. As regards the compensation towards loss of future income for permanent disability, I feel that the tribunal has erred in not awarding the same. The income of the appellant was not proved though averments were made that the appellant was earning Rs. 2,500/- to 3,000/- pm through his Bullock Cart. It is no more *res integra* that mere bald assertions regarding the income of the injured 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 injured learned Tribunal should determine income of the injured on the basis of the minimum wages notified under the Minimum Wages Act. The tribunal ought to have assessed the income of the appellant in accordance with the minimum wages of a skilled workman, notified under The Minimum Wages Act on the date of the accident, which were Rs. 552/- per month. The appellant met with the accident in the year 1987. The age of the appellant at the time of the accident was 32 years, thus, the appropriate multiplier would be 15 and the 10% disability of the appellant was duly proved on record. As per the disability certificate issued by the Safdarjung Hospital dated 22/12/1993 the appellant was a case of Ankylosis right leg and suffered permanent disability of whole body to the extent of 10%. Another disability certificate issued by Dr.

C.D. Prashar on the basis of the disability certificate issued by Safdurjung Hospital and as per this, the appellant suffered 18% permanent disability. When as per the said Dr. Parashar the said certificate is based on the earlier certificate, I do not feel that the tribunal erred in considering the disability as per the certificate issued by Safdurjung Hospital in this regard. Therefore, after considering all these factors, the compensation towards disability is awarded at Rs. 9,936/- ($552 \times 10 / 100 \times 12 \times 15$) to the appellant.

14. As regards loss of amenities due to permanent disability, 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 fracture on the right leg due to the accident and remained admitted in the hospital for one month and during that period his injured leg was operated upon, 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. The tribunal should have assessed income of the appellant at Rs. 552/- pm as discussed above and awarded Rs. 552/- towards loss of income for 1 month as claimed by the appellant for the period during which the appellant could not work.

16. As regards the issue of interest that the tribunal erred in awarding an interest for the period of 8 years only instead of allowing the same from the date of filing of the petition till realization. The compensation for the period when the appellant himself was negligent in pursuing the case has been disallowed. On perusal of the award it comes into light that the appellant had been negligent and also took a lot of time in examining the witnesses. No doubt that the MV Act is a beneficial piece of legislation, legislated with the purpose of giving relief to the victim of the motor accident but at the same time, a victim of the motor accident cannot be allowed to gain benefit out of his own faults and negligence due to which delay was caused in disposal of the case. Therefore, the tribunal rightly, disallowed the interest to the appellant for the said period when the appellant was negligent in pursuing the case. Therefore, no interference is made in the award on this count.

17. In view of the foregoing, Rs. 10,000/- is awarded for expenses towards medicines; Rs.5000/- for conveyance and special diet; Rs. 25,000/- for mental pain and sufferings; Rs. 25,000/- towards loss of amenities; Rs. 50,000/- towards loss of income, present and future, considering the disability and pain and sufferings suffered by the appellant; Rs. 9936/- on account of permanent disability to the extent of 10% and Rs. 552/- on account of loss of earnings.

18. In view of the above discussion, the total compensation is enhanced to Rs. 1,15,488/- from Rs. 60,000/- 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 respondent insurance company within a period of 30 days from the date of this award.

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

May 04, 2009

KAILASH GAMBHIR, J