

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO NO.115/2001

Judgment reserved on: 27.3.2008

Judgment delivered on:4.5.2009

Smt.Rajbiri Devi W/o Sh.Bishamber Singh

Through LRs;

1 Sh.Bishamber Singh

2 Sh Anil Kumar

3 Sh.Sunil Kumar

.....Appellant

Through Ms.Aruna Mehta, Adv

Versus

Sh.Trilok Singh & Anr.

..... Respondents

Through: Mr.J.N.Aggarwal

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 8/11/2000 for

enhancement of compensation. The learned Tribunal awarded a total amount of Rs. 20,000/- 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:

3. On 2.6.88 appellant alongwith her son Anil boarded a bus no.DEP 8698 from ISBT to go to Keshavpuram and the bus was being driven rashly and negligently by the driver as he was stopping the bus before and after the bus stop. At about 3.30 p.m when the bus reached at B-III pocket, Keshavpuram while the appellant was getting down, respondent no.1 started the bus with heavy jerk and at a high speed. The appellant fell down and received injuries on her person.

4. A claim petition was filed on 2/6/1988 and an award was passed on 8/11/2000. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Ms. Aruna Mehta counsel for the appellant claimant urged that the tribunal erred in awarding a consolidated sum of Rs. 20,000/- towards medical expenses, special diet and conveyance expenses. The counsel maintained that the tribunal erred in not awarding compensation towards, medical attendant, permanent disability to the extent of 20% and loss of income to the appellant now deceased.

Further the counsel pleaded that the counsel erred in awarding an interest of 10% pa instead of 15% pa.

6. Per contra, Mr. J.N. Aggarwal, 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, during the pendency of the trial the injured Smt. Rajbiri Devi expired after 10 years of the accident. The tribunal awarded Rs. 20,000/- for expenses towards medicines; special diet; and conveyance expenses.

10. On perusal of the award, it is manifest that the appellant had placed on record medical bills worth about Rs. 4,500/-. But, no evidence was brought on record regarding conveyance expenses and special diet expenses but still the tribunal considered that the appellant sustained hip injury and injuries on other parts of the body and thus awarded Rs.20,000/- towards medical expenses, special diet

and conveyance expenses. I do not find any infirmity in the order in this regard and the same is not interfered with.

11. As regards mental pain & suffering, the tribunal has not awarded anything to the appellant. Considering the injuries sustained by the appellant, I feel that the compensation towards mental pain & suffering should be awarded at Rs. 25,000/-.

12. As regards the compensation towards loss of earnings due to permanent disability, As per disability certificate, PW6/A, the appellant was suffering from 19% partial permanent disability. Nothing is proved regarding the income of the appellant therefore, in these circumstances Rs. 745/-p.m. after taking the aid of MW Act and applying multiplier of 12 Rs.20,383/- ($745 \times 12 \times 12 \times 19\%$) is awarded

13. As regards servant having been appointed by the appellant for doing house-hold work as after the accident she was unable to do it herself, PW9 Chetma stated that she was working as a servant for the appellant and used to get Rs. 350/- per day. In her cross examination, she could not tell the names of the family members of the appellant's family and also could not tell the address of the neighbor of the appellant, where she was working before joining the appellant. I feel

that the said witness is a procured witness. In the facts of the present case, no compensation is awarded in this regard.

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 injuries suffered by the appellant, 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 during treatment, no proof regarding income of the appellant was brought on record nor it was proved that she was doing knitting and sewing work before the accident. Apart from mere averments by the witnesses nothing cogent has come on record. In view of the above discussion, I do not feel that compensation should be awarded under this head.

16. As regards the issue of interest that the rate of interest of 10% p.a. awarded by the tribunal is on the lower side, 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 @ 10% pa by the tribunal and the same is not interfered with.

17. In view of the foregoing, Rs. 20,000/- is awarded for expenses towards medicines; special diet and conveyance expenses; Rs. 25,000/- for mental pain and sufferings; Rs. 25,000/- towards loss of amenities; and Rs. 20,383/- on account of permanent disability to the extent of 19%.

18. In view of the above discussion, the total compensation is enhanced to Rs. 90,383/- from Rs. 20,000/- 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 LR's of the appellant as loss of estate by the respondents as directed by the tribunal within 30 days of this order.

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

04th May 2009

KAILASH GAMBHIR, J