

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

+ **FAO No.421/2000**

% Judgment reserved on: 19.03.2008
Judgment delivered on: 6.4.2009

Surinder Kumar Kansal Appellant
Through: Mr. Ashok Popli, Adv.

versus

Nadar Khan & Ors. Respondents
Through: Ms. Manjusha Wadhwa, Adv.
Mr. 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 29.5.2000 for enhancement of compensation. The learned Tribunal awarded a total

amount of Rs.2,70,000/- 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 19.12.93 the appellant was going on his two wheeler scooter bearing registration no. DL 4SJ 8547 with one Sh. Sham Singh on the pillion. When he reached at round about of Taj Hotel, a car bearing registration no. DL-17-1347 came at a fast speed, which was being driven by Respondent no.1 in a rash and negligent manner on the wrong side and hit the scooter of the appellant with a force. As a result, appellant fell down and suffered grievous injuries leading to amputation of left leg below knee.

4. A claim petition was filed on 30.5.94 and an award was made on 29.5.2000. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. Ashok Popli 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 said judgment of Learned Tribunal firstly, on the ground that the tribunal erred in awarding Rs.30,000/- towards pain and suffering which is too low in

view of the fact that the appellant remained under active treatment from 19.12.94 to 28.9.95 and even thereafter. The counsel also showed his discontent to the amount of compensation awarded by the Tribunal towards special diet. It is also stated that no compensation has been granted towards conveyance though the appellant attended the OPD during active treatment. It is stated that no compensation towards future treatment has been awarded by the Tribunal, whereas appellant has to take regular treatment due to use of artificial limb. Further, the counsel stated that Ld. Tribunal erred in not awarding any compensation for repair/replacement of the artificial limb. The counsel further submitted during the course of arguments that appellant filed bills of Rs.6000/- incurred on account of repair of the artificial limb, which Ld. Tribunal has not considered. The counsel further submitted that Ld. Tribunal erred in not awarding any compensation for further operation as it has now been advised by the doctor that there is non-union of lower end of femur for which operation is required and the appellant has to incur Rs.40,000/- on operation and medicines. It is also stated that Ld. Tribunal has erred in observing that the appellant being Engineer in DVB will not suffer any loss on account of injuries as it does not affect his employability while in service till the age of 60 years. Further, the counsel stated that a

sum of Rs.1,00,000/- ought to have been awarded for the injury, disability, discomforts, inconvenience , loss of longevity of life and for reduction in quality of life by use of artificial limb. The counsel further stated that Ld. Tribunal has erred in directing that out of the total award 90% of the award be deposited in a nationalized bank for a period of 15 years. Further the counsel pleaded that the counsel erred in awarding an interest of 12% pa instead of 18% pa.

6. Per contra, Ms. Manjusha Wadhwa and Sh. Pradeep Gaur counsel for the respondent insurance company contended that the tribunal passed a just and fair award on the basis of the documents proved by the appellant and therefore, no interference is required in the same.

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 has awarded Rs. 80,000/- for expenses towards medicines; Rs. 10,000/- for special diet; Rs. 30,000/- for mental pain and sufferings; Rs. 1,00,000/- on account of permanent

disability to the extent of 40% and Rs. 53,600/- on account of loss of earnings.

10. On perusal of the award, it is manifest that the appellant remained admitted in AIIMS from 19/12/1993 till 26/1/1994 as per the discharge slip PW3/1. But still he continued getting treatment as an out patient, which is proved vide OPD cards Ex. Pw3/2 to PW3/4. PW3/5, discharge slip proved that he also took treatment at Ganga Ram hospital. Ex. PW3/6 and Pw3/7 proved that he also took treatment at Orthonova Hospital. The appellant further deposed as PW3 that for consultation regarding artificial limb for his amputated leg he sought consultation from Dr. Sethi of Jaipur and same is proved vide Ex. PW3/8 and Pw3/9. Further Pw3/11 to PW3/25 are the tickets vide which it is proved that he visited Jaipur for consultation. He had placed on record various bills Ex. PW3/27 to 30 and Pw3/32 to 56, medical bills, to prove medical expenses and expenses on purchase of artificial limb. As regards medical expenses, the tribunal took cognizance of the fact that the appellant suffered fracture on the thigh and left hand and later on 23/12/1994 his leg was amputated and awarded Rs. 80,000/- even though the appellant could not prove that he had incurred Rs. 80,000/- towards medical expenses. The tribunal has already been generous

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

11. As regards conveyance expenses, the appellant deposed as PW3 that for consultation regarding artificial limb for his amputated leg he sought consultation from Dr. Sethi of Jaipur and same is proved vide Ex. PW3/8 and Pw3/9. Further Pw3/11 to PW3/25 are the tickets vide which it was proved that he visited Jaipur for consultation. As mentioned above, the tribunal awarded the said expenses under the head of medical expenses. Thus the same has already been awarded to the appellant by the tribunal. I do not find any infirmity in the order in this regard and the same is not interfered with.

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 his leg was also amputated and thus he must have also consumed protein-rich/special diet for his early recovery and awarded Rs. 10,000/- for special diet expenses. I do not find any infirmity in the order in this regard and the same is not interfered with.

13. As regards mental pain & suffering, the tribunal has awarded Rs. 30,000/- to the appellant. The appellant sustained fracture of thigh and left hand and later the leg was amputated. In such circumstance, I feel that the compensation towards mental pain & suffering should be enhanced to Rs. 50,000/-.

14. As regards the compensation towards permanent disability, the tribunal awarded Rs. 1,00,000/- to the appellant. Considering the facts of the case and also considering that the appellant could not prove that he is facing any problem in the job as a DESU Inspector, I feel that the tribunal has already been quite generous. Therefore, I do not feel that any enhancement is required in this regard.

15. As regards loss of amenities, 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. 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. 50,000/-.

16. 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 15% p.a., I feel that the rate of interest awarded by the tribunal is just and un/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.

17. As regards the contention that the tribunal erred in not awarding compensation towards future medical expenses and expenses towards repair of artificial limb, nothing has been brought on record to prove the same. But considering that the appellant is completely dependant on the said artificial limb and said artificial limb being a machine can require repairmen, I feel that awarding a sum of Rs. 25,000/- under the said head would be just and fair.

18. As regards the issue that the tribunal deposited 90% of the award amount in the nationalized bank, I feel that the same does not suffer from infirmity. In **Lilaben Udesing Gohel vs. Oriental Insurance Co. Ltd. – 1996 ACJ 673 (SC)** the Hon'ble Apex Court laid down broad guidelines which the Claims Tribunal should follow while disposing of the claim applications arising under the Motor Vehicles Act, 1939 to scotch complaints of misapplication of compensation money and that as per those guidelines the compensation money should be invested in a nationalised bank as a fixed deposit and the interest thereon should be paid directly to the claimant or his guardian, as the case may be. Therein, the Apex Court also held that in personal injury cases if treatment is necessary the Claims Tribunal on being satisfied about the same may after recording reasons for such satisfaction direct the Insurance Company to pay such amount to the claimant as is necessary for incurring the expenses for such treatment. This permission should be granted strictly after verifying the necessity of medical expenses. Therefore, the appellant can always seek withdrawal of the said deposited amount upon proof of exigency. Therefore, no interference is made in the award on this count.

19. In view of the above discussion, Rs. 80,000/- is awarded for expenses towards medicines; Rs. 10,000/- for special diet; Rs. 50,000/- for mental pain and sufferings; Rs. 50,000/- towards loss of amenities of life; Rs. 1,00,000/- on account of permanent disability to the extent of 40%; Rs. 25,000/- towards future medical expenses and Rs. 53,600/- on account of loss of earnings.

20. In view of the above discussion, the total compensation is enhanced to Rs. 3,68,600/- from Rs. 2,70,000/- along with interest @ 7.5% per annum, on the enhanced compensation from the date of institution of the present petition till realisation of the award and the same should be paid to the appellant by the respondent no.3.

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

6.4.2009

KAILASH GAMBHIR, J