

+ **FAO No.439/2000**

Sh. Mohan Lal Appellants
Through: Mr. O.P. Mannie, Advocate

Sh. Raj Bir Singh & Ors. Respondents
Through: Mr. Kanwal Chaudhary, Advocate

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 of compensation passed by the Learned Motor Accident Claim Tribunal on 2nd August 2000 for enhancement of compensation. The learned Tribunal awarded a total amount of Rs. 39,020/- 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. Injured appellant, Sh. Mohan Lal, aged about 32 yrs at the time of the accident was working as a chaat seller and is said to have been earning Rs1,500/- by selling chaat on stall. On 18th November 1989 at about 1:30 P.M. he was going on a bicycle from his residence to N.D. Market, Pritampura. He was hit by a TSR bearing registration No. DBL 6538. The offending TSR was travelling from the opposite direction and the accident was caused due to rash and negligent driving of the driver of the said TSR. The accident caused grievous injuries to the petitioner and was removed to D.D.U. Hospital. He sustained fracture in his right hand along with other bodily injuries.

4. The counsel for the appellant, Sh. O.P. Mannie, contended that the award passed by the learned Tribunal is inadequate and insufficient looking at the circumstances of the case. He contended that the tribunal erred in assessing the income of the claimant appellant at Rs. 848/- PM which should have been assessed at Rs. 1,500/-. Based on this, it was further contended that the loss of income should also be enhanced, accordingly. The counsel urged that the tribunal erred in assessing the total disablement at 20% whereas the claimant appellant actually suffered disability of 40% of whole body.

He also contended that the tribunal erred in not awarding any damages towards the 40% permanent disability caused in the accident. The counsel submitted that the multiplier applied by the tribunal is on the lower side & the multiplier of 18 should have been applied instead of 13 by the tribunal. Further the counsel averred that the tribunal erred in awarding an interest of 12% instead of 18% pa.

5. Per contra, Mr. Kanwal Chaudhry counsel for the respondent No. 3 refuted the contentions of the counsel for the appellants and contended that since the appellant failed to place on record bills and treatment papers therefore no enhancement can be awarded for the same. He also submitted that although disability certificate was placed on record but same was not duly proved as the doctor was not examined by the appellant who made the said certificate, therefore, no compensation should be awarded on this count. Learned counsel also disputed the awarding of non-pecuniary damages as the same were not duly proved. Further the learned counsel also disputed assessment of income as per the wages notified under MW Act for a semi-skilled person and also submitted that the multiplier of 13 as applied by the Tribunal does not require any interference.

6. I have heard the counsel for the parties and perused the award.

7. 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 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.”

8. In the instant case the tribunal awarded Rs. 2500/- for the cost of treatment as well as purchase of medicines; Rs. 2500/- for special diet; Rs. 2500/- for conveyance expenses; Rs. 5000/- for pain and agony and Rs. 26,520/- on account of permanent disability to the extent of 20%.

9. Injured was aged 32 years as on the date of the accident. He was a chaat seller. On account of the accident, the injured sustained fracture in his right hand along with other bodily injuries. Disability certificate, Ex. P-A shows that permanent disability was assessed at 40% by Dr. Ajay Gupta of LNJP, Hospital. Further, the injured deposed that he remained in Deen Dayal Upadhyay Hospital for about a week, although his treatment continued for about 5-6 months and even after 5-6 months, he could not work for a year. In the light of aforementioned backdrop facts, I shall determine the 'fairness' of the compensation assessed by the Tribunal.

10. On perusal of the award it comes into light that the appellant did not bring anything on record to prove either the expenditure he incurred during the period of his treatment or to prove his monthly

income. But still the tribunal awarded Rs. 2500/- for the cost of treatment as well as purchase of medicines; Rs. 2500/- for special diet; Rs. 2500/- for conveyance expenses. I, therefore, do not find any justification for any enhancement under these heads.

11. As regards compensation of Rs. 5000/- for pain and agony suffered by the injured appellant, I feel that the same is inadequate. The injured deposed that he remained in Deen Dayal Upadhyay Hospital for about a week, although his treatment continued for about 5-6 months and even after 5-6 months, he could not work for a year and the same has not been rebutted. Considering this, I feel that surely he must have suffered great pain and agony and Rs. 5000/- in this regard do not seem to be just and fair, thus the same is enhanced to Rs. 25,000/-.

12. The tribunal has awarded Rs. 26,520/- on account of permanent disability to the extent of 20%. While estimating future loss of income, the effect of the earning capacity ought to be judged in the light of the importance of the loss of permanently impaired limb in the vocation or profession or employment career of the injured person. The nature of work or business has to be considered and the extent of disablement cannot be indifferent to the nature of the work. The injured suffered 40% disability due to which, he could not join his avocation. The

tribunal has observed in the award that the disability certificate suggested above 40% disability but since the appellant did not examine the doctor who had issued the disability certificate. The tribunal assessed the compensation towards the loss of income after considering 20% disability. It is no more *res integra* that mere placing documents on record is not sufficient, it is equally essential that the same are duly proved on record. I consider that finding of the Tribunal in this regard is justified. Therefore, I do not feel inclined to interfere with the award on this count.

13. As regards the income of the appellant, the tribunal has assessed the income of the appellant, as that of a semi-skilled workman, in accordance with the Minimum Wages Act, since nothing was brought on record to prove the income of the appellant. It is no more *res integra* that mere bald assertions regarding the income of the deceased 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 deceased learned Tribunal should determine income of the deceased on the basis of the minimum wages notified under the Minimum Wages Act. Therefore, the tribunal rightly assessed the income as per the MW Act.

14. As regards the future prospects I am of the view that there is no sufficient material on record to award future prospects. Therefore, the tribunal committed no error in not granting future prospects in the facts and circumstances of the case.

15. As regards the contention of the counsel for the appellant that the tribunal erred in applying the multiplier of 13 in the facts and circumstances of the case, I feel that the tribunal has committed error. This case pertains to the year 1989 and at that time II schedule to the Motor Vehicles act was not brought on the statute books. The said schedule came on the statute book in the year 1994 and prior to 1994 the law of the land was as laid down by the Hon'ble Apex Court in **1994 SCC (Cri) 335, G.M., Kerala SRTC v. Susamma Thomas**. In the said judgment it was observed by the Court that maximum multiplier of 16 could be applied by the Courts, which after coming in to force of the II schedule has been raised to 18. In the facts of the present case I am of the view that after looking at the age of the appellant, being 32 years at the time of the accident, the multiplier of 15 should have been applied. Therefore, in the facts of the instant case the multiplier of 15 shall be applicable.

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 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.

17. On the basis of the above discussion, the income of the appellant taken as Rs. 848/- per month or Rs. 19,176/- per annum. After considering 20% disability and after applying multiplier of 15 the loss of income comes to Rs.30,528/-.

18. Therefore, Rs.2,500/- is awarded towards special diet, Rs. 2,500/- conveyance expenses & Rs. 2,500/- towards medical expenses; Rs.25,000/- for mental pain & sufferings & Rs.30,528/- for permanent

disability. Accordingly, the total compensation comes out as Rs. 63028/-.

19. In view of the above discussion, the total compensation is enhanced to Rs. 63028/- from Rs. 39,020/- 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 respondent insurance company.

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

6.4. 2009

KAILASH GAMBHIR, J.