

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

+ **FAO No. 454/2000**

% Judgment reserved on: 7th January, 2008
Judgment delivered on: 13.4.2009

Sham Lal Appellant
Through: Mr. Deepak Goyal, Advocate.

versus

Dharamvir & Anr. Respondents
Through: None.

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 12th August 2000 for enhancement of compensation. The learned Tribunal awarded a total amount of Rs. 1,75,800/- with an interest

@ 12% PA for the injuries sustained by the claimant appellant in the motor accident.

2. The brief conspectus of facts is as under:

Injured appellant Sh. Sham Lal was a Mason and is said to be having an income of Rs. 3000/- PM at the time of the accident. On 21st October 1990, he was travelling by a DTC bus bearing registration no. DEP 9279. At around 9:55 P.M. when the bus reached near DTC Bus stand, DESU Sub station road, P.S. Okhla Industrial Area, the injured claimant appellant was trying to get off the said bus, the bus driver suddenly increased the speed of the bus as a result of the sudden jerk and loss of balance the injured claimant fell off from the bus. He consequently fell on the road and suffered injuries which ultimately led to amputation of left leg above knee. As per the disability certificate granted by AIIMS he suffered 100% disability of the left lower limb.

3. The counsel for the appellant claimant claims through this appeal that the award passed by the learned Tribunal is inadequate and insufficient looking at the circumstances of the case. He assails the said judgment of Learned Tribunal on following grounds: firstly it is contended that the tribunal erred in assessing the income of the claimant appellant at Rs. 1,500/- PM. He

contended basing his arguments on the oral evidence of the appellant himself that the same should have been Rs. 3,000/-. Based on this, it is further contended that the loss of income should also be enhanced accordingly. The Counsel also expressed his discontent on the amount of compensation granted towards medical expenses. He claimed an amount of Rs. 1,80,000 towards the medical expenses, special diet, conveyance charges and Rs. 30,000/- for mental pain & suffering. Further the counsel contended that the tribunal erred in awarding an interest of 9% instead of 18% pm.

4. Nobody has been appearing for the respondents.

5 I have heard counsel for the appellant and perused the award.

5. 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 and fatal accidents the general principle is that such sum of compensation should be awarded which puts the injured or the claimants, in case of the fatal accidents matter, 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.”

6. In the instant case the tribunal awarded Rs. 10,000/- for expenses towards medicines, special diet and conveyance expenses; Rs. 10,000 for mental pain and sufferings, loss of amenities and expectation of life and Rs. 1, 45, 800 on account of permanent disability.

7. On perusal of the award, it is manifest that the appellant had not placed on record any medical bills and medical vouchers. Similarly nothing was brought on record to show the expenses incurred towards conveyance and special diet. The tribunal took cognizance of the fact that the appellant sustained serious injuries in the accident and his left leg was amputated and therefore, awarded Rs. 10,000/- even though the appellant could not prove that he had incurred Rs 10,000/- towards medical expenses, conveyance expenses and special diet expenses. I do not find any infirmity in the order in this regard and the same is not interfered with.

8. As regards mental pain & suffering, the tribunal has awarded Rs. 10,000/- to the appellant. The appellant sustained grievous injuries and his left leg was amputated and now he cannot walk without crutches. In such circumstance, I feel that the compensation towards mental pain & suffering should be enhanced to Rs. 25,000/-.

9. As regards the compensation towards permanent disability the appellant as PW 1 deposed that prior to the accident he was working as a mason and was earning Rs. 3000/- p.m. The Income of the appellant was assessed by the tribunal at Rs. 1500/- p.m., after appreciating the entire material on record. I do not see any justification to interfere in the same. The appellant met with the accident in the year 1990. The age of the appellant at the time of the accident was 24 years and the 60% disability of the whole body of the appellant was duly proved on record. Therefore, the interests of justice would be best served if the award is not interfered in this regard.

10. As regards loss of amenities, Compensation for loss of amenities of life compensates victim for the limitation, 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. I feel that the tribunal erred in awarding the same at rupees 10,000 only and in the circumstances of the case same is allowed to the extent of Rs. 25,000/-.

11. As regards loss of earnings, the tribunal has assessed the income of the appellant at Rs. 1500/- p.m., Though nothing has been brought on record to prove that for how long the appellant remained under treatment. But keeping in view the injuries suffered by the appellant and nature of work the appellant was doing immediately before the accident, I consider that appellant must have suffered total loss of earning Rs. Two years. Thus taking monthly income of Rs.1500/- the compensation for loss of earning is awarded to the tune of Rs.36,000/-.

12. As regards the issue of interest that the interest has been awarded to the appellant only for a period of five years and that the tribunal has grossly erred in doing the same. The tribunal gave the reasoning for the same that the appellant took a long time of around five years to conclude the evidence and examine the witnesses. It is on record that issues were framed in March 1995 it took two years to the appellant to bring the evidence on record and examine the witnesses. It is also on record that even after a lapse of two years the appellant sought adjournment for his evidence and on subsequent dates of 14/10/1997, 26/5/1998, 14/9/1998, 14/6/1999, 13/7/1999 and finally on 2/2/2000 no appellant evidence was recorded and it was on 2/2/2000 that the trial was concluded. I

feel that tribunal was totally justified on this account and no interference is called for.

13. Therefore, Rs.10,000/- is awarded towards medical expense, Rs. 36,000/- towards loss of earnings, conveyance expense and special diet, Rs. 25,000/- towards mental pain and sufferings, Rs.1,45,800/- towards permanent disability and Rs.25,000/- towards loss of amenities.

14. In view of the above discussion, the total compensation is enhanced to Rs. 2,41,800/- from Rs. 1,75,800/- along with interest @ 7.5 % per annum on the enhanced compensation from the date of institution of the petition in this court till realisation.

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

13.4.2009

KAILASH GAMBHIR, J