

+ **FAO No. 616/2002**

Balwan Singh Appellant
Through: Mr. O.P. Mannie, Advocate

Sh. Randhir Singh & Ors. Respondents
Through: Nemo.

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 2.8.2002 for enhancement of compensation. The learned Tribunal awarded a total

amount of Rs.88,300/- with an interest @ 9% p.a for a period of two and a half years for the injuries caused to the claimant appellant in the motor accident.

2. The brief conspectus of facts is as under:

3. On 27.12.97, at about 5PM, the appellant was getting down from DTC bus bearing registration no. DBP-6372 at bus stand village Jaunti and when he was in the process of getting down, the bus driver started the bus with a jerk, as a result of which the appellant fell down and his leg was crushed under the wheels of the bus.

4. A claim petition was filed on 6.8.98 and an award was passed on 2.8.2002. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. O.P. Mannie, counsel for the appellant claimant urged 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. 1800/- PM whereas the monthly income of the appellant was Rs.4000/-. It was further contended that Ld. Tribunal erred in applying multiplier of 12 while computing loss of earnings of the appellant since the

appellant was 44 years of age at the time of accident and has suffered 80% permanent disability and Ld. Tribunal ought to have applied multiplier of 15 in reference to IInd Schedule of M.V Act. It was further submitted that Ld. Tribunal erred in not considering the fact that income of the appellant would have been increased with the passage of time in near future and the fact that minimum wages are being revised from time to time. Based on this, it is further contended that the loss of income should be enhanced, accordingly. The Counsel also expressed his discontent on the amount of compensation granted towards treatment and medicines. He claimed an amount of Rs.40,000/- towards the medical treatment and expenses. Enhancement is also claimed on the ground that a sum of just Rs.5,000/- is awarded towards conveyance instead of the claim of Rs.25,000/-. The Tribunal awarded a sum of Rs. 25,000/- towards mental pain & suffering but the counsel showed his discontent to that as well and averred that it should have been Rs.1,00,000/-. It was further urged by the counsel that tribunal erred in holding that accident in question was caused on account of 50% contributory negligence of the appellant. It is also submitted that Ld. Tribunal has failed to appreciate that the tribunal on his own could not have

imagined a situation in favour of Delhi Transport Corporation without any plea to that effect on their part. It is argued by the counsel that Ld. Tribunal failed to appreciate that respondents have not taken any defence that the accident was caused due to the negligence of appellant himself. It was further argued by the counsel that Ld. Tribunal erred in holding that the appellant was not fit for making statement in the hospital as he was under the influence of liquor. Further, the counsel pleaded that the tribunal erred in awarding an interest of 9% p.a for a period of two and a half years and the same should have been 18% p.a from the date of filing of the petition till realisation.

6. Nobody appeared for the respondent.

7. I have heard counsel for the appellant and perused the record.

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. 10,000/- for expenses towards medicines; Rs. 7,000/- for special diet; Rs. 5,000/- for conveyance expenses; Rs. 25,000/- for mental pain and sufferings; and Rs. 1,29,600/- on account of permanent disability to the extent of 50%.

10. On perusal of the award, it is manifest that the appellant had placed on record medical bills which come to a total of Rs. 600/-. As regards medical expenses, the tribunal took cognizance of the fact that the appellant sustained grievous injuries and his right leg was amputated above knee and awarded Rs. 10,000/- even though the appellant could not prove that he had incurred said amount 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 expenses, nothing has been brought on record. The appellant sustained grievous injuries and his right leg was amputated above knee. The tribunal after taking notice of this fact and in the absence of any cogent evidence awarded Rs. 5,000/- for conveyance expenses. 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 grievous injuries and his right leg was amputated above knee thus, he must have also consumed protein-rich/special diet for his early recovery and awarded Rs. 7,000/- 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. 25,000/- to the appellant. The appellant sustained grievous injuries and his right leg was amputated above knee. 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 loss of earning due to permanent disability, the tribunal assessed the income of the appellant by taking aid of the Minimum Wages Act as the appellant could not bring on record any cogent evidence to prove that he was earning Rs. 4,000/- pm. The appellant merely deposed that he was a self employed farmer and was also plying buffalo boggie earning Rs. 4,000/-pm.

Thus, the tribunal assessed the income of the deceased at Rs. 1,800/- pm.

15. The appellants right leg was crushed in the accident and suffered 50% disability of the entire body. Ex. PW3/15 is the disability certificate issued by the office of the civil surgeon, Jhajjar and according to it, he suffered 80% disability due to amputation of his right leg above knee. The age of the appellant at the time of the accident was 44 years and the 50% disability of the appellant was duly proved on record as Ex. PW3/15. The tribunal applied multiplier of 12 considering the age of the appellant, I feel that the tribunal erred in this regard as this case pertains to the year 1997 and by that time II Schedule to the MV Act had already been brought on record. Thus, the applicable multiplier of 15 as per the II Schedule shall be applied herein. Therefore, after considering all these factors, the compensation towards loss of earnings due to disability is awarded at Rs. 1,62,000/- ($1800 \times 50/100 \times 12 \times 15$) to the appellant.

16. As regards loss of amenities due to 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 amputation, 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/-.

17. As regards loss of earnings during treatment, it has come on record that the appellant was under treatment for 2 months and 10 days. Considering the fact that the appellant would not have been able to work, the tribunal ought to have awarded compensation in this regard. In view of the foregoing, compensation for about three months towards loss of earnings is assessed at Rs. 5,400/- (1800/- x 3).

18. As regards the issue of interest that the rate of interest of 8% 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 @ 8% pa by the tribunal and the same is not interfered with.

19. As regards the contention that the tribunal awarded interest for only 2 and a half years, I do not feel that the same requires any interference by this court. The tribunal has observed in the award that the claim petition was filed on 6/8/1998 and issues were framed in July 1999 and the appellant completed the evidence in August 2001. 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 for the said period of two and a half years. Therefore, no interference is made in the award on this count.

20. As regards, the issue of contributory negligence, I feel that the contention of the counsel for the appellant has merit. On perusal of the award it is manifest that the tribunal on its own took up the issue of contributory negligence when the same was not even raised by the respondents. The tribunal has to decide the issue after considering the rival contentions of the parties and does not have to imagine or self assume the contentions, which are not raised by the parties. Thus, the award is modified in this regard.

21. In view of the foregoing, Rs. 10,000/- is awarded for expenses towards medicines; Rs. 7,000/- for special diet; Rs. 5,000/- for conveyance expenses; Rs. 50,000/- for mental pain and sufferings; Rs. 25,000/- towards loss of amenities; Rs. 1,62,000/- on account of permanent disability to the extent of 50% and Rs. 5,400/- on account of loss of earnings.

22. In view of the above discussion, the total compensation is enhanced to Rs. 2,64,400/- from Rs. 88,300/- 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 DTC within a period of 30 days from the date of this award.

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

04th May, 2009

KAILASH GAMBHIR, J.