

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No. 626/2002

Judgment reserved on: 21.2.2008

Judgment delivered on: 13.04.2009

Sushil Kumar

..... Appellant.

Through: Ms.Manjeet Chawla,Adv

versus

Ramesh Kumar & Ors.

..... Respondents

Through: Mr. Kanwal Chaudhary,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 31.7.2002 for enhancement of compensation. The learned Tribunal awarded a

total amount of Rs.1,78,000/- with an interest @ 9% PA for the injuries caused to the claimant appellant in the motor accident, after attributing contributory negligence upon the petitioner to the extent of 25%.

2. The brief conspectus of facts is as under:

3. On 12.10.95 at about 10 P.M. the petitioner was driving tempo bearing registration no.DBL-9112 and when he reached at gate no.3 of Yamuna Sports Complex, all of a sudden a bus bearing registration no. DL-1P-2973 being driven by the driver of the offending vehicle in a rash and negligent manner hit the tempo. Consequently, the tempo was badly damaged and the petitioner sustained multiple grievous injuries.

4. A claim petition was filed on 19.1.96 and an award was made on 31.7.2002. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Ms. Manjeet Chawla, 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. She assailed the said judgment of Learned Tribunal firstly, on the ground that the tribunal erred in assessing the **income** of the claimant

appellant at Rs. 1969/- PM and submitted that the same should have been Rs. 3000/-Based on this, it was further contended that the **loss of income** should also be enhanced, accordingly. The Counsel also expressed her discontent on the amount of compensation granted towards **medical expenses**. She urged for an amount of Rs.2,50,000/- towards the medical treatment and expenses. The claimant appellant is not able to produce medical bills to claim the stated amount, but the counsel contended that looking at the facts and circumstance of the case and the fact that the claimant was treated for multiple injuries, the learned Tribunal should have considered awarding that amount. 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.10,000/-. Amount towards the **special diet** is also sought to be enhanced from Rs.5,000/- to 10,000/-. The Tribunal awarded a sum of Rs.30,000/- towards **mental pain & suffering** but the counsel shows his discontent to that as well and averred that it should have been Rs.60,000/-. For **permanent disablement** also he sought enhancement from Rs. 25,000/- to Rs. 1,00,000/-. Further the counsel pleaded that the tribunal erred in awarding an **interest** of 12% p.a instead of 9% pa.

6. On the other hand, counsel for the respondent Mr. Kanwal Chaudhry submitted that since in fact the appellant injured himself had contributed to the cause of said accident as he was found driving in an intoxicated state. Thus 25% contributory negligence was attributed to him. The counsel urged that the award passed by the Tribunal is just and fair and requires no interference by this Court.

7. I have heard 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. 98,518/-for medical expenses; Rs.5,000/-, for special diet; Rs.5,000/-, Rs. 25,000/- towards loss of amenities of life, Rs. 30,000 for mental pain and sufferings; Rs.50,000/- on account of permanent disability Rs. 23,628/- on account of loss of earnings.

10. On perusal of the award, it is manifest that the appellant had placed on record various medical records and bills Ex. PW1/1 to Ex.

PW1/138, which comes to a total of Rs.98,518/- and, therefore, the Tribunal awarded the said amount under the head of medical expenses. In the absence of any proof of the appellant having spent more than the said amount towards medical expenses no interference can be made by this Court, therefore, no interference is made in this regard.

11. As regards conveyance expenses, nothing has been brought on record. The appellant suffered multiple injuries. 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 serious multiple injuries thus he must have also consumed protein-rich/special diet for his early recovery and awarded Rs.5,000/- 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, and loss of amenities the tribunal has awarded Rs.30,000/- and Rs.25,000/- respectively to the appellant. The appellant sustained multiple grievous injuries In such circumstance, I feel that the compensation towards mental pain & suffering and loss of amenities in the facts of the present case does not require any interference.

14. As regards the compensation towards permanent disability, vide Ex. PW1/171 it has come on record that the appellant suffered permanent disability to the extent of less than 40% due to incorrect joining of the fractured bones. The income of the appellant has been assessed by the Tribunal at Rs. 1969/- p.m. and multiplier of 12 should be applied as assessed by the Tribunal. Therefore, compensation in this regard is assessed at Rs. 1,13,414/- ($1969 \times 12 \times 12 \times 40/100$).

15. As regards **loss of earnings**, no proof regarding income of the appellant was brought on record. Therefore, the Tribunal assessed the income in accordance with the Minimum Wages Act The tribunal assessed income of the appellant at Rs. 1969/- pm and awarded Rs. 23,628/- towards loss of income for one year, the period during which the appellant could not work. The period during

which the appellant could not work, Ex. PW 1/84 to 86 shows that the appellant stayed away from work for about an year. 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. The tribunal rightly assessed the income of the appellant in accordance with the minimum wages of a skilled workman, notified under The Minimum Wages Act on the date of the accident, which was Rs. 1969/- per month and thus loss of income would come to Rs. 23,628/-. Therefore, no interference is made in the award.

16. The tribunal has attributed contributory negligence to the extent of 25% upon the petitioner and has given justifiable reasons for it. There is nothing on the record to warrant any interference in the finding of the tribunal in this regard.

17. As regards the issue of interest that the rate of interest of 9% p.a. awarded by the tribunal is on the lower side and the same

should be enhanced to 12% 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 @ 9% pa by the tribunal and the same is not interfered with.

18. In view of the above discussion, the total compensation is enhanced to Rs.2,25,420/- from Rs. 1,78,000/- along with interest @ 7.5% per annum 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 insurance company.

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

13.4.2009

KAILASH GAMBHIR, J.