

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

+ **FAO No. 636/2002**

% Judgment reserved on: 11.02.2008
Judgment delivered on: 6.4.2009

Sh. Ashok Kumar Appellant
Through: Shri O.P. Mannie, Adv.

versus

Sh. Suraj Pal & Ors. Respondents
Through: Nemo

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 6.8.2002 for enhancement of compensation. The learned Tribunal awarded a total

amount of Rs.73,700/- with an interest @ 9% PA for the injuries caused to the claimant appellant in the motor accident.

2. The brief conspectus of facts is as under:

3. On 1.9.95, appellant Ashok Kumar was going on his two wheeler and at about 10:30AM, when he reached village Ranhaula near Jeet Hotel, Najafgarh Road, his scooter was hit by a Tanker bearing registration no. URR-1413 coming from the opposite side which was being driven in a rash and negligent manner and at a fast speed by R1, Suraj Pal. Due to the impact, appellant fell down with his scooter and suffered injuries.

4. A claim petition was filed on 8.4.99 and an award was made on 6.8.2002. 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. The Counsel also expressed his discontent on the amount of compensation granted towards pain and suffering. Ld. Tribunal awarded Rs.20,000/- on this count and he claimed Rs.50,000/- for the same. It is further pleaded that Ld.

Tribunal has erred in not awarding Rs.13,900/- spent by the appellant on his treatment at Swami Hardass Hospital & Medical Lab, Delhi. The counsel further submitted that Ld. Tribunal erred in awarding only Rs.40888.30/- for the treatment and purchase of medicines, Rs.5000/- for conveyance & special diet whereas the appellant spent Rs.1,00,000/- for the same. It is further contended that the loss of earnings should also be enhanced to Rs.63,000/- as appellant was earning Rs.3500/- per month at the time of accident and could not attend his duties for a period of 1½ years whereas the Ld. Tribunal awarded Rs.7876/- for four months @ Rs.1969/-per month. It is submitted that no compensation has been awarded by Ld. Tribunal for disfigurement of the appellant. It is also submitted that no compensation has been awarded for the loss of amenities of life, damage for the loss of expectation of life, inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life. Further the counsel pleaded that the counsel erred in awarding an interest of 9% pa instead of 24% p.a from the date of filing of the petition till realization keeping in view the high rate of inflation and fall in value of money.

6. Nobody has been appearing for the respondents.

7. I have heard the counsel for the appellant 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. 40,823.30/- for expenses towards medicines; Rs. 5,000/- for conveyance expenses; Rs. 20,000/- for mental pain and sufferings; and Rs. 7,876/- on account of loss of earnings.

10. On perusal of the award, it becomes manifest that the appellant had placed on record medical bill Ex. PW1/1 for Rs. 13,900/- paid to Swamy Hari Dass Hospital, where the appellant was taken immediately from the accident spot. The tribunal observed in para 13 of the award that the PW3 Dr. Mukhtiar Singh who runs Swamy Hari Dass Hospital admitted that he was only a BMS and thus could not run a hospital for allopathic treatment and also that he could not have signed the MLC Ex.PW1/8 and also that it was not legally permissible to charge Rs.

13,900/- from the appellant. The tribunal while discussing the testimony of the said witness PW3 brought into light glaring facts about how the said Swamy Hari Dass Hospital was being run by the said PW3. Be that as it may, the tribunals should not loose sight of the fact that the MV Act is a beneficial piece of legislation and the same should be interpreted in such a manner that the benefit of the said legislation should go to the victims of the accident. The appellant has duly proved on record that the said bill was raised and he had also paid the same. Merely because the hospital was malfunctioning the amount paid by the appellant towards his treatment cannot be disallowed to him. Therefore, the amount of Rs. 13,900/- towards the treatment of the appellant at Swamy Hari Dass Hospital is allowed.

11. As regards the issue that the tribunal awarded only Rs. 5,000/- conveyance expenses and no amount has been awarded towards special diet expenses, I feel that no interference is required in the award as regards conveyance expenses however expenses towards special diet should be allowed to the extent of Rs. 5,000/- considering that the appellant sustained head injury, his three tooth broken, injury on nose, little finger of the right hand was fractured and the right

shoulder was dislocated and fractured, he must have also consumed protein-rich/special diet for his early recovery.

12. As regards the fact that the compensation awarded towards the medical expenses is insufficient, I do not feel that the same requires any interference by this court. The appellant had placed on record medical bills, Ex. Pw 1/2 to 5; Pw1/9 to 63, issued by Jaipur Golden Hospital and G.B. Pant Hospital for a sum of Rs. 40,828.30. Considering the same, the tribunal awarded Rs. 40,828.30/-. It is no more res integra that in order to claim compensation under any head of pecuniary compensation, the claimant has to prove the amount spent by him under the said head and in the absence of any proof compensation cannot be claimed. Therefore, 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. 20,000/- to the appellant. The appellant sustained head injury, his three tooth broke, injury on nose, little finger of the right hand was fractured and the right shoulder was dislocated and fractured and considering it the tribunal awarded the said amount under this head. In

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

14. 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. The appellant sustained head injury, his three tooth broke, injury on nose, little finger of the right hand was fractured and the right shoulder was dislocated and fractured and considering it the tribunal ought to have awarded compensation under this head. 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. 15,000/-

15. As regards loss of earnings, Pw1 appellant deposed that at the time when he met with the accident he was working with his father who was running the business of mobile oil and lubricants under the name and style of Shiva Lubricants and that his father was paying him Rs. 3,500/-pm. Since nothing has come on record by way of documentary evidence as regards the proof of the income of the appellant and thus, the tribunal assessed the income of the appellant

by taking aid of the Minimum Wages Act to assess the income as that of a skilled workman. The tribunal considering the evidence on record, Ex. PW1/50 to 56, assessed the income of the appellant for a period of four months and awarded Rs.7,876/- as compensation for loss of earning. In the absence of any proof having been brought on record by the appellant as regards the fact that he could not work for 1 ½ years, compensation cannot be awarded for said 1 ½ years to the appellant. Therefore, the award is not interfered with in this regard and compensation towards loss of income is taken at Rs. 7,876/-.

16. As regards compensation for disfigurement, nothing has come on record to prove the same, therefore, no compensation is awarded 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 24% 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, change of economy, 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 foregoing discussion, Rs. 40,823.30/- is awarded for expenses towards medicines; Rs. 5,000/- for special diet; Rs. 5,000/- for conveyance expenses; Rs. 13,900/- for taking treatment at Swamy Haridass Hospital; Rs. 20,000/- for mental pain and sufferings; Rs. 15,000/- towards loss of amenities and Rs. 7,876/- on account of loss of earnings.

19. In view of the above discussion, the total compensation is enhanced to Rs. 1,07,599/- from Rs. 73,700/- along with interest @ 7.5% per annum on the enhanced compensation from the date of institution of the petition till realisation of the award and the same

should be paid to the appellant by the respondent no. 3 insurance company.

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

6.4. 2009

KAILASH GAMBHIR, J.