

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

+ **FAO No. 266/2001**

% Judgment reserved on: 04th February, 2008
Judgment delivered on: 06.04.2009

Anil Sharma Appellant
Through: Mr. Y. R. Sharma, Advocate.

versus

Vinod Kumar & Ors. Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

- | | |
|--|----|
| 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 26.2.2001. The learned Tribunal awarded a total amount of Rs.97,500/- with an

interest @ 9% PA for the injuries sustained by the claimant appellant in the motor accident.

2. The brief conspectus of facts is as under:

3. On 1.7.1990, claimant, Sh. Anil Sharma was going towards Mehrauli at a slow speed with Sh. Ram Nath Sharma as a pillion rider and when they reached Mehrauli-Gurgaon Road near Mangla Puri at that very time, a Maruti car bearing registration no. DBB-5538 being driven by R1 at a very fast speed came from opposite direction and struck against the scooter of the petitioner after coming on the wrong side of the road. Due to the forceful impact, claimant fell down on the road along with the scooter and received grievous injuries all over the body such as chest, hands, right ear and thigh bone fracture of right leg. A claim petition was filed on 21.12.1990 and an award was made on 26.02.2001. Aggrieved with the said award enhancement is claimed by way of the present appeal.

4. Sh. Y. R. Sharma, counsel for the appellant urged that the award passed by the learned Tribunal is inadequate and insufficient looking at the circumstances of the case. He assailed the said judgment of Learned Tribunal firstly, on the ground that the tribunal erred in awarding Rs.48,000/- as compensation towards **loss of income** and

he made the said contention on the basis that petitioner suffered complete loss of income for a period of 3 years & 2 months and at the salary of Rs.4000/- per month and same should be enhanced to Rs.1,52,000/-. The Counsel also expressed his discontent on the amount of compensation granted towards **medical expenses, conveyance and special diet**. He claimed an amount of Rs.54,400/- towards the medical treatment , conveyance and special diet. The Tribunal awarded a sum of Rs. 40,000/- towards **mental pain & suffering, loss of expectations and loss of earning capacity in future** but the claimant showed his discontent to that as well and averred that he remained under treatment for a long time and has suffered permanent disability and thus compensation for the same should have been awarded at Rs.50,000/-. For **permanent disablement** also he sought Rs.3,42,600/-. The compensation towards **expenses incurred in repairing the damage** to the scooter is also pleaded to be enhanced through this appeal. It is also submitted by the counsel for the claimant appellant that claimant had engaged an **attendant** to look after him for a period of one year @ Rs.1200/-per month and has sought Rs.14,400/- under this head. Further the counsel pleaded that the counsel erred in awarding an **interest** of 9% pa instead of 15% pa.

5. Nobody has been appearing for the respondents.
6. I have heard the counsel for the appellant and perused the record.
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 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 has awarded Rs.7000 /- for expenses towards medical treatment, conveyance and special diet; Rs.48,000/- for loss of earning during the period claimant remained incapable to carry on his business, Rs.2500/- for the damage to the scooter of the claimant and Rs.40,000/- for mental pain & suffering, loss of expectation of life and loss of earning capacity in future.

9. On perusal of the award, it is manifest that the appellant had placed on record bills amounting to Rs.3500/- and Tribunal after considering the nature of injuries viz. grievous injuries all over the body such as chest, hands, right ear and thigh bone fracture of right leg, suffered by the appellant awarded Rs.7000/- in all, towards medical expenses, conveyance and special diet. In this regard I feel that the tribunal has already been generous in awarding compensation to the tune of Rs. 7,000/- in the facts of the present even after there

being no proof regarding the expenses incurred towards special diet and conveyance expenses. Therefore, no interference is made in the award on this ground.

10. As regards mental pain & suffering, loss of expectations and loss of earning capacity in future, the tribunal awarded Rs. 40,000/- to the appellant. The appellant sustained fracture injuries & other multiple injuries all over the body which ultimately resulted in permanent disability. In such circumstances. In my opinion, the tribunal awarded just compensation under this head. Therefore, no interference is made in the award on this ground.

11. As regards the compensation towards permanent disability, I feel that the tribunal has erred in not awarding the same. The income of the appellant was duly proved at Rs.4000/- pm. Further on perusal of the award it is manifest that the injuries suffered by the appellant had resulted in shortening of lower limb by 1" as described in disability certificate, Ex. PW5/1. The appellant suffered permanent disability to the extent of 40% in relation to his lower limb or 20% disability in relation to his whole body as per the Workman Compensation Act. The age of the appellant at the time of the accident was 28 years and applicable multiplier shall be 16. Since the instant case pertains to the

year 1990, when the II Schedule to the MV Act had not come in to force, but still help of the same can be taken to award just compensation. Therefore, after considering all these factors, the compensation towards disability is awarded at Rs. $4000 \times 20/100 \times 16 \times 12 = \text{Rs.}1,53,600$ /- to the appellant.

12. As regards medical attendant, claimant deposed that he engaged Sh. Mahinder Singh as an attendant at the salary of Rs.1200/- per month. Sh. Mahinder Singh was also examined as PW4, who deposed that he was engaged by the appellant in January 1991 i.e. after about six months of the accident as the appellant had met with an accident on 1.7.1990. Therefore, the tribunal rightly did not allow compensation under the said head. Therefore, no interference is made in the award on this ground.

13. As regards expenses incurred in repairing the damage to the scooter, I feel that tribunal rightly allowed Rs.2500/- in this regard. Although nothing was brought on record to prove the same. It is no more res integra that for arriving at a particular figure on each of the heads of damages, the claimant is duty-bound to produce relevant materials, on the basis of which, a determination could be made, as to what would be the just compensation. In the absence of any cogent or

reliable material on record, I do not wish to interfere with the award in this regard.

14. As regards loss of earnings, the tribunal assessed the income of the appellant at Rs.4000/- pm and awarded Rs.48,000/- towards total loss of income for one year, the period during which the appellant could not work as proved on record. In my opinion, the tribunal has rightly allowed compensation to the appellant under this head to the tune of Rs. 48,000/-. Therefore, I do not wish to interfere with the award in this regard.

15. 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 15% 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.

16. In view of the foregoing, Rs.7000 /- is awarded for expenses towards medical treatment, conveyance and special diet; Rs.48,000/- for loss of earning during the period claimant remained incapable to carry on his business, Rs.2500/- for the damage to the scooter of the claimant; Rs. 1,53,600/- towards permanent disability and Rs.40,000/- for mental pain & suffering, loss of expectation of life and loss of earning capacity in future.

17. In view of the above discussion, the total compensation is enhanced to Rs. 2,51,100/- from Rs. 97,500/- 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.

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

6.04.2009

KAILASH GAMBHIR, J