

+ **FAO 502/2000**

Satish Chander Jain & Ors. Appellant
Through: Mr. O.P. Goyal, Adv.

Subhash Chander & 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 8/9/2000 for enhancement of compensation. The learned Tribunal awarded a total

amount of Rs. 39,685/- with an interest @ 6% PA for the injuries caused to the claimant appellant in the motor accident.

2. The brief conspectus of facts is as under:

3. That on 26.6.1982 the appellant, Satish Chander Jain, was driving his scooter with Shri Rajesh Jain on the pillion seat on road in Channa Market, Karol Bagh, New Delhi from Ajmal Khan Market towards his residence and was crossing Channa Market Crossing and when he crossed more than 3/4 th of the crossing, at that time car No. MXT-4752 driven rashly, negligently and recklessly by its driver entered the crossing from left side of the appellant and hit with the front of the car to the appellant's left side of the scooter with a great force, as a result of which the appellant was thrown away and received injuries. The car also dragged the scooter. As a result of being hit by the car, the appellant received the following injuries:

- a) Fracture left femur – thigh bone fractured.
- b) Fracture left neck of stupula.
- c) Fracture left side ribs number 2 to 9.
- d) Fracture left clavicle (collar bone).

- e) Traumatize plural effusion left side (lung side).
- f) Abrasion on the back of knee, left shoulder and head injury resulting into unconsciousness.

After the accident, the police removed the appellant to the hospital, where the appellant was given treatment and was indoor patient from the time of his admission till 11 p.m. and thereafter he was shifted to Safdrajung Hospital where he remained admitted till 5.8.1982. In Safdarjung Hospital, the appellant was also put on skeletal traction, inter coastal drainage was done on the left side in order to drain the blood which had collected in the plural cavity due to the injuries on the left side.

4. A claim petition was filed on 24.12.82 and an award was passed on 8.9.2000. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. O.P. Goyal counsel for the appellant claimant urged that the tribunal erred in assessing the compensation towards loss of earned leave of the claimant appellant at Rs. 7100/- for four and a half months and contended that the same should also be enhanced, considering that the appellant would have encashed it at the time of retirement,

when he would have been earning Rs. 30,000/- to 40,000/- pm. The counsel also submitted that the appellant should have been awarded Rs. 1,00,000/- for delayed promotion. The Tribunal awarded a sum of Rs. 20,000/- towards mental pain & suffering but the counsel averred that it should have been Rs. 5,00,000/-. For permanent disablement also learned counsel sought compensation of Rs. 2,00,000/-. Further the counsel pleaded that the counsel erred in awarding an interest of 15% pa instead of 6% pa.

6. Nobody appeared 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 awarded Rs. 9685/- for expenses towards medicines; Rs. 20,000/- for mental pain and sufferings; Rs.

7100/- for loss of earned leave; and Rs. 10,000/- on account of permanent disability to the extent of 15%-20% of the left leg.

10. As regards loss of earned leave, the tribunal took notice of the fact that PW4 A.S. Bhutola, Asst. Office Suptd., BHEL deposed that the appellant took 4 months and 12 days earned leave, which he could have encashed and thus, after considering that the appellant was drawing Rs. 1796.40 pm which had risen to 2116/- pm from 1.8.82 as per Ex. PW4/B and C. accordingly, he assessed income for July at Rs. 1796/- and Rs. 240/- for June; Rs. 2036/- for July and Rs. 6348/- from August to October, totaling to Rs. 9224/-. But considering that PW4 deposed that the appellant took 66 days half pay leave, Rs. 2116/- was deducted in this regard, thus, the compensation under this head was awarded at Rs. 7100/-. I do not feel any error in this regard. The tribunal rightly assessed the loss of earned leave at the aforesaid rates as the compensation in this regard is assessed for the loss which occurred during the time leave was taken. Thus, no interference is made in this regard.

11. On perusal of the award, it is manifest that the appellant had placed on record various bills Ex. PW8/1 to 2; Ex. Pw3/A1 to A12, which

comes to a total of Rs. 9685/- after making adjustments as the appellant was reimbursed to the extent of Rs. 5,000/- by his office. As regards medical expenses, the tribunal took cognizance of the above fact and awarded Rs. 9685/-, as duly proved on record, towards medical expenses. I do not find any infirmity in the order in this regard and the same is not interfered with.

12. As regards conveyance expenses, nothing has been brought on record. The appellant suffered 15%-20% permanent disability of the left leg and also had a fracture of four months from hip to toe of the left leg. The tribunal after taking notice of this fact and in the absence of any cogent evidence awarded Rs. 5,000/- for conveyance expenses. I feel the tribunal erred in not awarding the same.

13. 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 the tribunal did not take notice of the fact that since the appellant suffered 15%-20% permanent disability of the left leg and also had a fracture of four months from hip to toe of the left leg, thus, he must have also consumed protein-rich/special diet for his

early recovery and awarded Rs. 5,000/- for special diet expenses. I feel the tribunal erred in not awarding the same.

14. As regards mental pain & suffering, the tribunal has awarded Rs. 20,000/- to the appellant. The appellant suffered 15%-20% permanent disability of the left leg and also had a fracture of four months from hip to toe of the left leg. In such circumstance, I feel that the compensation towards mental pain & suffering should be enhanced to Rs. 30,000/-.

15. As regards the compensation towards loss of future earning and permanent disability, I feel that the tribunal has erred in not awarding the same as per the settled principle of law. The income of the appellant was duly proved at Rs. 1796.40/- pm. The age of the appellant at the time of the accident was 32 years, thus multiplier of 15 shall be applied and the 15% to 20% permanent disability of the left leg of the appellant was duly proved on record as Ex. PW3/B. Which means 5% disability of the entire body as per the Workman Compensation Act. Therefore, after considering all these factors, the compensation towards disability is awarded at Rs. 16168/- ($1796.40 \times 5/100 \times 12 \times 15$).

16. 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. Considering that the appellant suffered amputation of his toe, 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 the issue of interest that the rate of interest of 6% 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 @ 6% pa by the tribunal and the same is not interfered with.

18. In view of the foregoing, Rs. 9685/- is awarded for expenses towards medicines; Rs. 5,000/- for special diet; Rs. 5,000/- for conveyance expenses; Rs. 30,000/- for mental pain and sufferings; Rs. 7100/- for loss of earned leave; Rs. 25,000/- towards loss of amenities; Rs. 10,000/- on account of permanent disability to the extent of 15%-20% of the left leg and Rs. 16,168/- on account of loss of earnings.

19. In view of the above discussion, the total compensation is enhanced to Rs. 1,07,953/- from Rs. 39,685/- 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 respondents as directed by the tribunal and within 30 days of this order.

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

April 27, 2009

KAILASH GAMBHIR, J.