

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO. No. 664/2002

Judgment reserved on: 04.02.2008

Judgment delivered on: 20.4.2009.

Inderdeep Singh Uppal

..... Appellant.

Through: Mr. D.D. Singh, Adv

versus

Sh. Deepak Kumar & 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 26.8.2002 for enhancement of compensation. The learned Tribunal awarded a total amount of Rs.18,932/- 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. That on 24.11.1998 at about 10.00 a.m. petitioner Achint Kaur was getting ready to go on her scooter to Pragti Madan with her son Inderdeep Singh when Maruti Van DL 4CC-7894 being driven in a rash and negligent manner came from behind and hit against the left arm of Achint Kuar and the handle of her scooter in the process of over taking the scooter from left side. Due to impact both Achint Kaur and Inderdeep Singh fell on the road. Left knee and leg of Achint Kuar were crushed while Inderdeep Singh suffered fracture shaft of left Tibia. Both were removed to nearby Kailash Nurshing Home from where they were shifted to Ganga Ram Hospital and were treated there.
4. A claim petition was filed on 15.1.99 and an award was passed on 26.8.22. Aggrieved with the said award enhancement is claimed by way of the present appeal.
5. Sh.D.D. Singh, 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.

6. The Counsel urged that the amount of compensation granted towards **medical expenses is insufficient and sme should be enhanced.** He contended that an appropriate amount should have been granted by the Tribunal towards the medical treatment and expenses. The claimant appellant is not able to produce medical bills to claim the stated amount, but he contended that looking at the facts and circumstance of the case and the fact that the claimant was treated for fracture of shaft of left tibia at Gangaram Hospital, New Delhi, the learned Tribunal must have considered awarding that amount. Enhancement is also claimed towards conveyance on the ground that some reasonable amount be awarded. The appellant has also sought awarding of amount towards the **special diet.**

7. The Tribunal awarded a sum of Rs. 15,000/- towards **mental pain & suffering** but the counsel showed his discontent to that as well and averred that it should have been Rs.50,000/-. Further the counsel pleaded that the counsel erred in awarding an **interest** of 9% pa instead of 12% pa.

8. I have heard counsel for the parties and perused the award.

9. 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.”

10. In the instant case the tribunal has awarded Rs.,3932/- for expenses towards medicines and Rs. 15,000/- for mental pain and sufferings. The tribunal has not granted any amount towards special diet and special diet expenses.

11. On perusal of the award, it is manifest that the appellant had placed on record various bills Ex PW 7/1, PW 7/7, PW 7/16 to 22, which comes to a total of Rs. 3932.30. The appellant could not prove that he had incurred expenses more than Rs.3932.30 towards medical expenses and, therefore, Tribunal awarded the same amount as duly proved as compensation. 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 simple injuries and compound fracture. I feel that the tribunal after taking notice of this fact ought to have awarded Rs. 2,500/- for conveyance expenses.

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 still the tribunal ought to have taken notice of the fact that since the appellant sustained injuries and compound fracture thus he must have also consumed protein-rich/special diet for his early recovery and should have awarded Rs. 2500/- for special diet expenses.

14. As regards mental pain & suffering, the tribunal has awarded Rs. 15,000/- to the appellant. I do not feel that the same requires any interference in the facts of the present case.

15. As regards loss of amenities, which results resulting from the defendant's negligence, and affects 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. 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. 10,000/-.

16. 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.

17. In view of the foregoing, Rs. 10,000/- is awarded towards loss of amenities; Rs. 15,000/- towards mental pain and sufferings; Rs. 2,500/- towards conveyance expenses; Rs. 2,500/- towards special diet and Rs. 3,932.30/- towards medical expenses.

18. In view of the above discussion, the total compensation is enhanced to Rs. 33,932/- from Rs. 18,932/- along with interest @ 7.5% per annum 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 insurance company.

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

20.4.2009

KAILASH GAMBHIR, J.