

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO NO.665/2002

Judgment reserved on: 11.02.2008

Judgment delivered on: 04.05.2009

Achint Kaur Uppal

.....Appellant

Through Mr.D.D Singh, Adv

Versus

Deepak Kumar & Others

..... 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 26.8.2002 for enhancement of compensation. The learned Tribunal awarded a total amount of Rs. 1,83,120.50/- 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 21.4.98 at about 10 a.m appellant Achint Kaur was getting ready to go on her scooter to Pragti Maidan with her son Inderdeep Singh when Maruti Van bearing Registration no. DL 4CC 7894 being driven in rash and negligent manner by respondent no.1 came from behind and hit against the left arm of Achint Kaur and the handle of her scooter in the process of overtaking the scooter from left side. Due to impact both Achint Kaur and Inderdeep Singh fell on the road. Left knee and leg of Achint Kaur were crushed while Inderdeep Singh suffered fracture shaft of left tibia. Both were removed to hospital for treatment.

4. A claim petition was filed on 15/1/99 and an award was passed on 26/8/2002. 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 tribunal erred in assessing the income of the claimant appellant as it did not consider that the appellant was also earning by purchase and sale of scrips. The counsel maintained that the tribunal erred in awarding a lower amount of compensation towards pain and sufferings, conveyance expenses and also erred in not allowing any compensation towards loss of amenities, expenses on an attendant, physiotherapy treatment and special diet expenses. the counsel further contended that the tribunal erred in not assessing the compensation towards permanent disability as per the principles of law and awarded a lumpsum amount towards it. The counsel also submitted that the tribunal erred in allowing interest @ 12% pa instead of 15% 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 has awarded Rs. 7039.50/- for expenses towards medicines; Rs. 5,000/- for conveyance expenses; Rs. 25,000/- for mental pain and sufferings; Rs. 75,000/- on account of permanent disability to the extent of 25% and Rs. 71,081/- on account of loss of leave.

10. On perusal of the award, it is manifest that the appellant was covered under the medical claim policy and the counsel of the appellant before the tribunal submitted that the claim of the appellant as regards medical expenses is restricted to Ex. PW7/1 to 26 which amounted to Rs. 7039.50/- the tribunal awarded the said amount as duly proved by the appellant. I do not find any infirmity in the order in this regard and the same is not interfered with.

11. As regards conveyance expenses, nothing has been brought on record. The appellant suffered bicondylar fracture of left tibia apart from other bruises on different parts of the body. 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 her towards special diet but still the tribunal should have taken notice of the fact that since the appellant sustained bicondylar fracture of left tibia apart from other bruises on different parts of the body, thus, she must have also consumed protein-rich/special diet for her early recovery and should have awarded Rs. 5,000/- for special diet expenses. thus, the award is modified in this regard.

13. As regards mental pain & suffering, the tribunal has awarded Rs. 25,000/- to the appellant. The appellant suffered bicondylar fracture of left tibia apart from other bruises on different parts of the body. The appellant also went through operations under local anesthesia twice. In such circumstance, I feel that the compensation towards mental pain & suffering should be enhanced to Rs. 50,000/-.

14. As regards the compensation towards loss of earnings due to permanent disability, I feel that the tribunal has erred in not awarding the same as per the settled principles of law. As per the disability certificate issued by AIIMS, the appellant suffered 25% disability. The appellant met with the accident in the year 1998. The appellant at the time of the accident was of 38 years of age, thus the multiplier of 16

as per the II Schedule to the MV Act shall be applied. The income of the appellant at the time of the accident was duly proved at Rs. 8671/- pm. Therefore, after considering all these factors, the compensation towards disability is awarded at Rs. 4,16,208/- ($8671 \times 12 \times 16 \times 25\%$) to the appellant.

15. As regards expenses for physiotherapy treatment, the PW1 Dr. A.K. Kochhar deposed that the problem of inability to walk of the appellant would be solved if she takes physiotherapy treatment continuously for 6 months. Also, considering the testimony of PW3 Physiotherapist, I feel that the tribunal erred in not allowing compensation in this regard, I award compensation in this regard at Rs. 100 per visit, which would make compensation under this head at Rs. 18,000/- ($100 \times 30 \times 6$).

16. As regards house attendant, Sh. Naveen Chander Arya was contended to be the person who was kept for attending the house and assisting the appellant since she had suffered grievous injuries in the accident and could not do household work. But the said Mr. Arya was not examined before the tribunal, further, the receipt PW7/C also does not contain any date of issue and also does not bear the address of the

said attendant. Thus, the tribunal rightly did not err in not awarding any compensation in this regard.

17. As regards loss of amenities due to permanent disability, 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 bicondylar fracture of left tibia apart from other bruises on different parts of the body, 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/-.

18. As regards loss of earnings, it has come on record that the appellant remained on leave from 26/11/1998 to 24/6/1999 and then from 4/10/1999 till 5/11/1999. PW2 R.S. Johar proved salary record of the appellant vide Exs. PW4/O to T and the same contain details of the salary of the appellant for each month when she was on leave. After considering the same, the tribunal assessed the loss of leave suffered by the appellant at Rs. 71,081/-. I do not find any infirmity in this regard. Thus, no interference is made on this count.

19. As regards the issue of interest that the rate of interest of 12% 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 @ 12% pa by the tribunal and the same is not interfered with.

20. In view of the foregoing, Rs. 7039.50/- is awarded for expenses towards medicines; Rs. 5,000/- for special diet; Rs. 5,000/- for conveyance expenses; Rs. 18,000/- for physiotherapy treatment; Rs. 50,000/- for mental pain and sufferings; Rs. 25,000/- towards loss of amenities; Rs. 4,16,208 on account of permanent disability to the extent of 25% and Rs. 71,081/- on account of loss of earnings.

21. In view of the above discussion, the total compensation is enhanced to Rs. 5,97,328.50/- from Rs. 1,83,120.50/- 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 within 30 days of this order.

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

May, 04, 2009

KAILASH GAMBHIR, J