

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

. FAO No.297/01

Judgment reserved on: 21.02.08
% Judgment delivered on: 6.4.2009

VIJAY KUMAR Appellants
Through: Mr. Santosh Chauriha, Adv.

versus

DEVINDER SINGH Respondent
Through: None.

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 01.02.2001. The learned Tribunal awarded a total amount of Rs. 33,923/- with an interest @ 10% PA for the injuries caused to the claimant appellant in the motor accident.

The brief conspectus of facts is as under:

2. On 23.1.95 at about 9.30 a.m an accident took place due to rash and negligent driving on the part of the bus driver who was driving bus no. UGP 4316 at very high speed, negligently and rashly while going from Haldwani side to Muradabad. The accident took place at Gram Taharpur. The bus was hit against a tree as a result of which the petitioner and other passengers received serious injuries.
3. A claim petition was filed on 21.11.2000 and an award was made on 1.2.2001. Aggrieved with the said award enhancement is claimed by way of the present appeal.
4. Appellant claimant claims enhancement through this appeal. The counsel 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 a sum of Rs.6,000/- towards earning loss for two months and which should have been Rs.90,000/-. The Counsel also expressed his discontent on the amount of compensation granted towards **medical expenses**. He claimed an amount of Rs.40,000/- towards the medical treatment, conveyance and special diet. The claimant appellant has produced some 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 in leg, the learned Tribunal must should consider the same, while awarding that amount. The Tribunal awarded a sum of Rs.20,000/- towards **mental pain & suffering** but the counsel shows his discontent to that as well and averred that it should have been Rs.50,000/-. Further the counsel pleaded that the tribunal erred in awarding an **interest** of 10% pa instead of 15% pa.

5. I have heard the counsel for the appellant and perused the award.

6. 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 and fatal accidents cases should be on awarding substantial, just and fair damages and not mere token amount. In cases of personal injury accidents 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.”

7. In the instant case the tribunal awarded Rs. 3923/- for expenses towards medicines; Rs.2000/- for special diet; Rs.2000/- for conveyance expenses; Rs.20,000/- on account of mental pain and sufferings for grievous injuries, Rs.6,000/- towards loss of income for two months at the rate of Rs. 3,000/- per month.

8. On perusal of the award, it is manifest that the appellant placed on record various medical bills, Ex.P16 to Ex. P37 issued by various medical stores for a sum of Rs. 3,923/-. Due to the accident, the petitioner was hospitalised for 25 days as per the MLC, Ex. A, and a fracture of 2 months was done. No doubt the appellant might have incurred considerable amount towards the purchase of medicines but in the absence of any proof the tribunal rightly granted Rs 3,923/- towards medical expenses based on the proved medical bills.

9. As regards conveyance expenses, nothing has been brought on record to prove the same. The appellant suffered fracture in his leg. The tribunal after taking notice of this fact and in the absence of any cogent evidence awarded Rs.2,000/- for conveyance expenses. No interference can be made to enhance the conveyance expenses unless specifically proved by the appellant.

10. 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 took notice of the fact that since the appellant sustained serious injuries in leg thus he must have also consumed protein-rich/special diet for his early recovery and

awarded Rs.2000/- for special diet expenses. No interference is warranted to increase the special diet expenses.

11. As regards mental pain & suffering, the tribunal has not awarded any amount. The appellant remained in hospital for about one month and sustained fracture in his leg. In such circumstance, I feel that the compensation towards mental pain & suffering should have been granted at Rs.10,000/-.

12. The appellant has not filed any disability certificate before the Tribunal. But considering that the appellant suffered fracture, the Tribunal has awarded Rs.20,000/- towards mental pain and sufferings for grievous injury disability, which in my view does not require any interference.

13. As regards loss of amenities, resulting from the defendant's negligence, on the injured person's ability to participate in and derive pleasure from the normal activities of daily life, or 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.15,000/-.

14. As regards loss of earnings, no proof regarding income of the appellant was brought on record. The tribunal assessed notional income of the appellant at Rs. 3000/- pm and awarded Rs.6000/- towards loss of income for two months, the period during which the appellant could not work. Since the petitioner was hospitalised for 25 days as per the MLC, Ex. A, Therefore, loss of income for one month as assessed by the tribunal at Rs.6,000/- is not interfered with.

15. As regards the issue of interest that the rate of interest of 10% 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 @ 10%pa by the tribunal and the same is not interfered with.

16. Therefore, as discussed above, Rs. 3,923/- is awarded for expenses towards medicines; Rs.20,000/- on account of greivous injury disability, Rs.6,000/- towards loss of income; Rs. 15,000/- for loss of amenities Rs. 10,000/- for pain and sufferings, Rs. 2000/- on account of special diet and conveyance.

17. In view of the above discussion, the total compensation is enhanced to Rs. 56,923/- from Rs.33,923/- along with interest @ 7.5% per annum from the date of institution of the present petition in this Court till realisation on the enhanced compensation and the same should be paid to the appellant by the respondents no 1 to 3, whose liability is joint and several.

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

6.4.2009

KAILASH GAMBHIR, J.