

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

+ **FAO 59/2000**

Judgment reserved on: 13.3.2008
% Judgment delivered on: 27.4.2009

Lt. Col. Pradeep Khanna (Retd.) Appellant
Through: Mr.D.D. Singh, Advocate

versus

Shri Ram Babu Ram & Ors. Respondents
Through: Mr. Kanwal Chaudhary, Adv

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 07.10.1999 for enhancement of compensation. The learned Tribunal awarded a total amount of Rs.99,561/- with an interest @ 12% PA for the injuries caused to the claimant appellant in the motor accident.
2. The brief conspectus of facts is as under:
3. On 5.8.93 when Lt.Col. Pradeep Khanna was going on his scooter

no.DAM 663 from Saket to Panchkuian Road and reached near Shivaji Stadium,Gole Market at about 10.30 a.m, a TSR bearing registration no. DAR 1376 being driven by respondent no.1 came in rash manner from opposite side and while trying to overtake another vehicle, could not control and overturned and struck with scooter of the petitioner. The pillion rider of the scooter fell down. The right leg of the petitioner was broken and he suffered fracture of both bones and right lower leg. He was treated in various hospital.

4. A claim petition was filed on 31.01.94 and an award was passed on 07.10.99. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. DD Singh counsel for the 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 peanuts i.e. Of Rs.30,000/- against pecuniary and non pecuniary damages which is totally unjustified. The appellant remained under treatment for two years and suffered for long but yet awarded only a paltry sum towards pecuniary and non-pecuniar damages. The tribunal has erred in not awarding the amount claimed on account of mental pain, agony and general damages. It is further contended that the appellant had a large area of agricultural land and he had to employ attendant numbering

three and the tribunal has disallowed the claim on this account as well as loss of agricultural income. The tribunal has further erred in not granting the loss of income in the presence of overwhelming evidence to the contrary. The appellant had taken premature retirement at the age of 43 years to pursue second career, and did not retire on reaching the age of superannuation. The tribunal has erred in assessing the loss of salary at Rs.18,000/- and tribunal has not considered the salary certificate issued by his employer dated 2.2.94. Based on this, it is further contended that the **loss of income** should also be enhanced, accordingly. The Counsel also expressed his discontent on the amount of compensation granted towards **medical expenses**. He claimed an amount of Rs.50,000/- 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 both legs, Tibia and Fibula, the learned Tribunal must have considered awarding that amount. Enhancement is also claimed on the ground that a sum of just Rs.16,000/- is awarded towards **conveyance** instead of the claim of Rs.30,000/- because of air fare paid by the appellant. Ld. Counsel also shows his discontent towards **mental pain & suffering**.

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

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.15,000/- for

expenses towards medicines; Rs.12,000/- for special diet; Rs.16,000/- for conveyance expenses; Rs. 5000/- for keeping medical attendants; Rs. 30,000/- for mental pain and sufferings; Rs.2761/- towards loss of income of wife; and Rs.18,800/- on account of loss of earnings.

9. On perusal of the award, it is manifest that the appellant had placed on record various bills, which comes to a total of Rs. 13,700/-. As regards medical expenses, the tribunal took cognizance of the fact that the appellant sustained fracture in both his legs and awarded Rs. 15,000/- even though the appellant could not prove that he had incurred Rs.15,000/- towards medical expenses and he could prove bills only for Rs.13,700/-. I do not find any infirmity in the order in this regard and the same is not interfered with.

10. As regards conveyance expenses, the appellant has placed three boarding passes and seven rail tickets. The appellant suffered grievous injuries. The tribunal after taking notice of this fact has awarded a sum of Rs. 16,000/- for conveyance expenses. The appellant must have spent some local conveyance expenses at Nagpur as well as Delhi. Therefore, I allow total sum of Rs.20,000/- on account of conveyance expenses.

11. 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 fracture in legs thus he must have also consumed protein-rich/special diet for his early recovery and awarded Rs.12,000/-

for special diet expenses against the claim of Rs.10,000/- claimed in the petition. I do not find any infirmity in the order in this regard and the same is not interfered with.

12. As regards mental pain & suffering, the tribunal has awarded Rs. 30,000/- to the appellant. The appellant sustained fracture in both his legs. The appellant remained under treatment for about two years. In such circumstance, I feel that the compensation towards mental pain & suffering should be enhanced to Rs.50,000/-.

13. As regards the compensation towards permanent disability, I feel that the tribunal has not erred in not awarding the same since no disability certificate from competent board has been brought on record.

14. As regards medical attendants no evidence has been led by the appellant before the tribunal. The appellant has claimed compensation towards attendants charges incurred by the appellant for two years @ Rs.1500/- pm. But, no documentary proof was given in this regard. The tribunal has awarded a sum of RS.5000/- under this head. In the facts of the present case, Rs.10,000/- is awarded in this regard.

15. As regards loss of amenities, Compensation for loss of amenities of life compensates victim for the limitation, 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. In essence, compensation for loss of expectation of life

compensates an individual for loss of life and loss of the pleasures of living. 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 **loss of earnings**, income certificate of the appellant was brought on record. As per certificate the consolidate salary of appellant was Rs.12,000/- p.m at the time of leaving service on 30th Nov.1993. The tribunal has awarded Rs.18,800/- towards loss of income the period during which the appellant could not work. The tribunal has awarded compensation for four months by taking salary to be Rs.4706/- p.m as per income tax return filed by him. The appellant has mentioned his salary as Rs.4700/- in the petition at the time of accident taken place on 5.8.93 plus perks and Rs.1100/- from agriculture income. The figure of perks had not been disclosed. Taking into account the salary of RS.4700 + agricultural income of Rs.1100/-, the total income of the appellant comes to RS.5800/- p.m. In the facts of the case, the petitioner could not have worked for six months since he suffered fracture in both his legs. Therefore, the compensation for six months comes to Rs. 34,800/-.

17. In view of the foregoing, Rs. 15,000/- is awarded for expenses towards treatment; Rs.12,000/- for special diet; Rs.20,000/- for conveyance expenses; Rs.34,800/- for loss of wages; Rs.10,000/- for loss of amenities and enjoyment of life & Rs.50,000/- for pain and sufferings, Rs.10,000/- for attendant expenses and Rs.10,000/- for amenities and loss of enjoyment of life.

18. In view of the above discussion, the total compensation is enhanced to Rs. 1,61,800/- from Rs.99,561/- 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.

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

April 27, 2009

KAILASH GAMBHIR J.