

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO NO.706/02

Judgment reserved on:4.2.2008
Judgment delivered on:4.5.2009

Manohar Lal .

.....Appellant

Through Mr.OP Mannie, Adv

Versus

Pradeep Kumar & Ors.

..... Respondents

Through: Nemo

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 28.8.02 for enhancement of compensation. The learned Tribunal awarded a

total amount of Rs. 1,12,000/- 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 19.7.96 at about 7 p.m appellant Manohar Lal was going on a scooter which was being driven by his friend Sh Chain Sukh and when they reached near Sangam Cinema, RK Puram, New Delhi a bus no. DL 1P 2934 came from behind in a rash and negligent manner without caring for the traffic rules and hit the scooter. As a result, both the occupants fell down and sustained grievous injuries.

4. A claim petition was filed on 8.10.98 and an award was passed on 28.2.02. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. OP Mannie 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 not paying any compensation for reduction in earning capacity on account of permanent disability to the extent of 44%. Ld. Counsel claimed loss of leaves for nine months instead of four month. The Tribunal awarded a sum of Rs. 10,000/- towards mental pain &

suffering but the counsel shows his discontent to that as well and averred that it should have been Rs.25,000/-. For **permanent disablement** also he sought enhancement from Rs. 50,000/- to Rs. 1,00,000. It is further contended that Tribunal has erred in not awarding compensation for loss of amenities and enjoyment of life, for frustration and for reduction of working capacity. Further the counsel pleaded that the counsel erred in awarding an **interest** of 9% pa instead of 18% pa.

6. I have heard the counsel for the appellant Sh OP Mannie and perused the record.

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.26,676/- for medical expenses; Rs.15,000/- for loss of leaves; Rs. 50,000/- for disability suffered by the appellant; Rs.10,000/- for pain and suffering and Rs.10,000/- for special diet and conveyance.

9. On perusal of the award, it is manifest that the appellant had placed on record various bills Ex.PW1/1 to Ex.PW1/69 which are amounting to Rs.26,676/-. It has been admitted by the appellant that the amount of Rs.1,37,609/- i.e. Bill of Jassa Ram Hospital has been reimbursed by his department. The Tribunal has rightly awarded the

amount of Rs.26,676/- towards medicines and the same is not interfered with.

10. As regards conveyance expenses & special diet, nothing has been brought on record. The appellant suffered fracture and 44% disability in his body. The tribunal after taking notice of this fact and in the absence of any cogent evidence awarded Rs. 10,000/- for conveyance expenses and special diet. I enhance the same to Rs.20,000/-.

11. As regards mental pain & suffering, the tribunal has awarded Rs. 10,000/- to the appellant. The appellant sustained fractures and 44% disability. In such circumstance, I feel that the compensation towards mental pain & suffering should be enhanced to Rs.20,000/-.

12. As regards the compensation towards permanent disability, I feel that the tribunal has rightly awarded a sum of Rs.50,000/- towards disability. I do not find any infirmity in the said order in this respect and the same is not interfered with.

13. 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 did not err in not awarding the same since compensation towards disability and loss of amenities is a common head under non-pecuniary damage.

14. As regards **loss of leaves**, the appellant has stated in his testimony that he was on leave for about nine months. But he has not examined any witness from his office in this respect nor produced any record. The Tribunal has rightly awarded compensation for four months to the tune of Rs.15,000/-. I do not find any infirmity in the order and the same is not interfered with.

15. AS regard future loss in earning capacity due to permanent disability, the petitioner has placed on record his salary slip showing monthly salary as Rs.3774.85 or Rs.3775/- p.m rounded of to Rs.4000/- p.m. The appellant suffered 44% disability as per the certificate Ex.PW1/71. This disability is for a particular limb and I presume it as 20% for the whole body. The loss of income per month would be Rs.800/- p.m or Rs.9600/- p.a. The petitioner is age about 31 years at the time of accident. Therefore multiplier of 17 would be appropriate. Applying the multiplier the amount comes to RS. 1,63,200/-. I award a sum of Rs.1,63,200/- to the appellant on this account of future loss of earning capacity.

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 18% 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, change of economy, 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. 26676/- towards medicines; Rs.20,000/- towards conveyance and special diet; Rs.20,000/- for pain and suffering; Rs.50,000/- towards disability; Rs.15,000/- for loss of leaves and Rs.1,63,200/- for future loss of earning capacity.

18. In view of the above discussion, the total compensation is enhanced to Rs. 2,94,876/- from Rs.1,12,000/- 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.

04th May, 2009

KAILASH GAMBHIR, J