

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No. 36/2001

Judgment reserved on: 5th February, 2008.

Judgment delivered on: 13.4.2009.

Girish Bahadur Saxena. Appellant.

Through: Mr. J.S. Kanwar, Advocate.

Versus

Bhola Shankar & Ors. Respondents

Through: Mr. Kalamdeep, Adv. for R-3.

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 2.11.2000 for enhancement of compensation. The learned Tribunal awarded a total amount of Rs.70,028/-

with an interest @ 12% PA from 11.5.2000 for the injuries caused to the claimant appellant in the motor accident.

2. The brief conspectus of facts is as under:

On 12.10.95, appellant alongwith his son Kuldeep Saxena was going on a two wheeler scooter bearing registration no. DL-5SG-3941 from Seemapuri to Gamri. The scooter was driven by his son at a normal speed and on the proper side while he was sitting on the pillion seat. When their scooter reached Pahla Pushta of Shastri Park at about 11:15PM, a three wheeler scooter bearing registration no. DL-1-RB-3163 being driven by R1 in a rash and negligent manner and at a high speed came from opposite direction and dashed against the two wheeler scooter on which appellant was going. Front wheel of three wheeler scooter struck against the engine portion of the two wheeler scooter, and the rear of the offending vehicle hit against the right leg of the appellant, as a result of which appellant as well as his son alongwith the scooter fell down. Appellant sustained serious injuries in the accident. A claim petition was filed on 27.3.96 and an award was passed, on

2.11.2000. Aggrieved with the said award enhancement is claimed by way of the present appeal.

3. Sh. J.S. Kanwar, 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. He assailed the said judgment of Learned Tribunal firstly; on the ground that the tribunal erred in awarding Rs.12,588/- towards **medical expenses** and he made the said contention on the basis that appellant incurred more amount over and above the bills produced by him. The Tribunal awarded a sum of Rs. 15,000/- towards **pain & suffering** but the counsel showed his discontent to that as well and averred that Ld. Tribunal has not passed compensation under separate heads as per judgments of Hon'ble Supreme Court of India and Delhi High Court. It is further averred that Ld. Tribunal awarded Rs.19,940/- for **loss of earnings** for 115 days, the period for which appellant remained on leave without pay. It was submitted that Tribunal should have awarded Rs.79,760/- for the **loss of earnings** for 484 days. It was further stated by the counsel that Ld. Tribunal erred in awarding only Rs.15,000/-

for loss of sufferings on account of **permanent disability** which is 47% as per the disability Certificate. The Tribunal held that there was no future loss of earnings and the counsel assailed the award on the said ground also and contended that the Ld. Tribunal should have considered the damages on ground of permanent disability of 47% of lower limb as the appellant is unable to even walk and perform his natural activities of life and normal work. Further the counsel pleaded that the tribunal erred in awarding an interest for the period from 11.5.2000 instead of allowing the same from the date of filing of the petition i.e. 27.3.1996.

4. Per contra Sh. Kamal Deep counsel for respondent no. 3 contended that the award passed by the learned tribunal is just and fair and does not require interference by this court.

5. I have heard counsel for the parties 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 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.”

7. In the instant case the tribunal awarded Rs. 12,588/- for expenses towards medicines; Rs. 7,500/- for special diet and conveyance expenses; Rs. 15,000/- for mental pain and sufferings; Rs. 19,940/- on account of loss of earnings and Rs.15,000/- towards Permanent Disability.

8. On perusal of the award, it is manifest that the appellant had placed on record various medical records and bills Ex. PW3/N to U; Ex. P15 to 61, which comes to a total of Rs. 12,588/- and thus, the tribunal awarded the said amount towards medical expenses. It is no more *res integra* that in order to claim compensation under any head of pecuniary compensation, the claimant has to prove the amount spent by him under the said head and in the absence of any proof compensation cannot be claimed. I do not find any infirmity

in the order in this regard and the same is not interfered with.

9. As regards the issue that the tribunal awarded only Rs. 7,500/- as conveyance expenses & special diet expenses, I feel that the tribunal has already been generous so no interference is required in the award in this regard since nothing was brought on record by the appellant to prove the expenses incurred by him towards conveyance and special diet expenses. Therefore, the award is not modified in this regard.

10. As regards mental pain & suffering and loss of amenities of life, the tribunal awarded Rs. 15,000/- to the appellant. The appellant sustained fracture in his right leg, he was operated upon and plates and rods were inserted in the right leg and were removed subsequently and his right leg was put in plaster. He also suffered disability to the extent of 47% in the right lower limb. In such circumstance, I feel that the compensation towards mental pain & sufferings and loss of amenities of life, granted by the Tribunal is inadequate and the same is enhanced to Rs. 30,000/-.

11. As regards the compensation towards future loss of income, I feel that the tribunal has committed no error in not awarding the same. The appellant was working as a peon in a government office at the time of the accident and he is still working as a peon at the same office. Clearly, there has been no financial loss to the appellant even after the accident and is working with the same employer. Therefore, the tribunal committed no error in not awarding compensation under the said head. As regard compensation towards permanent disability, I feel the Tribunal has committed an error in not suitably awarding the same. The appellant has proved on record that he has suffered disability to the extent of 47% of lower limb of the right leg. I feel compensation of Rs. 15,000/- in the facts of the instant case is on the lower side, thus, the same is enhanced to Rs.25,000/-.

12. As regards loss of earnings, the appellant deposed in the court that he remained on leave from 30.10.1995 to 7.2.1997. He also deposed that he further remained on leave from 1.4.1997 to 30.4.1997. Pw3 Sh. Hari Shankar Sharma, Senior Assistant of NDMC, Pallika Kendra, Sansad

Marg proved the leave record of the appellant as Ex. PW3/A to PW3/I. According to the abovementioned documents, appellant was on leave without pay only for about 115 days and not 484 days as claimed by the appellant. Thus, the tribunal rightly allowed the compensation to the extent of 115 days of leave to the appellant after taking income @ Rs. 4985/- pm as deposed by PW3 for four months, which amounted to Rs. 19,940/-. I do not find any infirmity in the order in this regard and the same is not interfered with.

13. As regards the issue of interest that the tribunal erred in awarding an interest for the period from 11.5.2000 instead of allowing the same from the date of filing of the petition i.e. 27.3.1996., I feel that the tribunal ought to have given reasons for disallowing the compensation for the said period from 27.3.1996 to 10.5.2000. But on perusal of the record it comes into light that the appellant had been negligent in serving the parties and also took a lot of time in examining the witnesses. No doubt that the MV Act is a beneficial piece of legislation, legislated with the purpose of giving relief to the victim of the motor accident but at the same time, a victim of the motor accident cannot be

allowed to gain benefit out of his own faults and negligence due to which delay was caused in disposal of the case. Therefore, the tribunal rightly, disallowed the interest for the said period, from 27.3.1996 to 10.5.2000, to the appellant. Therefore, no interference is made in the award on this count.

14. In view of the foregoing discussion, Rs. 12,588/- is awarded for expenses towards medicines; Rs. 7,500/- for special diet and conveyance expenses; Rs. 30,000/- for mental pain and sufferings and loss of amenities; Rs. 25,000/- on account of future loss of income to the extent of 47% of lower limb of the right leg and Rs. 19,940/- on account of loss of earnings.

15. In view of the above discussion, the total compensation is enhanced to Rs. 95,028/- from Rs. 70,028/- along with interest @ 7.5% per annum from the date of institution of the present petition till realisation of the award and the same should be paid to the appellant by the respondent no. 3.

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

13.4.2009

KAILASH GAMBHIR J.