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a total amount of Rs. 2,89,000/- 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:

On 1 April 1995, the injured appellant Mr. Rakesh Kumar was going from Faridabad to Sadar Bazar on his two wheeler scooter bearing registration No. HR 29D 9680 via Ashoka Road. At about 1:40 P.M. when the appellant reached on the round about of Jantar Mantar Road, a bus bearing registration No. UP 65 E 5966 being driven at a very high speed came and hit the scooter from the rear. The right leg of the appellant came under the wheel of the offending bus and consequently, the appellant suffered multiple fractures in his left leg. He was removed to a hospital and was admitted there for 2 months. A claim petition was filed on 3rd July 1995 and an award was made on 25th January 2001. Aggrieved with the said award enhancement is claimed by way of the present appeal.

3. Sh. Nitinjaya Chaudhary 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 a sum of Rs. 39,000/- towards loss of income and it is urged that the same should have been assessed at Rs. 50,000/-. The Tribunal awarded a sum of Rs. 50,000/- towards mental pain & suffering but the appellant showed his discontentment to that as well and averred that it should have been Rs. 1,00,000/-. For permanent disablement also he sought compensation as per the criteria provided under IIInd Schedule. Amount towards loss of amenities for life is also claimed by the appellant's counsel stating that Rs. 1,00,000 would be just and reasonable compensation under this head. Further the counsel pleaded that the counsel erred in awarding an interest of 15% pa instead of 9% pa.

4. Per contra, Sh. Kanwal Chaudhry counsel for the Respondent insurance company urged that there is no error committed by the learned Tribunal in passing the award and the appeal is devoid of any merits as no ground is made out for enhancement under any of the heads. In furtherance of his argument, the counsel for the respondent Insurance Company has urged that the Appellant miserably failed to prove on record as to how and in what manner on account of permanent disability to an extent of 25% there was reduction in his

earning capacity. Further he stated that the amount awarded towards the head of loss of earning and Pain and suffering, which was 1,25,000/- and 50,000/- respectively is adequate and requires no interference. The award of interest at 9% PA on the total compensation is also stated to be justified on the basis of the judgment of Kaushnuma Begum and Ors. Vs. New India Assurance Co. Ltd. 2001 (1) A.D. (SC) 5.

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

6. In 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 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 had 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 has awarded Rs. 60,000/- for expenses towards medicines; Rs. 10,000/- for conveyance expenses; Rs. 5,000/- for keeping medical attendants; Rs. 50,000/- for mental pain and sufferings, loss of amenities and inconvenience, frustration etc.; Rs. 1,25,000/- on account of permanent disability to the extent of 25% and loss of earning capacity and Rs. 39,000/- on account of loss of earnings.

8. As regards the compensation towards permanent disability and future loss of income, I feel that the tribunal erred in awarding the same at Rs. 1,25,000/-. The tribunal after considering Ex PW3/C held that the appellant suffered 25% permanent disability and awarded compensation confined towards permanent disability and future loss of income and thus the same requires interference. It has come on record that the appellant was of 23 years of age. The appellant also deposed that on the date of his deposition he was earning an amount of Rs. 7,000/- p.m. I feel that Rs, 3,57,000/- ($7000 \times 17 \times 12 \times 25/100$) would be the appropriate amount towards permanent disablement of the appellant and towards future loss of income and earning capacity.

9. As regards loss of amenities and mental pain & suffering, the tribunal has awarded Rs. 50,000/- to the appellant. The appellant sustained multiple fractures in his left leg, his right ankle was crushed under the wheels of the offending vehicle and he also sustained abrasions on his left elbow, forehead and on the other parts of the body. It has also been proved on record that the appellant remained admitted in the hospital from 1/4/1995 to 31/5/1995, meaning thereby that he was hospitalized for 2 months. Further, Ex PW3/C shows that the appellant suffered 25% permanent disability. Compensation for loss of amenities of life compensates victim for the limitation, which result from the defendant's negligence, on 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. The appellant stated that because of injury there is stiffness in his right leg and he cannot do individual practice due to loss of confidence and disability. The appellant also deposed that he failed to appear in his LLB IInd year examination due to the accident and could not complete his LLB exam in the year 1997. He further deposed that due to injuries he could not walk or stand for

more than 35 to 40 minutes and even could not drive two wheeler scooter or any other vehicle. Due to these infirmities he lost confidence to join legal profession. I feel that the tribunal erred in awarding Rs. 50,000/- towards loss of amenities and mental pain & suffering. I feel that the same should be enhanced to Rs. 75,000/-.

10. As regards loss of earnings, the appellant had produced on record the income tax acknowledgment slip of the year 1993-1994 according to which the income of the appellant was Rs. 16,667/-; in the year 1994-1995 it was Rs. 36,644 and in the year 1994-1995 it was Rs. 40,701/-. The tribunal assessed notional income of the appellant at Rs. 3250 pm and awarded Rs. 39,000/- towards loss of income for one year, the period during which the appellant could not work. The appellant could only prove that he was hospitalised for 2 months. Although, nothing had come on record to prove that the appellant could not work for a year but still the tribunal assessed loss of income for the entire year. Since, the tribunal has already been quite generous, I feel that no interference is required in the award in this regard.

11. 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 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, 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.

12. In view of the above discussion, the total compensation is enhanced to Rs. 5,46,000/- from Rs. 2,89,000/- along with interest @ 7.5% per annum on the enhanced compensation from the date of institution of the petition in this Court till realisation of the

compensation amount and the same should be paid to the appellant by the respondents.

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

6.4.2009

KAILASH GAMBHIR, J.