

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

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FAO No. 2/2003

Judgment reserved on: 21.2.2008

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Judgment delivered on: 6.4.2009

Sh. Vishal Mittal

..... Appellant

Through: Mr. S.N. Parashar, Adv.

versus

DTC

..... Respondent

Through: Mr. Nemo

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 24/07/2002 for enhancement of compensation. The learned Tribunal awarded a

total amount of Rs. 60,640/- with an interest @ 9% PA for the injuries caused to the claimant appellant in the motor accident.

2. The brief conspectus of facts is that on 21/11/1989 at Hanuman Road, the appellant was injured when a DTC bus bearing registration no DEP 8379 crushed his right foot under its wheel. A claim petition was filed on 13/03/1990 and an award was made on 24/7/2002. Aggrieved with the said award enhancement is claimed by way of the present appeal.

3. Sh. S.N. Parashar 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 assessing the income of the claimant appellant in accordance with the Minimum Wages Act overlooking the fact that the appellant at the time of the accident was merely 11 years of age and due to the accident he lost four toes of his right leg, which has rendered him disabled at such a young age. The counsel also urged that the tribunal erred in not considering future increase in income of the appellant while awarding compensation. The counsel also averred that the tribunal adopted

multiplier in ignorance of the II Schedule to the MV Act. The Counsel also expressed his discontent on no amount of compensation being granted towards medical expenses by the tribunal. The counsel also pleads for compensation towards special diet, conveyance and loss of education to the appellant. The Tribunal awarded a meager sum of Rs. 25,000/- towards mental pain & suffering but the counsel shows his discontent to that as well. Further the counsel pleaded that the tribunal erred in awarding no interest for a period of 4 years.

4. Nobody has been appearing for the respondents.

5. I have heard the counsel for the appellant 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 and fatal accidents the general principle is that such sum of compensation should be awarded which puts the injured or the claimants in case of the fatal accidents matter 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. 25,000/- for mental pain and sufferings and Rs. 35,640/- on account of loss of earnings.

8. On perusal of the award, it becomes manifest that the appellant had not placed on record any medical bill or vouchers. The appellant was a young boy of 11 years of age at the time of the accident. It cannot be expected of a boy of such a tender age to keep record of his expenses. I feel that the tribunal erred in not awarding any compensation towards medical expenses. Looking at the fact that the appellant lost 4 toes of his right leg in the accident and also that the appellant remained admitted in the LNJP Hospital from 21/11/1989 to 26/12/1989 and again he was hospitalized from 5/6/1990 to 7/6/1990 for surgery and thereafter he used to visit the hospital for removal of plaster and for post operation care, I feel that the tribunal erred in not awarding compensation under this head. In view of the above discussion, I award compensation under this head to the tune of Rs. 10,000/-.

9. As regards conveyance expenses, nothing has been brought on record. Considering that the appellant lost 4 toes of his right leg in the accident for which purpose the appellant remained admitted in the LNJP Hospital from 21/11/1989 to 26/12/1989 and again he was hospitalized from 5/6/1990 to 7/6/1990 for surgery and thereafter he used to visit the hospital for removal of plaster and for post operation care, the tribunal after taking notice of this fact even in the absence of

any cogent evidence ought to have awarded at least Rs. 5,000/- for conveyance expenses. Considering this fact, I award compensation at Rs. 5,000/- under this head.

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 ought to have considered that since the appellant sustained serious injuries and lost 4 toes of his right leg in the accident thus he must have also consumed protein-rich/special diet for his early recovery and ought to have awarded Rs. 5,000/- for special diet expenses. Considering this fact, I award compensation at Rs. 5,000/- under this head.

11. As regards mental pain & suffering, the tribunal has awarded Rs. 25,000/- to the appellant. The appellant lost 4 toes of his right leg in the accident further, the appellant remained admitted in the LNJP Hospital from 21/11/1989 to 26/12/1989 and again he was hospitalized from 5/6/1990 to 7/6/1990 for surgery and thereafter he used to visit the hospital for removal of plaster and for post operation care. Clearly, the appellant underwent a lot of pain & suffering. In such circumstance, I feel that the compensation towards mental pain & suffering should be enhanced to Rs. 50,000/-.

12. As regards the compensation towards permanent disability, I feel that the tribunal has erred in not awarding the same according to the principles of law. The appellant at the time of the accident was merely 11 years of age. As per Second Schedule, for non-earning persons, the notional income has been prescribed to be Rs.15,000/- per annu in case of fatal and permanent disability cases. The Second Schedule also prescribes multiplier of 15 for the persons up to the age of 15 years. In the present case, the injured was only 11 years of age and he was non-earning thus taking into account 40% disability, the compensation on account of permanent disability comes to Rs.90,000/- ($15000 \times 40 / 100 \times 15$).

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 erred in not awarding the

same and in the circumstances of the case same is allowed to the extent of Rs. 25,000/-.

14. As regards that no interest has been awarded to the appellant for a period of 4 years by the tribunal, I feel that the tribunal is fully justified and no interference in this regard is called for.

15. In view of the above discussion, the total compensation is enhanced to Rs. 1,85,000/- from Rs. 60,640/-. The differential amount shall be paid to the appellant by the respondent insurance company with up to date interest @ 7.5% pa from the date of filing of the petition in this court till realisation.

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

6.4. 2009

KAILASH GAMBHIR, J.