

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO NO.314/03

Judgment reserved on: 29.02.2008

Judgment delivered on:04.05.2009

Manoj Kumar

.....Appellant

Through Mr.O.P.Goyal, Adv

Versus

Vijender Singh & Ors.

..... Respondents

Through: Mr.R.K.Tripathi, Adv

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 5.3.03 for enhancement of compensation. The learned Tribunal awarded a

total amount of Rs.4,67,000/- 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 11.6.93 the appellant was returning after appearing in Civil Engineering examination in bus bearing registration no. DL 1P 3997 plying on route no. 131 from Lampur Border to Old Delhi Railway Station. The bus was full of passengers. The driver of the offending vehicle was driving in a rash and negligent manner and a in zig zag way due to which some of the passengers fell on appellant and he suffered a jerk and his right hand was thrown out of window and was crushed by a truck bearing no. DEL 8018 which was coming from the opposite direction. His hand was cut off and fell out of the bus. Only 1/3rd portion of the hand over the elbow was left.

4. A claim petition was filed on 09.12.94 and an award was passed on 05.03.2003. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. OP Goyal 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 not awarding the special damages for a sum of Rs.93,000/-.

Ld. Tribunal ought to have calculated the loss in earning capacity as 80% for a period of atleast 50 years as appellant was below 20 years of age at the time of accident. He claimed Rs.60,00,000/- for loss in earning capacity. It is stated that Ld.Tribunal erred in assessing the income of the claimant appellant at Rs.3000/- PM and he made the said contention on the basis of the testimony of PW8 who in his deposition disclosed his earning at Rs.8400/-p.m as on 8.1.2003. Based on this, it is further contended that the loss of income should also be enhanced, accordingly. The counsel expressed his discontent that the Tribunal has not awarded any compensation for permanent disability suffered by the appellant and he claimed Rs.5.00 lac for permanent disability. The Counsel also expressed his discontent on the amount of compensation granted towards medical expenses. He claimed an amount of Rs. 1,25,000/- towards the medical treatment and expenses and stated that looking at the facts and circumstance of the case,the Tribunal ought to have awarded this amount. The Tribunal awarded a sum of Rs. 20,000/- towards mental pain & suffering, dietary and conveyance etc but the counsel shows his discontent to that as well and averred that it should have been Rs. 5,00,000/-including loss of enjoyment of life.

6. I have heard Ld. counsel for the appellant and the respondents 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.4,32,000/- for loss of earning capacity; Rs.15,000/- for medicines and Rs.20,000/- towards pain, suffering, dietary, conveyance charges etc.

9. On perusal of the award, it becomes manifest that the appellant had placed on record various bills which shows that he has paid a sum of Rs.11,650/-. He has also placed some other receipts of medicines. The Tribunal has granted Rs.15,000/- to the appellant towards medicines. I do not find any infirmity in the order in this regard and the same is not interfered with.

10. As regards conveyance, the tribunal awarded consolidated amount of RS.20,000/- for pain & suffering, dietary, conveyance charges etc. Instead of awarding separate damages under these heads. I, therefore propose to award separate damages under these heads. Nothing was brought on record by the appellant that he spent money on conveyance. However, he must have performed to and fro journey to hospital for his treatment. I am inclined to award a sum of RS. 5000/- on this count.

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. The appellant suffered 85% permanent disability as his right hand was amputated. He must have consumed protein-rich/special diet for his early recovery. I award a sum of Rs.10,000/- on account of special diet.

12. As regards mental pain & suffering, it is apparent that the appellant suffered amputation of his right hand and as per the disability certificate he suffered 85% disability. 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 and loss of amenities, I feel that the tribunal has erred in not awarding the same. In view of the disability suffered by the appellant, I award a sum of Rs.50,000/- on this count.

14. As regards loss of earning capacity, the appellant at the time of accident was pursuing civil engineering. The appellant in his testimony has deposed that due to loosing of his right hand he could not pursue and complete diploma course in civil engineering. PW8 Manoj Kumar in his deposition stated that he was one year senior to the appellant in the said course and got his job in the year 1996 after about one year of completion of diploma course. He further deposed that he was earning a sum of Rs.8400/- as on thte date of his deposition i.e. 8.1.2003. Based on the testimony of PW8 and of

the appellant himself the Ld. Tribunal notionally assessed the income of the deceased at Rs.3000/- p.m. The appellant in the normal course would have also completed his diploma course in civil engineering in the year 1996 and would have been in a position to secure employment in the year 1997-98 as PW8 could get employment just in a year's time after completing the course. In these circumstances I do not find any fault in the approach of the Ld. Tribunal in taking the notional income but the same being little on the lower side and looking into the earning of PW8 I assess the same at Rs.4000/- as monthly income of the appellant the loss of income would be $4000 \times 85\%$ which comes to Rs.3400/-. After applying the appropriate multiplier of 16 as per the IIInd schedule of MV Act the exact loss of income would come to RS.6,52,800/-.

15. In view of the foregoing, Rs.15000/- is awarded for expenses towards treatment; Rs.10,000/- for special diet; Rs.5000/- for conveyance expenses; Rs.50,000/- for permanent disability and loss of amenities; Rs.6,52,800/- for loss in earning capacity and Rs.50,000/- for pain and sufferings.

16. In view of the above discussion, the total compensation is enhanced to Rs.7,82,800/- from Rs.4,67,000/- 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 all the respondents jointly and severally within a period of 30 days from the date of this order.

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

04th May, 2009

KAILASH GAMBHIR, J