

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

+ **FAO No. 474/2003**

% Judgment reserved on: 15.2.2008
Judgment delivered on: 13.4.2009

Nand Lal Sapra Appellant
Through: Mr. Bhupesh Narula, Advocate.

versus

DTC Respondent
Through: None.

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 dated 24th April 2003 of the Motor Accident Claims Tribunal whereby the Tribunal

awarded a sum of Rs. 1,11,000 along with interest @ 9% per annum to the claimant.

2. The brief conspectus of the facts is as follows:

On 19th October 1992, at about 7:20 P.M., the appellant got down from a bus at Barafkhana, Subzi Mandi bus stop to catch another bus for going to Gulabi Bagh and in the meanwhile, one DTC bus bearing license No. DBP 6281 driven rashly and in a negligent manner hit the appellant on the footpath and crushed his left leg under the back wheel of the bus. He was quickly removed to Hindu Rao Hospital. Injured appellant's lower left limb was amputated due to the crush injury. The injured/appellant sustained 50% disability of the whole body as indicated in the medical certificate. The appellant was working as a copy holder/proof reader in Govt. of India Press, Mayapuri.

A claim petition was filed on 9th February 1993 and an award was made on 24th April 2003. Aggrieved with the said award enhancement is claimed by way of the present appeal.

Learned Counsel for the Appellant, Mr. Bhupesh Narula has challenged the said award of the Learned Tribunal on the ground that the Tribunal erred in awarding a lumpsum amount of Rs 1,11,000/- without any justification ignoring the guidelines for computing the compensation payable to the claimants as laid down by Apex Court and various High Courts. The counsel urged that the injured appellant was working as a government employee and was drawing a salary of Rs. 2,994/-, besides he was also earning from home tuitions to the tune of Rs. 3,000/- per month. The counsel also pleaded that the Learned tribunal should have taken Rs 5,994/- as the monthly income of the injured and should have granted a future increase on the same by doubling the amount to which a multiplier of 11 should have been applied as per the IIInd schedule. Further he contended that the tribunal erred in assessing the permanent disability at 25% whereas, as per the disability certificate granted to the injured appellant, he suffered disability of 50% of whole body. Enhancement in compensation is also sought on additional grounds like loss of future prospects, medical expenses, and loss of earning. Enhancement in Non-pecuniary

damages are sought under the heads of mental shock, pain and suffering, loss of amenities of life and loss of expectation of life.

Nobody has been appearing for the respondents.

I have heard counsel for the appellant and perused the award.

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 they would have been had the 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."

It is equally well settled that the multiplier method is the best method for computing compensation in motor accident matters.

In the instant case the tribunal awarded Rs. 42,000/- as loss of income; Rs. 54,000 on account of permanent disability; Rs. 10,000/- for mental pain and sufferings and Rs. 5,000/- towards conveyance; special diet etc.

As regards the compensation towards permanent disability, I feel that the tribunal erred in awarding the same at Rs. 54,000. The income of the appellant was duly proved at Rs. 2994/- p.m.as per the salary certificate, Ex.PW2/3. The appellant met with the accident in the year 1993. The age of the appellant at the time of the accident was 50 years and the 50% disability of the appellant was duly proved on record vide Ex. PW2/5. This case pertains to the year 1993 and at that time II schedule to the Motor Vehicles Act was not brought on the statute books. The said schedule came on the statute book in the year 1994 and prior to 1994 the law of the land was as laid down by the Hon'ble Apex Court in **1994 SCC (Cri) 335, G.M., Kerala SRTC v. Susamma Thomas**. In the said judgment it was observed by the Court that maximum multiplier of 16 could be applied by the Courts, which after coming in to force of the II schedule has risen to 18. Thus, the multiplier of 8 shall be applicable. Thus taking the monthly income of Rs. 2994/- P.M. and disability to the extent of 50% the compensation on account of permanent disability shall come to Rs. 1,43,712/- after adopting the multiplier of 8.

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. 50,000/-.

As regards loss of earnings, income of the appellant was duly proved as Rs. 2994/- pm as per the salary certificate ex. PW2/3 brought on record. The tribunal assessed notional income of the appellant at Rs. 2994/- pm and awarded Rs. 42,000/- towards loss of income for 14 months, from 20/10/1992 to 6/1/1994 as per the Ex. PW2/4, the period during which the appellant could not work. I do not find any infirmity in the award in this regard and the same is not interfered with on this account.

As regards mental pain & suffering, the tribunal has awarded Rs. 10,000/- to the appellant. The appellant sustained grievous crush injuries in the aforesaid accident and as a result his lower part of the left leg near the tow was amputated. In such circumstance, I feel that the compensation towards mental pain & suffering should be enhanced to Rs. 25,000/-.

As regards compensation towards medical expenses, it finds mention in the award that the counsel for the appellant had himself stated before the tribunal that the appellant had claimed his medical bills from the Government. Thus, the same is not awarded.

As regards conveyance expenses, special diet expenses etc. nothing has been brought on record by the appellant but still the tribunal awarded Rs. 5,000/-, which I feel is just and fair and requires no interference.

Therefore, Rs.1,43,712/- is awarded towards 50% permanent disability, Rs. 50,000/- towards loss of amenities, Rs. 42,000/- towards loss of earnings for 14 months; Rs. 25,000/- towards mental pain and sufferings, and Rs. 5,000/- towards conveyance expenses, special diet etc..

In view of the above discussion, the total compensation is enhanced to Rs. 2,65,712/- from Rs. 1,11,000/- along with interest @ 7.5% per annum from the date of institution of the petition till realisation of the award and the same should be paid to the appellant by the respondent insurance company.

With the above direction, the present appeal is disposed of.

13.4.2009

KAILASH GAMBHIR, J