

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO NO.799/2003

Judgment reserved on: 15.2.2008

Judgment delivered on: 04.05.2009

Smt. Neenu Dutta

.....Appellant

Through Mr. Y.R. Sharma, Adv

Versus

Sh. Alimuddin & Ors.

..... Respondents

Through: Mr. R.N. Sharma, 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 22.08.03 for enhancement of compensation. The learned Tribunal awarded a total amount of Rs. 32,000/- with an interest @ 8% PA for the injuries caused to the claimant appellant in the motor accident.

2. The brief conspectus of facts is as under:

3. On 11.5.99 appellant was travelling in vehicle no. DL 1PA 1504 (bus) and was sitting on a seat just above the left rear wheel for going to

her residence. When the bus reached Narvana Road, near Vinod Nagar Bus Stand, Delhi, the left rear tyre of the bus bursted. As a result thereof, the aluminium sheet fixed on the floor of the bus got damaged. Because of that the appellant suffered grievous injuries in her left leg by entangling herself in the hole of the damaged floor.

4. A claim petition was filed on 11.1.2000 and an award was passed on 22.08.03. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh.Y.R Sharma 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 granting medical expenses. He claimed an amount of Rs.20,000/- towards the medical treatment and expenses. The claimant appellant is not able to produce medical bills to claim the stated amount, but he contended that looking at the facts and circumstance of the case and the fact that the claimant sustained fracture in her leg, the learned Tribunal must have considered awarding that amount. Enhancement is also claimed on the ground that a sum Rs.20,000/-should have been granted for conveyance whereas no amount under this head has been granted. The Tribunal awarded a sum of Rs. 10,000/- towards **mental pain & suffering** but the counsel shows his discontent to that as well and averred that the leg of the appellant

remained plastered for six months and compensation should have been Rs. 50,000/-. It is further stated that Ld.Tribunal has erred in awarding a sum of Rs.18,000/- on account of loss of leave whereas the appellant was getting RS.7914/-p.m and she remained on leave for 96 days. He claimed a sum of Rs.25,500/- on this account. It is further averred that Ld.Tribunal has erred in not granting any expenses for keeping maid servant and he claimed Rs.24,000/- on this account. Further the counsel pleaded that the Tribunal erred in awarding an **interest** of 8% pa instead of 12% pa from the date of filing of the petition till realization.

6. I have heard the counsel for the appellant Sh YR Sharma and counsel for respondent Sh. RN Sharma and have 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.4000/- for expenses towards medicines; Rs. 10,000 for mental pain and sufferings; & Rs.18,000/- toward loss of leaves.

9. On perusal of the award, it is manifest that the appellant had placed on record various bills which comes to a total of Rs. 3829.95/- which are Ex.P1 to P15 issued by various medical stores. As regards medical expenses, the tribunal took cognizance of the fact that the appellant sustained serious injuries and awarded Rs.4000/- even though the appellant could not prove that she had incurred Rs.4000/- towards medical expenses. I do not find any infirmity in the order in this regard and the same is not interfered with.

10. As regards conveyance expenses, nothing has been brought on record. The appellant suffered injury in her leg. The tribunal has not

awarded any amount in this regard. Though, there is no cogent evidence available on file. However, I am inclined to award a sum of Rs.10,000/- towards conveyance charges.

11. As regards special diet expenses, the Ld. Tribunal has not awarded any amount. Nothing was brought on record by the appellant to prove the expenses incurred by him towards special diet. Taking into account the injury suffered by the appellant, I award a sum of Rs.10,000/- towards special diet to the appellant.

12. As regards mental pain & suffering, the tribunal has awarded Rs.10,000/- to the appellant. The appellant sustained injury in her leg. In such circumstance, I feel that the compensation towards mental pain & suffering should be enhanced to Rs. 15,000/-.

13. As regards the compensation towards permanent disability, there is no certificate of disability available on file. It has also not been averred in the appeal filed by the appellant. No relief is granted in this respect.

14. As regards medical attendants PW3 Ms. Har Bai stated that he was working as an attendant for the appellant and used to get Rs.2000/- per month. The period of employment with the appellant has not been disclosed by her. As per leave certificate, the appellant remained at house for about 96 days. Therefore, I award a sum of Rs.6000/- to the appellant on this account.

15. 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.5000/-.

16. As regards **loss of earnings/wages**, the appellant was on leave for about 96 days from her office. She is a Government employee. During her leave period she has got her full wages. However, she suffered loss of her leaves for 96 days. The tribunal has calculated the loss of leaves by taking basic + DA as on the date of accident. In my view the Tribunal has calculated the loss of leaves to the tune of Rs.18,000/- correctly and I do not find any infirmity in the order passed by the Ld.Tribunal and the same is not interfered with.

17. As regards the issue of interest that the rate of interest of 8% p.a. awarded by the tribunal is on the lower side and the same should be enhanced to 12% p.a from the date of filing of the petition till realisation, 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 @ 8% pa by the tribunal and the same is not interfered with. However, I award the said interest from the date of filing of the petition till realisation.

18. In view of the foregoing, Rs. 4000/- is awarded for expenses towards treatment; Rs.10,000/- for special diet; Rs.10,000/- for conveyance expenses; Rs.18,000/- for loss of leaves; Rs.5000/- for loss of amenities and enjoyment of life; Rs.6000/- for attendant expenses; & Rs.15,000/- for pain and sufferings.

19. In view of the above discussion, the total compensation is enhanced to Rs. 68,000/- from Rs.32,000/- 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 the respondents.

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

04th May, 2009

KAILASH GAMBHIR, J.