

+ **FAO No. 848/2003**

Smt. Manju Singhal Appellant
Through: Mr. Y.R. Sharma, Advocate

Sh. Rajbir & Ors. Respondents
Through: Nemo.

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

1. The present appeal arises out of the award of compensation passed by the Learned Motor Accident Claim Tribunal on 1.9.2003 for enhancement of compensation. The learned Tribunal awarded a total

amount of Rs.2,53,000/- 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 4.6.96, at about 11:15AM, the appellant was waiting for a bus at bus stand near D.C. Chowk, sector 9, Rohini, Delhi. At that time, a bus bearing registration no. DL-1P-5839 being driven by its driver at a very fast speed in a rash and negligent manner reached at D.C Chowk near DTC bus stand, Sector 9, Rohini, Delhi and in the meantime, a truck/tanker bearing registration no. DL-1G-4066 being driven by its driver rashly & negligently and at a very fast speed came from the side of Sector-12, Rohini, Delhi and both the vehicles lost their control and collided with each other with great force. Due to such forceful impact, the bus after colliding with the truck/tanker mounted on the pavement and struck against the bus stop and turned turtle, thereby causing injuries to about 26 persons and fatal injuries to 3 persons. The appellant received multiple grievous injuries in the accident such as head injury, injuries on the forehead, crush injury in left hand wrist & hand, fracture of right thigh, fracture of spinal cord and crush injury in right leg heel.

4. A claim petition was filed on 21.8.96 and an award was passed on 1.9.2003. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. Y.R. Sharma, 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 contended that the tribunal erred in awarding only a sum of Rs. 80,000/- on account of **mental pain, agony and sufferings** whereas the appellant had received multiple grievous injuries and she was operated upon for a number of times and she remained under active treatment for a long period as per medical records duly proved and Tribunal should have awarded at least Rs.2,00,000/- on this count. The counsel further urged that appellant was doing practical training of one year after completion of two years diploma in Software Technology & System Management Curriculum which she could not complete because of the injuries sustained in the accident and has suffered great **future financial loss** but Tribunal has not awarded any compensation under this head. The Counsel further contended that Ld. Tribunal erred in not awarding any compensation towards **leave taken by her father, brother & his wife** as well as for engaging a maid

servant. It was submitted that appellant had to engage a **maid servant** to look after her for a period of one year at the salary of Rs.2000/- per month and appellant has sought Rs.24,000/- on this count. The Counsel also expressed his discontent on the amount of compensation granted towards **medical expenses**. He claimed an amount of Rs.2,00,000/- 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 was treated for grievous injuries such as head injury, cut wound on her left wrist, fracture on her right thigh, a fracture in her spinal cord and fracture in her right heel, the learned Tribunal should have considered awarding of an amount of Rs.2,00,000/-. Further the counsel urged that the Tribunal erred in awarding an interest of 9% pa instead of 12% pa.

6. Nobody appeared for the respondents.

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

8. 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.”

9. In the instant case the tribunal awarded Rs. 1,44,005.94/- for expenses towards medicines; Rs. 8775/- for special diet; Rs. 19,225/- for conveyance expenses; and Rs. 80,000/- for mental pain and sufferings.

10. On perusal of the award, it is manifest that the appellant had placed on record various medical bills and cash memos, which comes to a total of Rs. 1,02,277/- and Rs. 22,804/-. The appellant had also placed on record medical bills, Ex. PW2/1 to 7 and Ex. PW8/1 to 35. Further, bills amounting to Rs. 10,829.94/- have been proved on record. Further, Rs. 8095/- was paid for her treatment at Prashant Nursing Home. Also Rs. 600/- was paid towards dressing charges. As regards medical expenses, the tribunal took cognizance of the fact that the appellant sustained head injury, injuries on the forehead, crush injury in left hand wrist & hand, fracture of right thigh, fracture of spinal cord and crush injury in right leg heel and also considered the abovementioned charges paid by the appellant awarded Rs.

1,44,005.94/- towards medical expenses. I do not find any infirmity in the order in this regard and the same is not interfered with.

11. As regards conveyance expenses, Exs. Pw8/22, 26, 27, 29 and 36. The tribunal after taking notice of this fact and also considering the nature of injuries suffered by the appellant awarded Rs. 19,225/- for conveyance expenses. I do not find any infirmity in the order in this regard and the same is not interfered with.

12. 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 took notice of the fact that since the appellant sustained grievous injuries such as head injury, cut wound on her left wrist, fracture on her right thigh, a fracture in her spinal cord and fracture in her right heel thus, she must have also consumed protein-rich/special diet for his early recovery and awarded Rs. 8,775/- for special diet expenses. I do not find any infirmity in the order in this regard and the same is not interfered with.

13. As regards mental pain & suffering, the tribunal has awarded Rs. 80,000/- to the appellant. The appellant sustained grievous injuries such as head injury, cut wound on her left wrist, fracture on her right

thigh, a fracture in her spinal cord and fracture in her right heel. In such circumstance, I feel that the compensation towards mental pain & suffering does not require any interference.

14. As regards the compensation towards permanent disability, I feel that the tribunal has not erred in not awarding the same since no disability certificate was brought on record in this regard. Thus, no interference is made on this count.

15. As regards medical attendants, mere averments have come in the deposition of the witnesses. Considering that the appellant was most of the time in the hospital and also considering that the said maid servant was also not brought in the witness box, I do not feel that the tribunal erred in not allowing compensation under this head.

16. As regards loss of amenities, resulting from the defendant's negligence, which affects 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. Pw8 deposed that the appellant sustained grievous injuries such as head injury, cut wound on her left wrist, fracture on her right thigh, a fracture in her spinal cord and fracture in

her right heel and remained admitted in Prashant Nursing Home from 4/6/1996 to 8/6/1996 and thereafter she was shifted to Ganga Ram Hospital on 8/6/1996 where she remained admitted till 27/6/1996 and she was again admitted in GR Hospital from 16/8/1996 till 23/8/1996. In this regard PW5 had proved Exs. PW5/A and B. PW 11 deposed that appellant was operated for thigh bone fracture and tendon fracture of femur on 10.6.96 and a rod was put for it. On 15.6.96 she was operated upon for spine fracture where laminectomy and fixation of spine was done. He also deposed that upon readmission on 16.8.96 she was twice operated for blackening of thigh skin for which debryment of the wound was done and later soothing was done. He also deposed that due to spine injuries she cannot do extra-curricular activities. Considering that the appellant sustained grievous injuries such as head injury, cut wound on her left wrist, fracture on her right thigh, a fracture in her spinal cord and fracture in her right heel, I feel that the tribunal erred in not awarding compensation under this head and in the circumstances of the case same is allowed to the extent of Rs. 25,000/-.

17. As regards loss of earnings to the father, brother and wife of the brother of the appellant on account of her having been unwell to take

care of her, no proof regarding leave taken by them was brought on record. Thus, the tribunal rightly did not allow compensation in this regard.

18. As regards loss of earnings to the appellant nothing has come on record to prove that she was getting a stipend of Rs. 2,000/- while taking training at GNIT. Thus, the tribunal committed no error in not allowing compensation in this regard.

19. As regards loss of future earnings, the appellant did not continue with her studies and training after the accident, when she could have done the same. Since she has decided not to work. Therefore, no compensation in this regard is made out.

20. 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 12% 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, 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.

21. In view of the foregoing discussion, Rs. 1,44,005.94/- is awarded for expenses towards medicines; Rs. 8775/- for special diet; Rs. 19,225/- for conveyance expenses; Rs. 25,000/- for loss of amenities of life and Rs. 80,000/- for mental pain and sufferings.

22. In view of the above discussion, the total compensation is enhanced to Rs. 2,78,000/- from Rs. 2,53,000/- with interest on the differential amount @ 7.5% per annum from the date of filing of the petition till realisation and the same shall be paid to the appellant by the respondent insurance company as directed by the tribunal and within 30 days of this order.

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

April 27, 2009

KAILASH GAMBHIR, J.