

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

+ **MAC.APP.No. 185/2005**

Judgment reserved on: 14.3.2008
% Judgment delivered on: 4.5.2009

Aishi Lal Saluja Appellant
Through: Mr. O.P. Goyal, Advocate

versus

Dharambir & Ors. Respondents
Through: Mr. D.R. Jain, Advocate for R-2.
Mr. S.L. Gupta, Advocate for R-3

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 18.9.2004 for enhancement of compensation. The learned Tribunal awarded a total

amount of Rs.9,24,000/- 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 22.10.98, appellant was going on his scooter bearing registration no. DL-9S-A-0171 from Punjabi Bagh Chowk towards Jakhira side and when he reached ahead of Power House, a bus bearing registration no. DL-1P-7563 driven by R1 in a rash and negligent manner came from behind and hit the appellant. Due to the injuries suffered in the accident, left leg of the appellant above knee was amputated and he suffered 80% permanent disability.

4. A claim petition was filed on 24.3.99 and an award was passed on 18.9.2004. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. O.P. 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 contended that the tribunal erred in awarding compensation of Rs.1,40,000/- on account of medical expenses including cost of an artificial limb whereas he claimed Rs.5 Lacs for expenses on treatment taken and to be taken.

For permanent disablement also he sought enhancement from Rs.7,49,000/- to Rs. 10,00,000/-. The appellant also claimed Rs.10,00,000/- as the cost of artificial limb for the rest of his life. The counsel also submitted that Ld. Tribunal awarded only a sum of Rs.10,000/- for special diet & conveyance whereas he claimed Rs.15 Lacs on account of conveyance charges. The counsel further contended that Ld. Tribunal awarded only Rs.25,000/- on account of pain and sufferings, mental agony, loss of enjoyment of life & loss of expectation of life against a sum of Rs. 5Lacs claimed on account of pain & sufferings and Rs.5Lacs claimed as general & special damages. It was urged that the appellant suffered 80% permanent disability and Tribunal ought to have awarded a sum of Rs.5Lacs towards pain & suffering and mental agony and a separate amount of Rs.5Lacs towards loss of enjoyment of life and further a sum of Rs.10 Lacs towards loss of expectation of life. The counsel further submitted that Ld. Tribunal has erred in assessing the income of the claimant appellant at Rs.6000/- PM. He referred to the case decided by Hon'ble Supreme Court reported as **Kerala State Road Transport Corporation Vs. Susamma Thomas , 1994 ACJ 1 (SC)** and stated that Ld. Tribunal ought to have taken the earnings of the deceased at

the end of his career at least as Rs.10,000/- per month and loss of income suffered by the appellant should be calculated @ Rs.8000/-per month and that too for a period of 25 years as Tribunal has wrongly taken the multiplier of 13, which comes out to Rs.24Lacs. Further the counsel pleaded that the counsel erred in awarding an interest of 9% pa instead of 12% pa.

6. Mr. S. L. Gupta counsel for the respondent no. 3 and Mr. D. R. Jain counsel for respondent no. 2 refuted the contentions of counsel for the appellant and contended that the award passed by the tribunal is just and fair and should not be interfered with. They urged that the only error committed by the tribunal is that the tribunal assessed permanent disability at 80% when same was disability for the left leg only and not of the whole body. As per the Workman Compensation Act the disability for the whole body comes to 50%.

7. I have heard the counsel for the parties 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 has awarded Rs.1,40,000/- for expenses towards medicines; Rs.10,000/- for special diet & Conveyance; Rs.7,49,000/- for permanent disability and Rs.25,000/- for mental pain and sufferings, mental agony, loss of enjoyment of life and loss of expectation of life.

10. The appellant deposed on oath before the tribunal that he was admitted to Majaraja Agrasain Hospital on 22/10/1998 and remained there till 25/10/1998 and proved Ex. M-1 in this regard. He stated that thereafter, he was then taken to Ganga Ram Hospital where his left leg was amputated on 28/10/98, where he remained admitted from 26/10/1998 till 19/1/1998. The prescription slips of GR Hospital are Ex. M-2 & M-3. He deposed that he was again admitted on 23/11/1998 and discharged on 26/12/1998, during which wound of his left leg was closed. He also deposed that his treatment continued for a total period of 3-3 ½ months. He admitted that he did not maintain the record of his treatment. He produced the bill Ex. PW4/A for purchase of artificial limb for Rs. 50,000/-. He also stated that the artificial limb was broken and its repair cost was Rs. 20,000/-, which is proved vide Ex. PW4/G.

He proved disability certificates, which are Exs. PW4/B and D. On perusal of the award, it is manifest that the appellant had placed on record various medical bills Ex. ME 1 to 62. The appellant had also placed on record, Ex. PW4/E & Ex. PW4/F, whereby he spent Rs. 250/- as registration fee and Rs. 20,000/- as advance for fitting of his artificial leg. Considering this, the tribunal awarded Rs. 1,40,000/- towards medical expenses as proved by the appellant. I do not find any infirmity in the order in this regard and the same is not interfered with.

11. As regards special diet and conveyance expenses, nothing has been brought on record. The appellant suffered amputation of his left leg below knee and the tribunal after taking notice of this fact and considering that he must have also consumed protein-rich/special diet for his early recovery even in the absence of any cogent evidence awarded Rs. 10,000/- for special diet and conveyance expenses. I do not find any infirmity in the order in this regard and the same is not interfered with.

12. As regards mental pain & suffering, the tribunal has awarded Rs. 25,000/- to the appellant. The appellant suffered amputation of his left leg below knee and other wounds on the body. 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 loss of earning due to permanent disability, the tribunal awarded it at Rs. 7,49,000/-. The tribunal took the income of the appellant at Rs. 6,000/- pm after considering future prospects. It is no more *res integra* that mere bald assertions regarding the income of the deceased are of no help to the claimants in the absence of any reliable evidence being brought on record. The thumb rule is that in the absence of clear and cogent evidence pertaining to income of the deceased learned Tribunal should determine income of the deceased on the basis of the minimum wages notified under the Minimum Wages Act. Herein, no cogent evidence was brought on record to prove the income of the appellant. Thus, the tribunal ought to have assessed the income as per wages notified under MW Act. But considering that no dispute in this regard is made by the respondents, no interference is made in the award.

14. The age of the appellant at the time of the accident was 45 years and considering it the tribunal assessed the multiplier at 13 and the 80% disability of the appellant was duly proved on record as Exs.

PW4/B and D. I feel that the tribunal erred in taking 13 as the multiplier as this case pertains to the year 1998 and at that time II schedule to the Motor Vehicles Act had already been brought on the statute book. Thus, the applicable multiplier for 45 years as per II Schedule, which is 15 should have been applied by the tribunal. The tribunal also committed error as regards percentage disability. In the disability certificate, the permanent disability at 80% was disability for the left leg only and not of the whole body. As per the Workman Compensation Act the disability for the whole body comes to 50%. But only if claim petition is filed under Section 163-A, then only aid of Workman Compensation Act may be taken as held by the Apex Court in **Rajesh Kumar @ Raju vs Yudhvair Singh & Anr. (2008) 7 SCC 305**. Therefore, the same does not require any interference.

15. Thus, aforesaid modifications is made in this regard. Thus, after modifications as discussed above, the compensation under this head would come to Rs. 8,64,000/- ($6,000/- \times 12 \times 80\% \times 15$).

16. As regards loss of amenities due to permanent disability, 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. Considering that the appellant suffered amputation of his toe, 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. 50,000/-

17. As regards loss of earnings during treatment, the appellant deposed on before the tribunal that he was admitted to Majaraja Agrasain Hospital on 22/10/1998 and remained there till 25/10/1998 and proved Ex. M-1 in this regard. He stated that was then taken to Ganga Ram Hospital where his left leg was amputated on 28/10/98, where he remained admitted from 26/10/1998 till 19/1/1998. The prescription slips of GR Hospital are Ex. M-2 & M-3. He deposed that he was again admitted on 23/11/1998 and discharged on 26/12/1998, during which wound of his left leg was closed. He also deposed that his treatment continued for a total period of 3-3 ½ months. Considering this, the loss of income is awarded at Rs. 36,000/- (6,000x6).

18. 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.

19. In view of the above discussion, Rs.1,40,000/- is awarded for expenses towards medicines; Rs.10,000/- for special diet & Conveyance; Rs.8,64,000/- for permanent disability ; Rs.50,000/- for mental pain and sufferings, mental agony, loss of enjoyment of life and loss of expectation of life.; Rs. 50,000/- for loss of amenities of life and Rs. 36,000/- for loss of earnings.

20. In view of the above discussion, the total compensation is enhanced to Rs. 11,50,000/- from Rs. 9,24,000/- with interest on the differential amount @ 7.5% p.a. from the date of filing of the petition till realization and shall be paid to the appellant by the respondent insurance company within 30 days of this order.

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

04th May, 2009

KAILASH GAMBHIR, J.