

(2009) 05 DEL CK 0238

Delhi High Court

Case No: F.A.O. No. 383 of 2002

Deepak Saxena

APPELLANT

Vs

Kulvinder Singh and Others

RESPONDENT

Date of Decision: May 4, 2009

Acts Referred:

- Motor Vehicles Act, 1988 - Section 171

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

Advocate: Y.R. Sharma, for the Appellant; Nemo, for the Respondent

Judgement

Kailash Gambhir, J.

1 The present appeal arises out of the award of compensation passed by the Learned Motor Accident Claim Tribunal on 1.4.2002 for enhancement of compensation. The learned Tribunal awarded a total amount of Rs. 18,102/- 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 1.7.91, the appellant was travelling in TSR alongwith his elder brother and other persons and they were coming from Subzi Mandi Railway Station and when the said TSR reached at Chowk of Road No. 40 and Road No. 37, Inderlok, Delhi at that time, a truck bearing registration No. DEL-5763 driven by its driver in a rash and negligent manner at a fast speed came and struck against the TSR. Due to the forceful impact, the TSR overturned and appellant received grievous injuries.

4. A claim petition was filed on 22.8.1991 and an award was passed on 1.4.2002. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. Y.R. Sharma, Ld. 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 awarding Rs. 3602/- towards medicines and treatment and stated that Tribunal should have awarded Rs. 10,000/- on this count. It is further argued that Ld. Tribunal has erred in awarding Rs. 5000/- towards pain & suffering and same should have been Rs.25,000/-. The Counsel also expressed his discontent on the amount of compensation granted towards loss in studies. He claimed Rs. 5000/- on this count. Further, Counsel submitted that Ld. Tribunal has erred in awarding Rs. 5000/- only on account of scars on the face of the appellant and same should have been Rs. 20,000/-. Amount towards the special diet is also sought to be enhanced from Rs. 2000/- to Rs. 5000/-. Further Ld. counsel pleaded that the Tribunal erred in awarding an interest of 9% p.a from the date of filing of the petition till the date of decision minus five years instead of 12% p.a from the date of filing of the petition till realization.

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 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 he would have been had accident had 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 [The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another](#), has classified pecuniary and non-pecuniary damages as under:

16. This Court in R.D. Hattangadi v. Pest Control (India) (P) Ltd. 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. 1,602/- for expenses towards medicines; Rs. 2,000/- for continuing/future treatment; Rs. 2,000/- for special diet; Rs. 2,000/- for conveyance expenses; Rs. 5,000/- for scars on the face; Rs. 500/- for loss of studies and Rs. 5,000/- for mental pain and sufferings.

10. On perusal of the award, it is manifest that the appellant placed on record photocopy of medical bills, which comes to a total of Rs. 945/-. The appellant also placed on record medical bills, for a sum of Rs. 701.03/-. As regards medical expenses, the tribunal took cognizance of the fact that the appellant sustained head injuries along with multiple facial cuts and fracture of the clavicle and awarded Rs. 1,602/- as duly proved on record. I do not find any infirmity in the order in this regard and the same is not interfered with.

11. As regards conveyance expenses, nothing has been brought on record. The appellant sustained head injuries along with multiple facial cuts and fracture of the clavicle. The tribunal after taking notice of this fact and in the absence of any cogent evidence awarded Rs. 2,000/- 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 head injuries along with multiple facial cuts and fracture of the clavicle, thus he must have also consumed protein-rich/special diet for his early recovery and awarded Rs. 2,000/- 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. 5,000/- to the appellant. The appellant sustained head injuries along with multiple facial cuts and fracture of the clavicle. He was a small child in class III, in such circumstance, I feel that the compensation towards mental pain & suffering should be enhanced to Rs. 25,000/-.

14. 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. Considering that the appellant sustained head injuries, multiple facial cuts and fracture of the clavicle, 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. 15,000/-

15. As regards compensation for scars on the face, the tribunal awarded Rs. 5,000/-. Considering that the appellant, a small child, sustained head injuries along with multiple facial cuts and fracture of the clavicle, I feel that the compensation under the said head should be enhanced to Rs. 15,000/-.

16. As regards loss of studies, no documentary evidence was brought on record, but still the tribunal awarded Rs. 500/-. I do not feel that the same requires any interference by this court.

17. As regards future treatment, considering that the appellant has facial scars, I feel the compensation should be enhanced to Rs. 10,000/-.

18. As regards the issue of interest that the rate of interest of 12% 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 u/s 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 foregoing, Rs. 1,602/- for expenses towards medicines; Rs. 10,000/- for continuing/future treatment; Rs. 2,000/- for special diet; Rs. 2,000/- for conveyance expenses; Rs. 15,000/- for scars on the face; Rs. 15,000/- towards loss of amenities; Rs. 500/- for loss of studies and Rs. 25,000/- for mental pain and sufferings.

20. In view of the above discussion, the total compensation is enhanced to Rs. 71,102/- from Rs. 18,102/- 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 within 30 days of this order.

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