

(2009) 04 DEL CK 0365

Delhi High Court

Case No: F.A.O. No. 171 of 1999

Girdhari Lal

APPELLANT

Vs

Sri Bhagwan and Another

RESPONDENT

Date of Decision: April 6, 2009

Acts Referred:

- Motor Vehicles Act, 1988 - Section 171

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

Advocate: O.P. Mannie, for the Appellant; Nemo, for the Respondent

Judgement

Kailash Gambhir, J.

The present appeal arises out of the award of compensation passed by the Learned Motor Accident Claim Tribunal on 12.1.99 for enhancement of compensation. The learned Tribunal awarded a total amount of Rs. 50,000/- with an interest @ 12% PA for the injuries caused to the claimant appellant in the motor accident.

2. The brief conspectus of facts is as under:

3. On 01.08.91, Girdhari Lal, appellant had boarded DTC bus No. DEP 9784 from Azadpur. At Wazirpur Depot-I, the driver slowed down the bus and when the appellant was in the process of getting down, the driver abruptly started the bus with a jerk due to which the appellant fell down and sustained injuries.

4. A claim petition was filed on 20.9.91 and an award was made on 12.1.99. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. 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, by submitting that the Tribunal awarded a sum of Rs. 5000/- towards mental

pain & suffering but the counsel shows his discontent to that and averred that it should have been Rs. 30,000/-. For permanent disablement also he sought enhancement from Rs. 20,000/- to Rs. 50,000/-. He further submitted that Ld. Tribunal erred in not paying any compensation for the disfigurement of the appellant resulting in permanent disability, loss of leave and remote chances of promotion. Ld. counsel further shows his discontent that no amount towards loss of enjoyment of life and amenities has been granted by the Tribunal. Further the counsel pleaded that the counsel erred in awarding an interest of 12% pa instead of 24% pa.

6. Nobody has been appearing for the respondents. I have heard the counsel for the appellant and 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 [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.

8. In the instant case the tribunal awarded Rs. 5,000/- for expenses towards medicines; Rs. 5,000/- for special diet; Rs. 5,000/- for conveyance expenses; Rs. 10,000/- for future medical expenses; Rs. 5,000/- for mental pain and sufferings & Rs. 20,000/- towards permanent disability.

9. On perusal of the award, it is manifest that the appellant examined Dr. Shiv Shankar Saha, a plastic surgeon who deposed that he conducted an operation on the right lower eyelid of the appellant and for it the appellant was charged at Rs. 8,500/- and the appellant also placed the said bill on record. The said doctor also said that the appellant had to undergo another operation costing Rs. 10,000-15,000/-. As regards medical expenses, the tribunal took cognizance of the fact that the appellant sustained serious injuries on his face & eyes and awarded Rs. 5000/- towards medicines and Rs. 10,000/- on account of future medical expenses. I feel that since the appellant proved his expenses to the extent of Rs. 5,000/- towards operation of eyelid therefore in the absence of any evidence no further medical expenses can be allowed. The tribunal has already awarded Rs. 5,000/- towards medical expenses and further Rs. 10,000/- towards future medical expenses. Thus, no interference is warranted to modify the award under these heads.

10. As regards conveyance expenses, nothing has been brought on record. The appellant suffered eye/face injuries. The tribunal after taking notice of this fact considering that for the treatment of such injuries he would have visited hospital as out-patient, and even in the absence of any cogent evidence, awarded Rs. 5000/- for conveyance expenses. I do not find any infirmity in the order in this regard and the same is not interfered with.

11. 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 serious injuries in eye/face thus he must have also consumed protein-rich/special diet for his early recovery and awarded Rs. 5,000/- for special diet 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 awarded Rs. 5,000/- to the appellant. The appellant sustained injuries on face and eyelid. Undoubtedly, face and area around eyes are quite sensitive parts of the body and the appellant must have gone through a lot of physical pain and mental and emotional suffering. 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, I feel that the tribunal has erred in not awarding the same. As per Award, the appellant is a Govt. servant. and he suffered permanent disability of 15% as per the disability certificate issued from the RML hospital, which was duly proved on record. The appellant sustained injuries on face and eyelid. The face and area around eyes are quite

sensitive parts of the body such injuries must have reduced the potential of the injured. I feel that the compensation in this regard should be enhanced to Rs. 50,000/- for permanent disability and disfigurement of the appellants face.

14. As regards loss of amenities, 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, which in essence, 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. 15,000/-.

15. As regards loss of earnings, no proof regarding income of the appellant was brought on record. Furthermore, there is no proof as to how long the appellant remained away from job and whether during that period he was not paid salary. Therefore, rightly the tribunal did not award anything under this head.

16. 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 24% 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 @12% p.a. by the tribunal and the same is not interfered with.

17. Therefore, from the above discussion, Rs. 5000/- is awarded for expenses towards medicines; Rs. 5,000/- for special diet; Rs. 5,000/- for conveyance expenses; Rs. 10,000/- for future medical expenses; Rs. 15,000/- for mental pain and sufferings; Rs. 15,000/- for loss of amenities of life & Rs. 50,000/- towards permanent disability.

18. In view of the above discussion, the total compensation is enhanced to Rs. 1,05,000/- from Rs. 50,000/- along with interest @ 7.5% per annum from the date of institution of the present petition till realisation of the award. Respondents are jointly and severally liable to pay the awarded amount to the appellant, however, respondent No. 2 being employee shall make the payment to the appellant.

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