

(2009) 05 DEL CK 0295**Delhi High Court****Case No:** F.A.O. No. 117/01

A.B. Gupta

APPELLANT

Vs

Rajbir 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:** Santosh Kumar, 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 6.11.2000 for enhancement of compensation. The Learned Tribunal awarded a total amount of Rs. 3,38,000/- 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 14.08.96 the appellant suffered injury in road accident on 14.8.96 on Aurbindo Marg, T Point, Vikas Sada Near INA Market. The appellant was driving his two wheeler scooter bearing No. DL 6SB 1835 for going to Mehrauli from Paharganj side and when he reached at T-Point, Vikas Sadan, a bus bearing No. DL 1 P 8432 came in very fast speed from right side and took a sudden and abrupt turn and crushed the appellant. The front wheel of the bus passed over the left leg and the scooter of the appellant. Due to injuries he remained in admitted in the hospital from 14.8.96 to 18.8.96 and then from 18.8.96 to 20.9.96 and he suffered amputation of his left leg below knee.

4. A claim petition was filed on 22.11.96 and an award was passed on 6.11.2000. Aggrieved with the said award enhancement is claimed by way of the present

appeal.

5. Sh. Santosh Kumar 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 has erred in granting compensation towards medical expenses. He claimed an amount of Rs. 2,50,000/- 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 suffered amputation of left leg, the Learned Tribunal must have considered awarding that amount. Enhancement is also claimed on the ground that a sum of just Rs. 20,000/- is awarded towards conveyance instead of the claim of Rs. 5,00,000/- The Ld. Counsel shows his discontent for awarding Rs. 1,00,000/- only for loss of leg consequent disability and loss of amenities etc. He also claimed Rs. 5,76,000/- towards future loss of income. The Tribunal awarded a sum of Rs. 30,000/- towards mental pain & suffering but the Counsel shows his discontent to that as well and averred that it should have been Rs. 2,00,000/- Ld. Counsel further urged that the tribunal has erred in awarding Rs. 40,000/- towards loss of business due to accident on average basis and he claimed Rs. 1,20,000/-in this respect. Enhancement is also sought from Rs. 10,000/- to Rs. 18,000/- on account of private attendant. Further the Counsel pleaded that the Counsel erred in awarding an interest of 12% pa instead of 15% pa.

6. I have heard the Counsel for the appellant Sh Santosh Kr 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 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 has awarded Rs. 30,000/- for pain and suffering; Rs. 1.00 lac for loss of leg and consequent disabilities, loss of amenities etc., Rs. 1,37,482/- for medicines, Rs. 20,000/- for conveyance; Rs. 40,000/- for loss of business; Rs. 10,000/- for engaging private attendant.

9. On perusal of the award, it becomes manifest that the appellant had placed on record various bills Ex.PW2/1 to Ex.PW2/63 which comes to a total of Rs. 1,38,032/-. As regards medical expenses, the tribunal has awarded Rs. 1,37,482/-. The Tribunal has erred in not taking into account a bill for Rs. 550/-. Accordingly, I enhance the amount to Rs. 1,38,032/- for medicines/medical treatment.

10. As regards conveyance expenses, the appellant has brought on record Ex.PW2/64 to Ex.PW2/66 which are amounting to Rs. 12,000/- approx. These bills are for going to Jaipur for purchase of artificial leg. In addition to above, it is obvious that appellant must have spent some amount while performing to and fro journey to hospital for taking treatment. The Tribunal has awarded a sum of Rs. 20,000/- for conveyance. 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, the Tribunal has erred in not awarding the same. From perusal of the file it is revealed that nothing was brought on record by the appellant to prove the expenses incurred by him towards special diet. The appellant suffered amputation of his left leg. He must have also consumed protein-rich/special diet for his early recovery. I grant a sum of Rs. 10,000/- for special diet to the appellant.

12. As regards mental pain & suffering, the tribunal has awarded Rs. 30,000/- to the appellant. The appellant sustained amputation of his left leg and wounds on other body parts. 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 permanent disability, I feel that the tribunal has not erred in awarding Rs. 1,00,000/- for loss of leg and consequent

disabilities, loss of amenities etc. I do not find any infirmity in the order passed by the Tribunal in this respect and the same is not interfered with.

14. As regards medical attendants, the Tribunal has awarded Rs. 10,000/- . The appellant has not examined any witness employed by him as attendant before the Tribunal. The appellant in his examination before the Tribunal has deposed that he kept attendant namely Raju to look after him for one year and he was paying Rs. 1500/- p.m to him. I enhance the compensation in this respect to Rs. 12,000/-.

15. As regarding loss of business, the appellant has filed his income tax return showing income as Rs. 71,032/-p.a. His monthly income comes to approx Rs. 6000/- p.m. I presume that the appellant could not have worked for 4 months due to the accident. The amount comes to Rs. 24,000/- . I accordingly award Rs. 24,000/- to the appellant towards loss of business.

16. As regards future loss in earning capacity, the certificate of disability Ex.2/77 show 60% disability. This disability is in relation to a particular limb. I consider the same as 40% for the whole body. Taking monthly income of the appellant to be Rs. 6000/- and 40% disability, loss of income comes to Rs. 2400/- p.m or Rs. 28,800/- p.a. The age of the appellant is mentioned as 49 years in the petition. No other proof regarding age of the appellant is available on file. Considering the same to be true I adopt the multiplier of 13. Therefore, the amount comes to Rs. 3,74,400/- (28800x13=3,74,400). I award a sum of Rs. 3,74,400/- on account of loss in earning capacity to the appellant.

17. As regards the study loss of the son of appellant, it is only an averment made by the appellant and it has not been proved by adducing authenticated evidence. The son of the appellant was the best witness to prove the contention of the appellant. But appellant has opted not to do so. Also no written communication in this respect has been filed. I am not inclined to award any amount on this ground.

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 15% 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 into 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 @ 12% pa by the tribunal and the same is not/ interfered with.

19. In view of the foregoing, Rs. 1,38,032/- is awarded for expenses towards treatment; Rs. 10,000/- for special diet; Rs. 20,000/- for conveyance expenses; Rs. 50,000/- for pain and suffering; Rs. 1,00,000/- for loss of leg, disability and loss of amenities; Rs. 12,000/- for attendant charges, Rs. 24,000/- for loss of business and Rs. 3,74,400/- for loss of earning capacity.

20. In view of the above discussion, the total compensation is enhanced to Rs. 7,28,432/- from Rs. 3,37,483/- 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 as directed by the tribunal within 30 days of this order.

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