

(2009) 05 DEL CK 0300

Delhi High Court

Case No: F.A.O. No. 107 of 2001

Jagdev Singh

APPELLANT

Vs

Gurdip Singh and Others

RESPONDENT

Date of Decision: May 4, 2009**Hon'ble Judges:** Kailash Gambhir, J**Bench:** Single Bench**Advocate:** S.C. Singhal, for the Appellant; None, 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 21/9/2000 for enhancement of compensation. The Learned Tribunal awarded a total amount of Rs. 35,160/- 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 1.12.86 appellant Jagdev Singh was going on his two wheeler scooter No. DBZ 9724 from his house to Red Fort at about 10 a.m. In his front, car no. DLY 429 was going and just near the gate No. 3 on the main road opposite Exhibition Ground, Pragati Maidan respondent No. 1 stopped his car without any signal suddenly. As a result of which the scooter of appellant struck on the back tail of the car and was grown on the road with great impact resulting in multiple compound injuries/fracture of both of his legs. Respondent No. 1 was driving the offending vehicle in rash and negligent manner,

4. A claim petition was filed on 27/8/1987 and an award was passed on 21/9/2000. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. S.C. Singhal Counsel for the appellant claimant urged that the tribunal erred in not assessing the income of the claimant appellant at Rs. 4,000/- PM after

considering future increase of income of the appellant. He contended that the award towards mental pain and sufferings should be enhanced to Rs. 2,00,000/-. The Counsel also urged that the tribunal should not have contributory negligence of the appellant since, same was neither pleaded before the tribunal by the respondents nor the same was in issue. The Counsel maintained that the tribunal should have also not deducted compensation towards medical expenses while considering contributory negligence.

6. Per contra, Mr. D.K. Sharma, Counsel for the respondent insurance company submitted that the award passed by the tribunal is just and fair and does not require any interference by this Court.

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 [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 awarded Rs. 47,779/- for expenses towards medical treatment; Rs. 3112/- for medicines; Rs. 25,000/- for mental pain and sufferings; and Rs. 12,000/- on account of loss of earnings for six months.
10. On perusal of the award, it is manifest that the appellant had placed on record various medical treatment bills PW3/1 to 6, which comes to a total of Rs. 47,779/-. The appellant had also placed on record medical bills, Exs. A1 to A 53 for a sum of Rs. 3,112/-. Thus, the tribunal allowed the said amount of Rs. 3,112/- towards medicines and Rs. 47,779/- towards medical treatment. I do not find any infirmity in the order in this regard and the same is not interfered with.
11. As regards mental pain & suffering, the tribunal awarded Rs. 25,000/- to the appellant. The appellant sustained multiple compound injuries on the body. In such circumstance, I feel that the compensation towards mental pain & suffering does not warrant any interference.
12. As regards the compensation towards permanent disability, no disability certificate has been brought on record. Therefore, the tribunal rightly did not allow compensation in this regard.
13. 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 suffered multiple compound injuries on the body, 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/-.
14. As regards loss of earnings, no proof regarding income of the appellant was brought on record. The tribunal assessed notional income of the appellant at Rs. 2,000/- pm and awarded Rs. 12,000/- towards loss of income for 6 months, the period during which the appellant could not work. It is no more res integra that mere bald assertions regarding the income of the injured are of no help to the claimant 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 injured Learned Tribunal should determine income of the injured on the basis of the minimum wages notified under the Minimum Wages Act. The tribunal ought to have assessed the income of the appellant in accordance with the minimum wages of a skilled workman, notified under The Minimum Wages Act on the date of the accident, but since on applying the said principle at this stage, the compensation under this head will dwindle down and considering that no dispute in this regard is raised by the respondents, thus in the interest of justice, the award is not interfered with in this regard and compensation towards loss of income is taken at Rs. 12,000/-.

15. As regards the issue of contributory negligence, I am in agreement with the contention of Counsel for the appellant that in the absence of any such contention of contributory negligence on the part of the appellant having been raised by the respondents, the tribunal cannot self assume such contentions and assess compensation. The MV Act is a beneficial piece of legislation and the tribunals are required to act within the premise of the powers conferred upon them by the Act. Also, the tribunal cannot decide an issue without it being framed. Thus, the award is modified in this regard.

16. In view of the foregoing, 47,779/- is awarded for expenses towards medical treatment; Rs. 3112/- for medicines; Rs. 25,000/- for mental pain and sufferings; Rs. 25,000/- towards loss of amenities; and Rs. 12,000/- on account of loss of earnings for six months.

17. In view of the above discussion, the total compensation is enhanced to Rs. 1,12,891/- from Rs. 35,160/- 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.

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