Shri Bhushan Kumar Vs DTC and Others

FAO No. 37 of 2003

Court: Delhi High Court

Date of Decision: April 13, 2009

Acts Referred:

Motor Vehicles Act, 1988 â€" Section 171

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

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

Judgement

Kailash Gambhir, J.

The present appeal arises out of the award dated 3rd September 2002 of the Motor Accident Claims Tribunal

whereby the Tribunal awarded a sum of Rs. 33,500/- with a simple interest @ 12% pa.

2. The brief conspectus of the facts is as follows:

On 8th June 1985, at around 1:45 P.M., the injured appellant Mr. Bhushan Kumar, aged about 35 years was travelling on the road leading to the

Ring Road from Vinay Marg on a two wheeler scooter as a pillion rider when suddenly a DTC bus bearing Registration No. DEP 3888 being

driven on the wrong side of the road hit the scooter resulting into causing serious injuries to the appellant who was on the pillion seat. He received

injuries in his chest, left hand and arm, face and other body parts including his left leg which was completely fractured. The injured was removed to

the Safdarjang Hospital.

3. A claim petition was filed on 7th December 1985 and an award was passed on 3rd September 2002. Aggrieved with the said award the

appellant claimed enhancement by way of the present appeal.

4. Sh. O.P. Mannie counsel for the appellant 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 assessing the income of

the claimant appellant at Rs. 750/- PM without considering his earnings from Burma Trunk House where from he was drawing a salary of Rs. 20/-

per day. Based on this, it is further contended that the loss of income should also be enhanced, accordingly. The Counsel also expressed his

discontent on the amount of compensation granted towards medical expenses. He claimed an amount of Rs. 25,000/- towards the medical

treatment and expenses. Enhancement is also claimed on the ground that a meager amount of just Rs. 1,500/- has been awarded towards

conveyance instead of the claim of Rs. 12,000/- . Amount towards the special diet is also sought to be enhanced from Rs. 4,000/- to 35,000/-.

The Tribunal awarded a sum of Rs. 15,000/- towards mental pain & suffering but the counsel showed his discontent to that as well and averred

that it should have been Rs. 50,000/-. Further the counsel pleaded that the counsel erred in awarding an interest of @9% pa instead of 12% pa.

5. Mr. Kanwal Chaudhry counsel for the respondent/insurance company refuted the contentions of counsel for the appellant and stated that the

impugned award is just and fair and requires no interference as far as enhancement is concerned. He urged that the tribunal awarded compensation

without there being any documentary or cogent evidence on record under the heads of conveyance expenses, medical expenses etc.

6. I have heard 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 and fatal

accidents 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 the 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. 5000/- for expenses towards medicines; Rs. 4000/- for special diet; Rs. 1500/- for conveyance

expenses; Rs. 15,000 for mental pain and sufferings and Rs. 3000/- on account of loss of earnings.

9. On perusal of the award, it is manifest that the appellant is the government employee and he took most of the treatment from a government

hospital where he was not charged and the appellant was reimbursed the amount he spent under treatment in the said hospital. The appellant

placed on record various bills and medical vouchers of private doctors and hospitals as Ex.PW3/21 to 29. As regards medical expenses, the

tribunal took cognizance of the fact that the appellant sustained injuries on various parts of the body and awarded Rs. 5000/- even though the

appellant could not prove that he incurred Rs. 5000/- towards medical expenses. I do not find any infirmity in the order in this regard and the same

is not interfered with.

10. As regards conveyance expenses, nothing has been proved on record. The appellant suffered injuries on various parts of his body and in his

statement he made the averment that he had spent rupees 12,000 on conveyance of three Wheeler Scooter as he had to visit the hospital at least

15 times for his treatment. The tribunal after taking note of this fact and in the absence of any cogent evidence awarded Rs. 1500/- 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 note of the fact that since the appellant sustained fracture thus he must have also consumed protein-rich/special

diet for his early recovery and awarded Rs. 4000/- 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. 15,000/- to the appellant. The appellant sustained major and serious injuries in his

chest, left hand and the arm, face and other parts of the body and the bone of his left leg were completely fractured below the knee. On perusal of

the award it is manifest that on the date of filing of the petition, the leg of the appellant was in plaster and he could not walk without the help of crutches. The appellant was examined as PW3 and he deposed that that he finds it difficult to board the bus. In such circumstance, I feel that the

compensation towards mental pain & sufferings should be enhanced to Rs. 25,000/-.

13. As regards loss of amenities, Compensation for loss of amenities of life compensates victim for the limitation, 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. In essence, compensation for loss of expectation of life 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

are awarded at Rs. 10,000/-.

14. As regards loss of earnings, proof regarding income of the appellant was brought on record as exhibit PW 3/50. The appellant was employed

with Indian Air Force at the monthly salary of rupees 750 per month. The appellant also deposed that besides the said work he was earning Rs 20

per day at Burma Trunk House. It is no more res integra that mere bald assertions regarding the income of the injured are of no help to the

claimants in the absence of any reliable evidence being brought on record. Since the appellant could not prove his income of rupees 20 per day at

Burma trunk house, thus the tribunal only considered his income as an employee of Indian air force. It has been duly proved on record that the

Appellant remained on leave for a period of about 196 days. Exhibit PW 3/51 to 52 a certificate to the effect of loss of wages and according to

the said certificate the tribunal worked out the compensation towards loss of earnings as Rs 7650 which was rounded off to Rs 8000. I do not find

any infirmity in the same & therefore, it is not interfered with.

15. 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

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.

16. Therefore, Rs. 5,000/- is awarded towards medical expenses; Rs. 1,500/- for conveyance expenses; Rs. 4,000/- for special diet; Rs.

25,000/- for mental pain & sufferings; Rs. 10,000/- for loss of amenities & Rs. 8,000/- towards loss of earnings.

17. In view of the above discussion, the total compensation is enhanced to Rs. 53,500/- from Rs. 33,500/- along with interest @ 7.5% per annum

from the date of institution of the petition till realisation of the award and the same should be paid to the appellant by the respondent/insurance

company.

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