Jatinder Kaur Riar @ Nina Riar Vs Jyoti Mittal and Others

FAO No. 260/98

Court: Delhi High Court

Date of Decision: May 4, 2009

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

Advocate: S. Janani, for the Appellant; Bhupesh Narula, 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 3.4.98 for enhancement of compensation. The learned Tribunal awarded a total amount of Rs. 97,000/- 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 28.2.95 appellant Jatinder Kaur Riar was going to her residence in her Maruti Car bearing registration No. DDC 2815 and her daughter

Simran Riar was also sitting besides her. When they reached between Sector 27 and 28, Noida an ambassador car bearing No. DL 2C 8959

came from the opposite direction at a fast speed being driven by Respondent No. 1 in rash and negligent manner and dashed against the maruti car

of the appellant. As a result of impact, appellant sustained serious injuries on her person. Appellant remained admitted in the hospital from 28.2.95

to 11.3.95.

4. A claim petition was filed on 23.08.95 and an award was passed on 3.4.98. Aggrieved with the said award enhancement is claimed by way of

the present appeal.

5. Ms. S. Janani 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 no compensation was given towards cost

of physiotherapy, special diet, damage to car, economic loss due to leave taken by husband and daughter, conveyance, loss of expectations of life,

permanent disability and treatment for future. The Counsel also expressed his discontent on the amount of compensation granted towards medical

expenses. He claimed further medical expenses amount of Rs. 24540/- besides Rs. 60,000/- granted by the Tribunal. He further claimed an

amount of Rs. 5500/- towards physiotherapy charges. It is further stated that appellant is entitled to compensation towards economic loss in regard

to leave availed by her husband and her daughter. The Tribunal awarded a sum of Rs. 25,000/- towards mental pain & suffering but the Tribunal

erred in not considering MLC Ex.PW1/1 showing three major fractures. It is further contended that the Tribunal"s finding that there was no

permanent disability is contrary to facts and evidence on record and he claimed that appellant suffered disability of 30%. Ld. Counsel further

claimed Rs. 50,000/- for loss of amenities of life (including disability). Amount towards expenses incurred in repairing the damage to the car is also

pleaded through this appeal for a sum of Rs. 20,000/-.

6. I have heard the counsel for the appellant and the respondent and perused the record.

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. 9 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. 60,000/- for expenses towards medicines; Rs. 12,000/- for maid servant and Rs. 25,000/- for

pain and suffering.

9. On perusal of the award, it becomes manifest that the appellant had placed on record various bills on file against which the Tribunal has

awarded a sum of Rs. 60,000/- whereas the bills are for a sum of Rs. 81,704/-. All the bills are exhibited on file and perusal of the same I do not

feel that the tribunal erred in this regard, thus, no interference is made in this regard.

10. As regards conveyance expenses, nothing has been brought on record. The appellant suffered comminuted -right femur, chantrick fracture -

right femur and comminuted fracture - left wrist. In the absence of any cogent evidence I award Rs. 5000/- for conveyance expenses.

11. As regards special diet expenses, nothing was brought on record by the appellant to prove the expenses incurred by her towards special diet. I

feel that tribunal has committed error in not awarding the same. The appellant must have also consumed protein-rich/special diet for her early

recovery. I therefore, award Rs. 10,000/- towards special diet.

12. As regards mental pain & suffering, the tribunal has awarded Rs. 25,000/- to the appellant. The appellant sustained grievous injuries on her

body. In such circumstance, I feel that the compensation towards mental pain & suffering has rightly been granted by the Tribunal. I find no

infirmity in the order in this respect and the same is not interfered with.

13. As regards the compensation towards permanent disability, I feel that the tribunal has not erred in not awarding the same. There is no disability

certificate issued by the competent board of doctors on file. I feel that the Tribunal has rightly not awarded the amount in this respect.

14. As regards loss of income, it is crystal clear that the appellant is a housewife. However, it does not mean that her utility as a housewife are to

be under estimated. She performed her duties towards her family. She is a non earning person and taking into account the same, I consider that she

can be given compensation taking into account notional income. The notional income is Rs. 15,000/- p.a. Or Rs. 1250/- p.m. Considering the

injuries suffered by the appellant I take that she could not have performed her work for six months. I grant a sum of Rs. 7500/- in this respect.

15. AS regards Amount paid to maid servant, the Tribunal awarded Rs. 12,000/- for two years. I do not find any infirmity in the order in this

respect and the same is not interfered with.

16. As regards expenses incurred in repairing the damage of car, the appellant has placed no document or bill or record that she had spent some

amount on repair of her car. It is no more res integra that for arriving at a particular figure on each of the heads of damages, the claimant is duty-

bound to produce relevant materials, on the basis of which, a determination could be made, as to what would be the best compensation. In the

absence of any cogent or reliable material on record, I do not wish to award any compensation in this regard.

17. 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 is

allowed to the extent of Rs. 10,000/-.

18. As regards loss of leave of husband, the appellant has placed on file a leave certificate issued by Sh AB Aroskar, Wg.Cdr, Air Headquarter

wherein it has been stated that Wg Cdr HS Riar was on leave from 1 March 1995 to 30th March 1995 to attend his wife. The monthly salary of

HS Riar for the month of March 1995 as per salary slip Ex.PW5/3 was Rs. 9527/-. He took leaves for one month. I, therefore award a sum of

Rs. 9527/- to the appellant on this account.

19. As regards loss of leaves of daughter of appellant, no material or certificate of leave has been placed on record. I am not inclined to award any

amount for the same.

20. In view of the foregoing, Rs. 60,000/- is awarded for expenses towards treatment; Rs. 10,000/- for special diet; Rs. 5000/- for conveyance

expenses; Rs. 7500/- for loss of work; Rs. 10,000/- for loss of amenities and enjoyment of life; Rs. 25,000/- for pain and sufferings; Rs. 12,000/-

for amount paid to maid servant and Rs. 9527/- as loss of leave of husband of appellant.

21. In view of the above discussion, the total compensation is enhanced to Rs. 1,39,027/- from Rs. 97,000/- 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

respondent No. 3 within a period of 30 days from the date of this order.

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