

(2009) 05 DEL CK 0448

Delhi High Court

Case No: FAO No. 733 of 2003

Bhure Singh

APPELLANT

Vs

Ram Jeet Singh

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:** J.S. Kanwar, for the Appellant; A.K. De, 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 14.7.03 for enhancement of compensation. The learned Tribunal awarded a total amount of Rs. 4,17,000/- with an interest @ 8% PA for the injuries caused to the claimant appellant in the motor accident.

2. The brief conspectus of facts is as under:

3. On 5.7.97 when the petitioner was coming from Janakpuri Dairy U.P. Border on his bicycle , vehicle No. TATA 38 9348 came at high speed without blowing any horn and hit the appellant due to which the appellant sustained grievous injuries on his head, legs and other parts of the body and became unconscious at the spot. Both his hands and legs were bruised and injured very badly, and suffered 90% permanent disability.

4. A claim petition was filed on 10.9.97 and an award was passed on 14.7.03. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. J.S. Kanwar 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 not believing the income stated by the appellant and corroborated by his employer i.e. Rs. 3000/- p.m. Ld. Tribunal erred in calculating the loss of earning power without considering the nature of job, the appellant was doing at the time of accident and Ld. Tribunal ought to granted compensation on the basis of 100% disability and not on 90% basis. It is further contended that Ld. Tribunal has erred in not considering the future prospects of the appellant. It is further urged that Ld. Tribunal erred in applying the multiplier of 17 in the peculiar facts and circumstances of the case. On the point of interest awarded, it is submitted that the same has not been paid from the date of filing of the petition and Ld. Tribunal erred in awarding the interest of only 8%.

6. I have heard the counsel the appellant and the respondent and have 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. 3,67,200/- for reduction in earning capacity; Rs. 10,000/- for expenses towards medicines; Rs. 40,000/- for pain & suffering.
9. On perusal of the award, it is manifest that the appellant had not placed any bill before the Trial court. As regards medical expenses, the tribunal took cognizance of the fact that the appellant sustained serious injuries and he suffered 90% permanent disability. Even though the appellant could not prove that he had incurred expenses on medical treatment, still the Tribunal awarded Rs. 10,000/- 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 90% disability. The tribunal has erred in not awarding any amount on account of conveyance. Taking into account the nature of injury and disability, I award a sum of Rs. 5000/- towards conveyance.
11. As regards special diet expenses, the Ld. Tribunal has erred in not awarding the same. Though, nothing was brought on record by the appellant to prove the expenses incurred by him towards special diet yet since the appellant sustained serious injuries and he suffered 90% disability, he must have also consumed protein-rich/special diet for his early recovery. I am inclined to award Rs. 10,000/- for special diet expenses.
12. As regards mental pain & suffering, the tribunal has awarded Rs. 40,000/- to the appellant. The appellant sustained 90% permanent disability that too in right hand. In such circumstance, I feel that the compensation towards mental pain & suffering is inadequate and should be enhanced to Rs. 75,000/-.
13. As regards adopting multiplier of 18, the appellant mentioned his age as 25 years at the time of filing of the petition. When his statement on oath was recorded before the Tribunal he deposed his age as 28 years. At the time of issuance of disability certificate his age is mentioned as 30 years. In view of above, the appropriate multiplier to be adopted is of 18 as per Second Schedule. The appellant has stated his income to be Rs. 3000/- p.m. but the tribunal assessed it at Rs. 1937/- p.m. as it has not been proved by adducing the evidence. It is no more res integra that mere bald assertions regarding the income of the deceased are of no help to the claimants 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 deceased learned Tribunal should determine income of the deceased 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 unskilled workman, notified under The Minimum Wages Act on the date of the accident, which were Rs. 1784/- per month (rounded off to Rs. 1800/-) or Rs. 21600/- p.a. The appellant suffered 90% permanent disability. Taking his loss

of income to be 90% and by applying the appropriate multiplier of 18, the loss of earning capacity comes to Rs. 3,49,920/-. But considering that no dispute in this regard is made by the respondents, thus, no interference is made in this regard.

14. As regards loss of amenities, Compensation for loss of amenities of life compensates victim resulting from the defendant's negligence, severely affects the 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. 25,000/-.

15. As regards the issue of interest that the rate of interest of 8% p.a. awarded by the tribunal is on the lower side, 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, 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 @ 8% pa by the tribunal and the same is not interfered with.

16. In view of the foregoing, Rs. 10,000/- is awarded for expenses towards treatment; Rs. 10,000/- for special diet; Rs. 5000/- for conveyance expenses; Rs. 25000/- for loss of amenities and enjoyment of life & Rs. 3,67,200/- for loss of earning capacity because of permanent disability and Rs. 75,000/- for pain and sufferings.

17. In view of the above discussion, the total compensation is enhanced to Rs. 4,92,200/- from Rs. 4,17,000/- 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 day from the date of this order.

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