

(2009) 04 DEL CK 0489
In the Delhi High Court
Case No : FAO No. 341 of 2001

Sh. Ashish Sharma @ Ashish Gautam	APPELLANT
Vs	
Shri Jasbir Singh and Others	RESPONDENT

Date of Decision : 27-04-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 171

Citation : (2009) 04 DEL CK 0489

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : M.P. Sharma, for the Appellant; Manjusha Wadhwa, for the Respondent

Final Decision : Disposed Off

Judgement

Kailash Gambhir, J.—The present appeal arises out of the award of compensation passed by the Learned Motor Accident Claim Tribunal on 17.04.2001 for enhancement of compensation. The learned Tribunal awarded a total amount of Rs. 1,21,000/- with an interest @ 9% PA for the injuries caused to the claimant appellant in the motor accident.

2. The brief conspectus of facts is as under:

3. On 12.6.91 injured started from his house to play hockey at Indira Gandhi Stadium. He got down from ITO Bridge and it was a red light. For a moment he waited at the red light, in the meantime traffic started flowing towards ITO and when the appellant started crossing the road Vikas Marg and reached near central verge a tempo No. DL-1-L-7451 came from the side of Jamuna Bridge and hit the appellant due to which the appellant sustained grievous injuries on his body.

3. A claim petition was filed on 10.12.91 and an award was passed on 17.4.2001. Aggrieved with the said award enhancement is claimed by way of the present appeal.

4. Sh. MP Sharma 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 only awarded a sum of Rs. 40,000/- for 40% permanent disability of the appellant which is very low. The Ld. Tribunal had miserably failed to appreciate that the appellant was a good player of volley ball and has ambitions to represent the nation at International level and also ambition to join Indian Army but he became disabled to the extent of 40%. It is further urged that the Trial court has failed to appreciate that appellant has still to undergo two operations and has to spent Rs. 50,000/- to Rs. 60,000/-. Further the counsel pleaded that the counsel erred in awarding an interest of 9% pa instead of 18% pa.

5. I have heard Shri M.P. Sharma counsel for the appellant & Ms. Manjusha Wadhwa Counsel for the respondent and have perused the award.

6. 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.

7. In the instant case the tribunal awarded Rs. 60,966/- for expenses towards medicines; Rs. 5000/- for special diet; Rs. 5000/- for conveyance expenses; Rs. 40,000/- for disability and Rs. 10,000/- for pain and suffering.

8. On perusal of the award, it is manifest that the appellant had placed on record various bills which comes to a total of Rs. 60,966/-. The appellant also placed on record medical bills and exhibited the same. The Tribunal has awarded Rs. 60,966/- to the appellant. I do not find any infirmity in the order in this regard and the same is not interfered with.

9. As regards conveyance expenses, nothing has been brought on record. The appellant suffered injuries in his leg and he suffered 40% disability. The tribunal after taking notice of this fact and in the absence of any cogent evidence awarded Rs. 5000/- for conveyance expenses. I feel to enhance the same to Rs. 10,000/-.

10. 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 notice of the fact that since the appellant sustained serious injuries and thus he must have also consumed protein-rich/special diet for his early recovery and awarded Rs. 5000/- for special diet expenses. I am inclined to enhance the same to Rs. 10,000/-.

11. As regards mental pain & suffering, the tribunal has awarded Rs. 10,000/- to the appellant. The appellant sustained injury in his leg and suffered 40% disability. In such circumstance, I feel that the compensation towards mental pain & suffering should be enhanced to Rs. 25,000/-.

12. As regards the compensation towards permanent disability, the tribunal has awarded Rs. 40,000/-. The appellant was a student of 9th class. He was not earning anything. Taking into consideration the future of appellant I enhance the same to Rs. 70,000/-.

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 is allowed to the extent of Rs. 20,000/-.

14. 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 18% p.a., I feel that the rate of interest awarded by the tribunal is just and fair and requires 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 @ 9% pa by the tribunal and the same is not interfered with.

15. In view of the foregoing, Rs. 60,966/- is awarded for expenses towards treatment; Rs. 10,000/- for special diet; Rs. 10,000/- for conveyance expenses; Rs. 20,000/- for loss of amenities and enjoyment of life & Rs. 70,000/- for permanent disability and Rs. 25,000/- for pain and sufferings.

16. In view of the above discussion, the total compensation is enhanced to Rs. 1,95,966/- from Rs. 1,21,000/- 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 respondents as directed by the tribunal and within 30 days of this order.

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