
(2009) 04 DEL CK 0505
In the Delhi High Court
Case No : FAO No. 542 of 2001

Shri Jai Prakash Gupta

APPELLANT

Vs

Sh. Chandar Bahadur and Others

RESPONDENT

Date of Decision : 13-04-2009

Acts Referred:

Citation : (2009) 04 DEL CK 0505

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : R.D. Shahlia, for the Appellant; Kanwal Chaudhary, 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 7.7.2001 for enhancement of compensation. The learned Tribunal awarded a total amount of Rs. 40,000/- 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 21.2.85 at about 6.45 P.M. the appellant along with his friends was going for a walk on Jhandu Marg, all of a sudden a car bearing registration No. DIA-4233 came from behind at a very fast speed without blowing any horn and hit the appellant, as a result of which the appellant was thrown and dragged for some distance and he sustained grievous injuries including fracture of right leg (fractures of Fibula and Tibia Bones) and grievous injuries on the head as well as on the forehead.

4. A claim petition was filed on 20.8.85 and an award was passed on 7.7.2001. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Sh. R.D. Shahlia, 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 the tribunal erred in assessing the income of the claimant appellant at Rs. 1500/- PM and the same should be enhanced to Rs. 3,000/- p.m. 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. 20,000/- towards the medical treatment and expenses. The claimant appellant is not able to produce medical bills to claim the stated amount, but he contended that looking at the facts and circumstance of the case and the fact that the claimant was treated for fracture of right tibia and fibula at Safdarjung Hospital, Delhi, the learned Tribunal must have considered awarding that amount. Enhancement is also claimed on the ground that a sum of just Rs. 1000/- is awarded towards conveyance instead of the claim of Rs. 10,000/-. Amount of Rs. 10,000/- towards the special diet is also sought, which has not been awarded by the tribunal. The Tribunal awarded a sum of Rs. 30,000/- towards mental pain & suffering but the counsel shows his discontent to that as well and averred that it should have been Rs. 40,000/-.

6. Per contra Shri Kanwal Chaudhary counsel for the appellant urged that the award passed by the Tribunal is just and fair and does not require interference by this Court.

7. I have heard 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. 3,000/- for expenses towards medicines, Rs. 1000/- for conveyance expenses;; Rs. 30,000 for mental pain and sufferings; Rs. 6,000/- towards loss of earnings.

10. On perusal of the award, it is manifest that the appellant did not place on record any medical bill to prove the expenses incurred towards medical treatment. To consider grant of medical expenses, the tribunal took cognizance of the fact that the appellant sustained serious injuries in his spine and his right femur and awarded Rs. 3,000/- even though the appellant failed to prove that he had incurred any expenses towards medical expenses. I do not find any infirmity in the order in this regard and the same is not interfered with.

11. As regards conveyance expenses, nothing has been brought on record. The appellant suffered 5% injuries. The tribunal after taking notice of this fact and in the absence of any cogent evidence awarded Rs. 1000/- for conveyance expenses. I do not find any infirmity in the order in this regard and the same is not interfered with.

12. As regards expenses towards special diet I feel that the Tribunal erred in not awarding the same and thus Rs. 1,000/- is awarded in this regard.

13. As regards mental pain & suffering, the tribunal has awarded Rs. 30,000/- to the appellant. The appellant sustained fracture on right leg and injuries on his forehead. In such circumstance, I feel that the compensation towards mental pain & suffering does not require any interference.

14. As regards the compensation towards permanent disability, the income of the appellant was averred to be at Rs. 1500/- pm. As per the disability certificate the appellant suffered 5% disability. Also considering that the appellant at the time of the accident was of 25 years of age and thus multiplier of 16 shall be applicable considering that the accident took place in the year 1985. Thus, the compensation towards 5% disability comes to Rs. 14,400/- ($1500 \times 12 \times 16 \times 5/100$).

15. As regards loss of amenities, which results from the defendant's negligence, on 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. 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/-.

16. As regards loss of earnings, the tribunal assessed notional income of the appellant at Rs. 1500/- pm and awarded Rs. 6000/- towards loss of income for four months, the period during which the appellant could not work. I consider that no interference is called for.

17. In view of the foregoing, Rs. 6,000/- is awarded towards loss of earning for 4 months, Rs. 10,000/- is awarded towards loss of amenities; Rs. 14,400/-; towards permanent disability to the extent of 5%; Rs. 30,000/- towards mental pain and sufferings; Rs. 1,000/- towards conveyance expenses; Rs. 1,000/- towards special diet and Rs. 3,000/- towards medical expenses.

18. In view of the above discussion, the total compensation is enhanced to Rs. 65,400/- from Rs. 40,000/- 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.

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