

CASE NO.:
Appeal (civil) 4561 of 2006

PETITIONER:
Tejinder Singh Gujral

RESPONDENT:
Inderjit Singh & Anr

DATE OF JUDGMENT: 19/10/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T

[Arising out of S.L.P. (C) No. 16501 of 2005]
WITH
CIVIL APPEAL NO. 4562 OF 2006
[Arising out of S.L.P. (C) No. 1134 of 2005]

S.B. SINHA, J :

Leave granted.

Appellant herein is a practicing lawyer. While riding on a scooter, he met with an accident as a tempo which was allegedly being driven rashly and negligently by Respondent No. 1 dashed therewith. He is said to have suffered a permanent disability. He filed an application under Section 166 of the Motor Vehicles Act, 1988 praying for grant of compensation of Rs.1,00,000/-. An application for amendment of the said claim petition was filed raising the amount of compensation to Rs.5,00,000/- .

The Motor Accident Claims Tribunal by a judgment and award dated 15th March, 1986 awarded a sum of Rs.1,83,000/-, details whereof are as under:

"i)
Damage on account of agony, shock pain
and suffering of the appellant
Rs. 50,000.00
ii)
Damages on account of hospitalization
including medicines
Rs. 20,000.00
iii)
Damages on account of loss of income
Rs. 1,12,000.00
iv)
Damages on account of the damage caused
to the scooter
Rs. 1,000.00

Total
Rs. 1,83,000.00"

The Tribunal as regards the purported plea of the Insurer that its liability is limited, opined :

"\005A perusal shows that liability of the insurance company is limited to the extent of Rs. 1,50,000/- Counsel for the claimant contended before me that as the insurance policy has not been tendered the same in evidence, so, should be held that the liability of insurance company is unlimited. It is no doubt true that the insurance policy has not been tendered the policy in evidence. But as the insurance policy is only on the file, I am of the view that this court taken note of it. So, it is held that the liability of insurance company is only to the extent of Rs. 1,50,000/- and interest on the same and rest of the amount will be paid by the respondent No. 1. The issue is decided accordingly."

An appeal thereagainst was filed by Appellant before the High Court. A learned Single Judge of the High Court enhanced the amount of compensation to Rs. 2,90,000/-. A direction was also issued upon Respondent to pay interest at the rate of 12% per annum on the amount of compensation from the date of filing thereof till the date of realization. The learned Single Judge also set aside the findings of the learned Tribunal to the effect that the liability of the insurance company was limited to Rs. 1,50,000/-.

Still being not satisfied, an intra-court appeal was filed by Appellant herein. Before a Division Bench of the High Court, the question which was raised on behalf of Appellant was as to whether he having suffered permanent disability would be entitled to any further compensation as he may have to engage a driver to drive his car in future. A contention as regards higher amount of compensation was also raised towards purported loss of prospective income. The Division Bench by reason of the impugned judgment enhanced only the amount of compensation under the head of 'loss of income' from Rs. 1,12,000/- to Rs. 1,50,000/- relying on the decision of this Court in Lata Wadhwa and Others v. State of Bihar and Others [(2001) 8 SCC 197].

Still not satisfied, Appellant is before us.

Mr. Jasbir Singh Malik, learned counsel appearing on behalf of Appellant, would inter alia submit that the High Court committed an error in denying enhanced compensation to Appellant despite noticing the fact that he has attained permanent disability and he would not be able to drive a vehicle himself and, thus, will have to appoint a driver. It was urged that the High Court failed to consider the question of grant of enhanced compensation without taking into consideration his prospective income. It was further submitted that although interest on an enhanced amount should have been granted, the High Court erred in not doing so without assigning any sufficient or cogent reason therefor.

Mr. S.L. Gupta, learned counsel appearing on behalf of the insurance company would, on the other hand, submit that although the insurance policy was not proved, the same having brought on records, the liability of insurance company must be held to be limited to Rs. 1,50,000/-. As Appellant on the date of accident was riding on a two-wheeler and not a car, the question of awarding compensation for not being able to drive a car does not arise. It was submitted that as Appellant did not suffer any permanent disability and as the Tribunal as also the High Court had only granted general benefits, this Court should not interfere with the impugned judgments. No claim of interest having been made, it was urged, Appellant must be held to be not entitled thereto.

It is not disputed that the vehicle in question was insured. The fact that an accident had taken place as also the fact that Appellant suffered

injuries is also not disputed. Appellant on 6.8.1984 was riding on a scooter. His scooter dashed with a tempo bearing No. CHW 4257. He in his application initially claimed only a sum of Rs. 1,00,000/- by way of compensation. He did not claim any interest on the said amount.

He, as noticed hereinbefore, filed an application for amendment of the claim petition only at a much later stage. The learned Tribunal noticed the extent of injuries suffered by him and also took into consideration the evidences of doctors who had examined and treated him and awarded compensation under different heads. In regard to his future loss of income, the Tribunal noticed his income tax returns for the financial year prior to his meeting with the accident as also the year in question. The annual loss to his private practice was taken at Rs. 700/- per month.

The learned Tribunal, however, committed an error in opining that the insurance policy was not required to be proved. The learned Single Judge of the High Court, in our opinion, rightly held that the insurance policy having not brought on records, a presumption would arise that the liability of the insurer was unlimited. The learned Single Judge adopted a rather liberal approach. He took into consideration the entire evidence on records including the extent of disability allegedly suffered by Appellant. It was opined:

"\005The appellant is lawyer by the profession. This profession needs unhampered concentration for the full devotion to the cases he might handle. When bodily pain and suffering subsist and there is even danger of such pain resulting in attack of the engine it certainly amounts to a great incapacity in performance of his professional duties by the appellant. The agony and suffering on this account which last with his life is difficult to measure in terms of money but I am decidedly of the view that damages to the tune of Rs. 50,000/- as awarded by the learned Tribunal under this head are grossly inadequate. Keeping in view all the facts and circumstances brought on the record, I shall assess damages under this Head at Rs. 1,00,000/-."

It was held that he was also entitled to the services of his wife who in turn would require some outside assistance and on that head awarded a sum of Rs. 57,600/-. He furthermore awarded interest at the rate of 12% per annum.

The Division Bench, in our opinion, had also taken a somewhat liberal view in favour of Appellant than he deserved. The Division Bench of the High Court opined that Appellant might have to engage a driver and for the said purpose awarded compensation at the rate of Rs. 700/- per month from the date of filing of claim petition till the award by the Tribunal. Appellant now wants the amount of compensation to be enhanced on that head. We decline to do so for more than one reason.

Appellant has not proved that he had bought a car. He even on the date of accident was merely riding on a scooter. He has not brought on record any evidence to show that even at that point of time he could afford a car. As indicated hereinbefore, the learned Single Judge as also the Division Bench of the High Court was more than generous in enhancing the amount of compensation.

So far as the question of interest is concerned, it is true that the same need not be claimed specifically. Interest is granted by way of compensation but, as has been held in *Abati Bezbaruah v. Dy. Director General, Geological Survey of India* and *Another* [(2003) 3 SCC 148], the same must be a reasonable one. In *Abati Bezbaruah (supra)*, this Court directed payment of interest only at the rate of 9% per annum, whereas the rate of

interest awarded in favour of the claimant was @ 12% per annum.

Lakshmanan, J. in his separate judgment, whereupon Mr. Malik has placed strong reliance, opined that the rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering, loss of future income, loss of enjoyment of life, etc. into consideration. Grant of interest is discretionary. We do not find that the discretion exercised by the High Court was in any manner unreasonable.

Reliance has been placed by the learned counsel in Abati Bezbaruah (supra) for the proposition of law that that future prospect of income should also be taken into consideration. We may notice that in that case multiplier of 15 was applied. The Tribunal had noticed that the income of the deceased was assessed only at Rs.3,500/- per month and, thus, the loss of dependency should have been enhanced to the tune of Rs. 2,000/- per month. This Court instead of granting Rs. 42,000/- per year increased the same to Rs. 45,000/- per year and the loss of dependency was, thus, calculated at Rs. 30,000/- instead of Rs. 28,000/-. The claimant in that case was a salaried person.

Appellant herein before us is in legal profession. He may have suffered some injuries but the same would not mean that he would not be in a position to rise in his profession only by reason thereof. We, therefore, decline to enhance any amount of compensation in this behalf.

So far as the amount of interest is concerned, we may notice that in Devi Dayal Kansal and Others v. Raj Roop and Another [(2000) 10 SCC 314] this Court merely opined that interest would have been directed to be granted on the enhanced compensation but no law in absolute terms was laid down therefor.

The learned Single Judge has awarded interest at the rate of 12% per annum. The rate of interest now granted is 9% per annum keeping in view the drastic fall in the bank rate. We, therefore, do not intend to interfere with the said direction of the High Court.

Reliance placed by Mr. Malik on Lata Wadhwa (supra) is not apposite. Therein multiplier method for determining compensation was resorted to as death occurred and injuries suffered by many persons in a devastating fire resulted from negligence on the part of the Company. [See Krishna Gupta & Ors. v. Madan Lal & Ors. 96 (2002) DLT 829]

Furthermore, as noticed hereinbefore, both the learned Single Judge as also the Division Bench was more than generous in awarding compensation to Appellant under different heads.

We, therefore, do not intend to interfere with the impugned judgments. The appeals are dismissed accordingly. No costs.