

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC.APP. No. 764/2006

Judgment delivered on: November 30, 2007

Himanshu Gupta

..... Appellant.

Through: Mr. Ravindra Narayan, Adv.

versus

Kundan Singh & Ors.

..... Respondents

Through: Ms. Sakshi Mittal, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:

By way of this appeal the appellant seeks enhancement in the compensation amount over and above the one awarded by the Tribunal.

The facts of the case in a nutshell are as follows:

Sh.Hem Chand Gupta, Sh.Neeraj Gupta, Sh.Himanshu

Gupta and Sh.Nitin Gupta were travelling in a Maruti car on 7.12.2000, while proceeding towards Anoopshahar from Delhi via Hapur. When they reached village Akdauli at about 7.30 a.m., a truck bearing registration No. UP 14N 1551 being driven at a high speed and in a rash and negligent manner collided with the Maruti car. As a result of the accident all the incumbents of the Maruti car suffered serious multiple injuries and were rushed to the nearest Nursing Home at Hapur and were later referred to Maharaja Agarsain Hospital, Delhi. Four claim petitions were filed before Motor Accident Claims Tribunal and all the four petitions were disposed of by way of a common order dated 20.5.2006. Aggrieved with the said order present appeal is preferred by the appellant.

Counsel for the appellant contends that the appellant was a student of second year MBBS course and due to the said accident he could not perform well in his exams, therefore, the appellant could complete his MBBS course in a period of seven years. Counsel for the appellant contends

that the appellant lost two precious years only due to the said serious injuries suffered by him and as per the testimony of PW-4 the appellant would continue to suffer from epileptic fits in his entire life time. Counsel further contends that the said accident has affected his memory besides causing physical and mental exertion, irritability etc. and these characteristics were even observed by the Court when the appellant had entered into the witness box. Counsel for the appellant thus contends that the Tribunal has awarded a very meager amount of Rs. 1 lakh towards the permanent disablement and loss of future prospects.

Per contra counsel appearing for the respondent seriously refutes the said submission of the counsel for the appellant. The counsel contends that the Tribunal has awarded appropriate compensation taking into account the facts and circumstances of the case. Counsel also contends that in the kind of injuries suffered by the appellant, the compensation of Rs. 1 lakh towards permanent disablement cannot be considered to be on the lower side.

Perusal of the Award shows that the appellant remained in a coma for a period of 7 days due to the head injuries sustained by him and as per the deposition of PW-4 the said disability to the extent of suffering fits would continue till the life time of the appellant. It is also not disputed that the appellant lost two precious years in completing his MBBS course and due to which it has certainly affected his future prospects and career. In any case, since the appellant was a student of second year in the MBBS and has already completed his 12th standard, the income of a graduate can safely be applied in the case of the appellant under the Minimum Wages Act. The income of the graduate under the Minimum Wages Act as on the relevant date of the accident was Rs. 3284/- and the annual income would come to Rs.39,408/- and for 25% disablement the annual loss and suffering would come to Rs.9,852/-. The appellant was of 23 years of age on the date of the accident. Appropriate multiplier under the Second Schedule is 17 years. Applying the said multiplier to the multiplicand of

Rs.9,852/- the total loss towards the permanent disablement would come to Rs.1,67,484/-. The compensation awarded by the Tribunal under this head stands enhanced from Rs. 1 lakhs to Rs.1,67,484/-.

The appellant is also aggrieved on account of the fact that the Tribunal has not adequately compensated the appellant for pain and agony as well as for loss of expectation of life and amenities including the time taken to clear his academic qualification. The contention of the counsel for the appellant is that only a meager amount of Rs. 50,000/- has been granted for pain, agony and similar amount has been granted towards loss of amenities, expectation of life including loss of time taken to clear his academic qualification. The contention of the counsel for the appellant is that the appellant has suffered immensely on account of the said injuries, which has the affect of crippling the life of the appellant as there is temporary memory loss and he would continue to receive the epileptic fits during his life time. Counsel contends that the testimony

of the Doctor i.e. PW-4 remained almost unrebutted. Counsel thus contends that the compensation needs to be enhanced under these heads. Counsel for the respondent disputes the said submissions of the counsel for the appellant. She states that Rs. 50,000/- for suffering such kind of disability meets the end of justice and, therefore, the same does not need any further enhancement. The same is the submission of the counsel for the respondent as regards the other heads of compensation. As regards the compensation for pain and agony, I am not inclined to interfere as it cannot be said that the grant of Rs. 50,000/- for suffering 25% disability is inappropriate. However, grant of Rs. 50,000/- towards loss of amenities, expectation of life and for loss of time taken to clear his academic qualification appears on the lower side. The appellant was a student of MBBS and was in the second year course at the time of the accident. He has taken 7 years time to complete the MBBS course, which certainly means that two precious years were lost. The course, which he would have completed within 5

years that has taken 7 years. Due to the said injury the appellant has also not been able to appear in the advance course and which ultimately has affected his entire medical career. There is force in the arguments of the counsel for the appellant, I, therefore, enhance the said compensation of Rs. 50,000/- towards loss of amenities and expectations of life including the loss of time taken to clear his academic qualification from Rs. 50,000/- to Rs. 1,50,000/-. The respondent shall pay the differential amount of compensation along with upto date interest @ 6% from the date of the filing of the petition till the realisation.

With these directions the appeal is disposed of.

November 30, 2007
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KAILASH GAMBHIR J.