

Neutral Citation No. - 2024:AHC-LKO:25337

Reserved on: 01.03.2024

Delivered on: 21.03.2024

Court No. - 31

Case :- FIRST APPEAL FROM ORDER No. - 1185 of 2016

Appellant :- Km. Kajal Mishra Minor Thru. Father Om Prakash Mishra

Respondent :- Amar Nath Singh Soni And 2 Others

Counsel for Appellant :- Satendra Nath Rai

Counsel for Respondent :- Ashok Kumar Rai, Jyoti Prakash, Manoj Kumar Dixit

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard learned counsel for the appellant, Sri Ashok Kumar Rai, learned counsel for the respondent no.3 and Sri Jyoti Prakash, learned counsel for the respondent no.1.
2. By means of present appeal, the appellant has challenged the judgement and award dated 29.08.2016 passed by Motor Accident Claims Tribunal/ Additional District Judge, Court No.6, Lakhimpur-Kheri in MACP No. 146 of 2015 (Km. Kajal Mishra vs Amar Nath Singh and others) whereby the learned Tribunal has awarded lessor compensation with prayer to enhance the same.
3. The relevant facts which give rise to present appeal is victim Kumari Kajal Mishra was returning from her school after collecting her high school admit card on 11.02.2015. When she was standing at the side of the road, suddenly the Truck No. U.P. 31 T 6621 run over the leg of the victim Kajal resulting serious injuries over right leg of the victim. It was found that both bones of right legs of the victim fractured. Thereafter she was admitted in hospital for a

treatment and remained admit for 44 days and because of this injuries victim become 40% disabled as per medical certificate issued by the office of C.M.O. As the victim was 14 years old, therefore, she filed claim petition through her father Om Prakash Mishra which was allowed by the impugned judgement and award dated 29.08.2016 granting total compensation of appellant victim Rs.161,683/- considering her notional income of the applicant as Rs.15,000/- per annum. Feeling aggrieved by that award, present appeal has been filed.

4. Contention of counsel for the appellant is that at the time of accident on 11.02.2015 age of injured Kumari Kajal was 14 years and because of the incident there was permanent disability of 40%. Certificate of the same was also produced before the Tribunal but the learned Tribunal presumed the notional income of the appellant is Rs.15,000/- per annum.

5. It is further submitted by the counsel for the appellant that very meagre amount was granted for mental pain and agony and no amount was awarded for future income to the disability and also no amount was awarded for the amenity for living normal life. Further, no compensation was granted for loss of expectation of life as well as attendant charges though she remained in hospital for 44 days.

6. He also submitted that no amount for future medical expenses as well as loss of prospective medical charges was granted. He further submitted that no amount was paid for the transportation charge. He further contended that the learned Tribunal while awarding the compensation deducted 1/3rd income of the injured toward her personal expenses though the same is not permissible in the case of injuries.

7. In support of his contention, learned counsel for the appellant has relied upon the judgement of the Apex court in the case of

Kajal vs Jagdish Chand; AIR 2020 Supreme Court 776 as well as judgement of **Erudhaya Priya vs State of Express Transport Corporation Ltd. 2021 39 (1) 18** also the judgement of **Pappu Dev Yadav vs Naresh Kumar; AIR 2020 Supreme Court 4424**.

8. After hearing the learned counsel for the parties and from perusal of record, it is undisputed that the injured Kumari Kajal was 14 years old student at the time of accident and because of accident in question, she suffered permanent disability for 40%.

9. Hon'ble Apex Court in the case of **Raj Kumar vs Ajay Kumar and another; 2011 (1) SCC 343** has laid down the heads under which compensation is to be awarded in the case of personal injuries due to motor accident. Para 6 of the judgement is being quoted as under;

"6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

10. Thereafter, the Apex Court in the case of **Jagdish vs. Mohan and others; (2018) 4 SCC 571** after considering the judgement of **Raj Kumar (supra)** observed that in the calculation of award of compensation for a victim who suffered a permanent or temporary disability occasioned by an accident is entitled to award of compensation. The award of compensation must cover among other aspects. Para 8 of the aforesaid judgement is being quoted as under;

“8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:

- (i) Pain, suffering and trauma resulting from the accident;*
- (ii) Loss of income including future income;*
- (iii) The inability of the victim to lead a normal life together with its amenities;*
- (iv) Medical expenses including those that the victim may be required to undertake in future; and*
- (v) Loss of expectation of life.”*

11. Hon'ble Apex Court in the case of **Kajal (supra)** after relying the earlier judgement of the Apex Court observed in para 5 of the judgement that damages may vary according to gravity of the injuries sustained by the complainant in an accident. Para 5 of the **Kajal (supra)** case is being quoted hereinbelow;

“5. The principles with regard to determination of just compensation contemplated under the Act are well settled. The injuries cause deprivation to the body which entitles the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by the claimant in an accident. On account of the injuries, the claimant may suffer consequential losses such as:

- (i) loss of earning;*
- (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges, etc.,*
- (iii) loss or diminution to the pleasures of life by loss of a particular part of the body, and*
- (iv) loss of future earning capacity.*

Damages can be pecuniary as well as non-pecuniary, but all have to be assessed in rupees and paise.”

12. In the case of **Kajal (supra)**, the Hon’ble Apex Court also observed that 40% income of the injured for future prospect must be added in the light of para 59.4 of the **National Insurance Company vs Pranay Sethi; (2017) 16 SCC 680**.

13. Therefore, in view of judgement of **Kajal (supra)**, the injured victim is entitled to get compensation for following losses.

(i) loss of earning;

(ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges, etc.,

(iii) loss or diminution to the pleasures of life by loss of a particular part of the body, and

(iv) loss of future earning capacity.

14. The learned Tribunal has granted compensation of Rs.1,61,685 to the claimant.

Heads		Tribunal
i. Loss of income (@ Rs.15,000/- per annum)	-	Rs. 60,000/-
ii. Damages for pain, suffering and special diet during treatment -	Rs. 13200 (@ 300 per day x 44 years)	
iii. Expenses for medicines	-	Rs.74,485/-
iv. Expenses for treatment	-	Rs. 10,000/-

15. In the case of **Kajal (supra)**, the Hon’ble Apex Court observed that income of younger girl of 12 year who could have worked after studying @ Rs.15000/- per annum is not justified and determined the income of young girl of 12 year as Rs.4846/- per month on the basis of minimum wages payment to skilled workmen. Though at present, as per Government Notification dated 24.03.2023

minimum wages of daily wagers or unskilled manual worker in U.P. is around Rs.6900/- per month. Therefore, considering the income determined by the Apex Court in the case of **Kajal (supra)**, this Court determines the income of victim appellant as Rs.5000/- per month which she could have earned on becoming major and on considering the fact that the victim appellant was below 14 years, and her disability of 40% this Court further directs that 40% of her income be added for the future prospect. Thus, total income would come around Rs.7000/- per month as applicant suffered permanent disability of 40%, therefore, loss of annual earning would be $\text{Rs.7000} \times 40\% = 2800 \times 12 = \text{Rs. 33,600/-}$ and on applying the multiplier of 18 as per the case of **Sarla Verma and other vs. Delhi Transport Corporation and another; 2009 (2) SCC (Cri) 1002**. Total loss of income of victim comes to about **Rs.6,04,800/-**.

16. The tribunal has awarded Rs.13,200/- for pain and suffering and diet but the same is absolutely incorrect because as per judgement of **Malikarjun vs Divisional Manager, National Insurance Company Ltd.; (2014) 14 SCC 396** children suffering from disability on account of motor vehicle accident, are entitled to Rs.3,00,000/- up to disability of 60% for pain suffering, physical shape, hardship, inconvenience, discomfort and loss of amenities in life on account of permanent disability. This Court also determines Rs.25,000/- for the discomfort, inconvenience and loss of earning to the parents of the victim during the period of hospitalisation.

17. This Court also awards compensation for transportation to the victim as Rs.10,000/- and also Rs.50,000/- for surgery and fixing rod to correct the fracture of the victim which was erroneously awarded as Rs.10,000/- by the learned Tribunal.

18. On the basis of receipt of medicine, the Court has rightly awarded expenses of Rs.78,485/- for which no modification is

required. Therefore this Court on the basis of analysis, is awarded Rs.10,68,285/- as compensation to the appellant under the following heads.

Sl. No.	Heads	Amount (in Rs.)
i	Loss of Income	Rs. 6,04,800/-
ii.	Pain and suffering and to be suffered in future, mental physical shape, hardship, inconvenience and discomfort and also loss of amenities on account of permanent disability of 40% .	Rs.3,00,000/-
iii.	Medical Expenses for purchase of medicines.	Rs. 78,485/-
iv.	Discomfort, Inconvenience and loss of earning to the parents of victim during the period of her hospitalisation for 44 days.	Rs.25,000/-
v.	Transportation charges.	Rs.10,000/-
vi	Treatment (surgery and fixing rod to correct fracture.	Rs.50,000/-
	Total Compensation	Rs.10,68,285/-

19. The impugned judgement and award dated 29.08.2016 is accordingly modified. The appellant claimant will be entitled to the compensation of Rs.10,68,285/- along with interest @ 7% per annum from the date of filing the claim petition till payment/deposit of the amount.

20. Respondent no.3- Insurance Company is directed to deposit the enhanced compensation with interest as mentioned above within a period of two months from today as appellant has already become major as on date, therefore, she is entitled to withdraw the entire amount deposited before the tribunal. Insurance company shall be entitled to adjust the amount already paid to the claimant.

21. With the aforesaid observation, the appeal is **allowed**.

22. The office is directed to send back the record of learned Tribunal immediately.

Order date: 21.03.2024

A.Kr.