

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

MACA.No. 1504 of 2015 (A)

AGAINST THE AWARD IN OP(MV) 342/2013 OF PRL.M.A.C.T., KOZHIKODE
DATED 02-02-2015

APPELLANT :

MUNAVIRA (MINOR), AGED 10 YEARS,
DOB: 12.8.2005 REP. BY HER FATHER NEXT FRIEND ALI AKBAR,
S/O. SIDHIQUE, AGED 34 YEARS, RESIDING AT POOTHOTTATHIL HOUSE,
P.O.MAVOOR, KALPALLY, KOZHIKODE.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENT :

RELIANCE GENERAL INSURANCE CO.LTD.,
2ND FLOOR, CITADEL ARCADE, OPP.TAGORE CENTENARY HALL,
RC ROAD, KOZHIKODE -673 001.

BY ADV. SRI.K.B.RAMANAND

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 04-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

(CR)

P.R.RAMACHANDRA MENON & ANIL K.NARENDRA, JJ.

M.A.C.A.No.1504 of 2015

Dated this the 4th day of November, 2015

JUDGMENT

Ramachandra Menon, J.

Inadequacy of the compensation of **₹9,80,000/-** ordered to be paid with interest @ 9% per annum from the date of petition, till realization, in respect of the injuries sustained by the 'minor' girl of 7 years, is the subject matter of this appeal, seeking for enhancement.

2. The accident was on 24.9.2012 at about 9.45 am. when the appellant, who was aged 7 years at that point of time, was proceeding to school. She was knocked down by a tipper lorry bearing registration No.KL-57-A-9062 (owned, driven and insured by the respondents 1 to 3 before the Tribunal). Immediately, she was taken to MIMS Hospital, Kozhikode and thereafter to the Specialist Hospital at Ernakulam. After more than one month of hospitalization, the appellant was discharged

and thereafter, the loss was sought to be compensated by filing the claim petition.

3. The owner and driver of the offending vehicle did not choose to contest the matter and were set exparte. The insurance company admitted the policy, but denied the liability on general grounds. The evidence adduced before the Tribunal consists of the documents produced as Exts.A1 to A8 from the part of the claimant, besides Ext.C1 disability certificate. Exts.B1 and B2 (charge sheet and insurance certificate) were marked from the side of the respondent/insurer. After analysing the facts and figures, the Tribunal arrived at a finding that the accident was solely because of the negligence on the part of the driver of the lorry.

4. With regard to fixation of quantum of compensation payable, the Tribunal observed that the permanent disability was certified by the Medical Board of the Medical College Hospital, Kozhikode as 50%, vide Ext.C1, in view of amputation of the left leg, at the ankle. Observing that the injured was a minor girl of 7 years and hence having no income, recourse was sought to be

made to the 2nd schedule of the M.V.Act. But observing that the annual income specified therein as ₹15,000/- in the case of non-earning member was way back in the year 1994, the Tribunal chose to reckon the same at a higher level of **₹30,000/-** placing reliance on the decision rendered by the Supreme Court in **Kishan Gopal and another Vs. Lala and others (2013 ACJ 2594)**. Considering the age of the injured, the appropriate multiplier was fixed as '**15**' and compensation for the future loss of earning was worked out as **₹2,25,000/-** (₹30,000 x 15 x 50/100). A further sum of **₹2,00,000/-** was awarded to the loss of amenities and enjoyment in life, over and above the sum of **₹40,000/-** awarded towards pain and suffering. The entire treatment expenses covered by Ext.A8 series to the tune of **₹4,95,666/-** was awarded. Granting amounts under other relevant heads, a total compensation of **₹9,79,916/-** (rounded as ₹9,80,000) was awarded; which in turn has been ordered to be satisfied with interest @ 9% per annum. The question is whether the award passed by the Tribunal is a 'just' one or does it require any interference, if inadequate, as contended by the

appellant.

5. Heard the learned counsel for the appellant as well as Sri.K.B.Ramanand, learned counsel appearing for the insurance company.

6. The learned counsel for the appellant points out that the Tribunal ought to have awarded a minimum compensation of ₹1,00,000/- towards pain and suffering in the light of the ruling rendered by the Supreme Court in **Kumari Kiran through her father Harinarayan Vs. Sajjan Singh and others ((2015) 1 SCC 539)**, wherein a reference has been made to the earlier decisions rendered by the Supreme Court in **R.D. Hattangadi vs. M/s.Pest Control (India) Pvt. Ltd. and Others (1995 (1) SCC 551)** and **Master Mallikarjun Vs. Divisional Manager, The National Insurance Company Limited (2013 (3) KLJ 815: 2014 SCC 396)**. In the said case, claim for injuries sustained by two minor children aged 10 years and 15 years respectively was involved; besides the claim preferred by their father. The disability sustained by the minor children in the said case were 30% and 20% respectively and in respect of both, the

Supreme Court granted a sum of ₹3,00,000/- towards the permanent disability/loss of amenities and another sum of ₹1,00,000/- each towards pain and suffering. The Apex Court held that, a child cannot be equated to a non-earning person and hence, compensation was to be worked out under 'non-pecuniary heads', in addition to the actual amounts/expenses incurred. It was accordingly, that a sum of ₹1,00,000/- was awarded towards 'pain and suffering', also ordering that the loss of amenities resulted because of the disability had to be compensated to an extent of ₹3,00,000/-.

7. The learned counsel for the appellant points out that in the instant case, the Tribunal has awarded only sum of ₹40,000/- towards 'pain and suffering' and no amount has been awarded towards parents' agony and towards future medical expenses; whereas a sum of ₹25,000/- each was awarded by the Supreme Court under these two heads in the aforesaid case, i.e., **Kumari Kiran through her father Harinarayan Vs. Sajjan Singh and others ((2015) 1 SCC 539)**. The learned counsel further submits that the disability in the instant case is 50% (as covered

by Ext.C1) and by virtue of the law declared by the Supreme Court in **Mallikarjun's** case, children with disability to an extent of 30% are eligible to get a compensation of ₹3,00,000/-; those with disability between 30-60% are eligible to get ₹4,00,000/-; those having disability between 60-90% are entitled to get compensation of ₹5,00,000/- and for those having it above 90%, the figure was ₹6,00,000/-. This being the position, the amount requires to be enhanced/varied, based on the said norm as well, submits the learned counsel for the appellant.

8. The learned counsel appearing for the insurance company submits that the idea and understanding of the appellant is thoroughly wrong and misconceived. The extent of disability mentioned by the Supreme Court is the 'total whole body disability' and not otherwise. That apart, the slab fixed by the Apex Court in **Mallikarjun's** case fixing the maximum amount in respect of the extent of disability, is the total amount payable, in addition to the actual expenses for treatment, attendant, etc. This naturally includes the amounts payable for pain and suffering, loss of amenities, loss of future earning

power/disability and such other heads, if any separate/split up exercise is to be pursued. On going through the contents of the said findings, we find considerable force in the said submission made by the learned counsel for the insurance company.

9. The observation made by the Apex Court in Mallikarjun's case, particularly as contained in paragraph 12 is relevant, which hence is extracted below:-

"12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization for about two months causing also inconvenience and loss of earning to the parents. The appellant, hence,

would be entitled to get the compensation as follows:

HEAD	COMPENSATION AMOUNT
Pain and suffering already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience, and discomforts, etc., and loss of amenities in life on account of permanent disability.	Rs.3,00,000/-
Discomfort, inconvenience and loss of earnings to the parents during the period of hospitalization.	Rs.25,000/-
Medical and incidental expenses during the period of hospitalization for 58 days.	Rs.25,000/-
Future medical expenses for correction of the mal union of fracture and incidental expenses for such treatment.	Rs.25,000/-
TOTAL:-	Rs.3,75,000/-

10. The point to be considered is whether the award now passed by the Tribunal could be treated as in conformity with the law declared by the Supreme Court, to hold whether it is a 'just' award or not, as envisaged under Section 168 of the M.V.Act. The amounts awarded by the Tribunal in the instant case are as given below:-

	The compensation claimed under different heads	Amount claimed	Amount awarded	Basis/vital details in a nutshell
1	Transport to hospital	10,000/-	6,000/-	

	The compensation claimed under different heads	Amount claimed	Amount awarded	Basis/vital details in a nutshell
2	Damages to clothings and articles	2,000/-	500/-	
3	Extra nourishment	10,000/-	4,500/-	
4	Bystander's expenses	15,000/-	8,250/-	250x33 days (Exts.A4 and A5)
5	Treatment expenses	5,00,000/-	4,95,666/-	Ext.A8 series
6	Pain and sufferings	40,000/-	40,000/-	
7	Loss of earning power	2,50,000/-	2,25,000/-	30000x15x50/100
8	Future prospects, disfiguration and loss of amenities and enjoyment of life	4,00,000/-	2,00,000/-	
	Total		9,79,916/-	

11. The total amount awarded by the Tribunal towards bystander's expenses, pain and suffering, loss of future earning power and future prospects/disfiguration and loss of amenities and enjoyment in life comes to **₹4,73,250/-** (₹8,250+₹40,000+₹2,25,000+₹2,00,000). **This is much above the total figure of ₹4,00,000/-** awarded by the Apex Court under the relevant heads in **Mallikarjun's** case. The former figure is also over and above the amount of compensation awarded by the Supreme Court in **Kumari Kiran through her father Harinarayan Vs. Sajjan Singh and others ((2015) 1 SCC 539)**. In the said circumstances, this Court is of the firm view that the total

amount of **₹9,79,916/-** awarded by the Tribunal does not require any modification/enhancement at the hands of this Court. It is held that the award passed by the Tribunal is a 'just' one, in conformity with the mandate of Section 168 of the M.V.Act.

Interference is declined. The Appeal stands dismissed.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE

Sd/-

ANIL K.NARENDRA, JUDGE

skj