

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**FAO No.669 of 2015 (O&M) and
XOBJC-128-CII-2015
Date of decision :06.04.2016**

New India Assurance Company Ltd.

.....Appellant

Versus

**Aksh (minor aged 5 years) through his father and natural guardian
Ajay Sharma and others**

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Vinod Gupta, Advocate for appellant.

Mr. Ashwani Arora, Advocate for respondent No.1-cross objector.

Respondent No.2 proceeded against *ex parte*.

DARSHAN SINGH, J.

Appellant-New India Assurance Company Ltd., who is respondent No.3 in the claim petition before the learned Motor Accidents Claims Tribunal, Chandigarh (hereafter called the 'Tribunal'), has preferred this appeal against the award dated 05.11.2014 passed by the Tribunal, vide which compensation to the tune of Rs.27,05,015/- has been awarded to the respondent No.1-claimant on account of the injuries

suffered by him in the motor vehicular accident which took place on the night intervening 12/13.11.2012.

2. The appellant-Insurance Company has preferred the appeal assailing the quantum of compensation awarded to the claimant.

3. Respondent No.1-claimant has filed the cross-objections under Order 41 Rule 22 read with Section 151 of the Code of Civil Procedure, 1908 for enhancement of the amount of the compensation.

4. Initiating the arguments, Mr. Vinod Gupta, Advocate, learned counsel for the appellant-Insurance Company contended that the claimant-injured was only a child of five years. His notional income has been taken by the learned Tribunal to be Rs.6000/- per month, which is exorbitant. The notional income of respondent No.1-claimant should not have been taken more than Rs.15,000/- per month. He further contended that the attendant charges have been awarded taking the salary of the attendant at the rate of Rs.5000/- per month, which is also exorbitant. It should not have been more than Rs.2000/- per month. Thus, he contended that excessive amount has been awarded by the learned Tribunal.

5. On the other hand, Mr. Ashwani Arora, Advocate, learned counsel for the respondent No.1-cross objector-claimant contended that the notional income of the claimant taken by the learned Tribunal is fully justified. He belonged to a good family and there were good prospects of the income of respondent No.1-claimant. He further contended that he has suffered 100% disability. He has also lost his mother in this accident. The salary of the attendant has also been rightly taken by the learned Tribunal. He further contended that learned Tribunal has awarded the

attendant charges by applying the multiplier of 18. He contended that the multiplier of 25 should have been applied keeping in view the life expectancy of respondent No.1-claimant. To support his contentions, he relied upon case ***Kavita Vs. Deepak and others 2012(4) RCR (Civil) 273.***

6. I have duly considered the aforesaid contentions.

7. Respondent No.1-claimant, a male child of five years, has suffered the injuries in this accident. As per the disability certificate Ex.CW4/1, he has suffered permanent disability on both the lower limbs to the extent of 100% on account of spinal cord injury. The doctor has categorically stated in the cross-examination that disability of the claimant is life long and cannot decrease over a period of time. So, claimant Aksh has become 100% disable permanently for whole of his life.

8. In order to assess the compensation of amount of the future loss of income, the learned Tribunal has taken the notional income of the claimant at the rate of Rs.6000/- per month *i.e.* at par with the minimum wages of an unskilled labour. So, no fault can be found with the notional income of the claimant taken by the learned Tribunal and the compensation computed by it under this head.

9. The claimant has examined PW1 Sarla, who was employed as a maid to look after the claimant who is bed-ridden. She stated that she is getting salary at the rate of Rs.6000/- per annum. She is looking after the claimant from 7:00 a.m. to 7:00 p.m. *i.e.* for whole of the day. The learned Tribunal has taken the average expenses of the attendant at the rate of Rs.5000/- per month. Though PW1 Sarla was

claiming that she was getting the salary at the rate of Rs.6000/- per month for looking after the claimant. So, the attendant charges taken by the learned Tribunal at the rate of Rs.5000/- per month are quite reasonable in view of the working hours of the attendant.

10. In order to assess the compensation on account of the attendant charges for whole of the life of respondent No.1-claimant learned Tribunal has applied the multiplier of 18. Respondent No.1-claimant is a child of 5 years of age. In case ***Kavita Vs. Deepak and others*** (supra), the injured-claimant was 31 years of age. Taking into consideration to life expectancy to be 55 years, the Hon'ble Apex court has applied the multiplier of 25 years for attendant charges. The case in hand is even on better footings as the respondent No.1-claimant was only a child of 5 years at the time of the accident. So, the attendant charges should have been granted by the learned Tribunal for 25 years instead of 18 years. The amount of compensation under this head will come to Rs.15,00,000/- (5000 x 12 x 25). So, respondent No.1-claimant shall be entitled to the increase of Rs.4,20,000/- towards the attendant charges and consequently this very increase in the total awarded amount of compensation raising it from Rs.27,05,015/- to Rs.31,25,015/-.

11. Thus, keeping in view my aforesaid discussion, the appeal filed by the appellant-Insurance Company, being without any merits, is hereby dismissed and the cross-objections filed by respondent No.1-claimant are hereby allowed. The amount of compensation is enhanced by Rs.4,20,000/- raising the total amount of compensation to Rs.31,25,015/- instead of Rs.27,05,015/- as awarded by the learned

Tribunal. Respondent No.1-claimant shall be entitled to interest on the enhanced amount from the date of filing the petition till realisation @ 7.5% per annum as determined by the learned Tribunal. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

06.04.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**