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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 14th March, 2016

+ **MAC APPEAL No.345/2011 & CM No. 7664/2011 (stay)**

NATIONAL INSURANCE CO. LTD. Appellant

Through: Mr. Pankaj Seth, Adv.

Versus

BABY HEENA & ORS. Respondents

Through: Mr.S.N. Parashar, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent (the claimant), then aged 10 years, suffered injuries in a motor vehicular accident that occurred at about 10.45 a.m. on 02.07.2004 at a place opposite Leprosy Mission Hospital near Water Tank Tahirpur, on Tahirpur road, Nand Nagri involving motor vehicle bearing registration No. DL 1L 4667 (the offending vehicle), admittedly insured against third party risk with the appellant insurance company (insurer). A claim petition was filed on her behalf under Sections 166 and 140 of Motor Vehicles Act, 1988, (MV Act), on 13.09.2006, impleading the insurer as third respondent in addition to the driver and owner respectively of the offending vehicle as first and second respondents.

2. The tribunal held inquiry and, by judgment dated 31.01.2011, granted compensation in the sum of ₹ 5,46,690/- with interest in her favour, computing the compensation as under:-

Sl.	On Account of	Amt. (Rs.)
1.	Estimated medical expenses	5,000/-
2.	Future loss of income (Minimum wage x 12 x 15 X62%).	3,19,510
3.	Attendant charges	17,180
4.	Pain and Suffering	50,000
5.	Conveyance and Special Diet	5,000
6.	Loss of marriage prospect	50,000
7.	Loss of future amenities of life	1,00,000
	TOTAL	5,46,690

3. The insurance company, by the appeal at hand, challenges the computation of compensation the liability to pay which has been fastened on it, mainly raising the issue that the method of calculation by the tribunal was erroneous, in that future loss of income has been calculated in the case of a child on the lines generally adopted for adult persons in the working age group, referring to the view taken by Supreme Court in *Master Mallikarjun vs. Divisional Manager, the National Insurance Co. Ltd. & Anr.*(2014) 14 SCC 396.

4. *Per contra*, the learned counsel for the claimant referred to a later judgment of the Supreme Court reported as *Kumari Kiran vs. Sajjan Singh & Ors.* (2015) 1 SCC 539, though conceding that the view in *Master Mallikarjun* (supra) was reiterated, mainly to contend that all the requisite

heads of damages were not taken care of in the former judgment. The main thrust of the argument of the counsel for the claimant was that the compensation awarded in the aforementioned sum cannot be said to be unduly high and, therefore, there is no cause for interference.

5. In *Master Mallikarjun* (supra), the Supreme Court observed as under:

“7. It is unfortunate that both the Tribunal and the High Court have not properly appreciated the medical evidence available in the case. The age of the child and deformities on his body resulting in disability, have not been duly taken note of. As held by this Court in R.D. Hattangadi v. Pest Control (India) (P) Ltd (1995) 1 SCC 551, while assessing the non-pecuniary damages, the damages for mental and physical shock, pain and suffering already suffered and that are likely to be suffered, any future damages for the loss of amenities in life, like difficulty in running, participation in active sports, etc. damages on account of inconvenience, hardship, discomfort, disappointment, frustration, etc. have to be addressed especially in the case of a child victim. For a child, the best part of his life is yet to come.

8. While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act for reasons more than one. The main stress in the formula is on pecuniary damages. For children there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs 15,000 per year. A child cannot be equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. The appropriate compensation for disability should take care of all the non-pecuniary damages. In other words, apart from this head, there shall only be the claim for the actual expenditure for treatment, attendant, transportation, etc.

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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 up to 30% to the whole body, Rs 3 lakhs; up to 60%, Rs 4 lakhs; up to 90%, Rs 5 lakhs and above 90%, it should be Rs 6 lakhs. For permanent disability up to 10%, it should be Rs 1 lakh, unless there are exceptional circumstances to take a different yardstick.

13. In the instant case, the disability is to the tune of 18%. The appellant had a longer period of hospitalisation 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: ”

(emphasis supplied)

6. In *Kumari Kiran* (supra) the fact-situation was similar to the one in *Master Mallikarjun* (supra), as indeed in the case at hand. The Supreme Court followed the view taken in *Master Mallikarjun* (supra) and calculated the compensation awardable to the two minor children, rendered permanently disabled to the extent of 30% and 20% respectively, added Rs. 1,00,000/- each on account of pain & suffering in addition to the awards under the non-pecuniary heads of agony to parents, transportation, special diet & nutrition and future medical expenses, besides the actual expenditure under the heads of medical expenses, and attendant. Noticeably, no award for loss of future income due to disability was granted in the said cases and instead, the method of awarding compensation on account of permanent disability/loss of amenities as commended in *Master Mallikarjun* (supra) was adopted.

7. In the considered view of this Court, in a case of disability of a child of such age, compensation under the head of loss of marriage prospects also deserves to be added.

8. The claimant here proved by evidence that she had suffered degloving injury on the left lower leg and foot which required repeat surgical procedures including skin drafting. She has been rendered disabled on account of locomotor impairment which is assessed by the medical authorities to be to the extent of 62% in relation to the left lower limb. The learned counsel for the insurance company had submitted before the tribunal that 50% of the said disability assessed by the medical authorities may be taken as the disability in relation to the whole body. The learned counsel for the claimant fairly concedes that the said submission was correct and may be accepted.

9. In the above view, the functional disability suffered by the claimant in the case at hand is accepted as over 30% in relation to the whole body. Therefore, the compensation under the head of “permanent disability/loss of amenities” in this case would be Rs. 4,00,000/-. Adopting the other heads of damages granted in the case of *Kumari Kiran* (supra), the compensation in the sum of Rs. 1,00,000/- towards pain & suffering; Rs. 25,000/- towards agony to parents; Rs.5,000/- towards transportation charges; Rs.10,000/- towards special diet & nutrition and Rs. 25,000/- towards future medical expenses are granted. Adding the actual medical expenses assessed by the tribunal in the sum of Rs. 5,000/- and Rs.17,180/- for attendant charges besides Rs. 50,000/- awarded on account of loss of marriage prospects, the total compensation payable in the case is computed as Rs. (4,00,000/- + 1,00,000 + 25,000 + 5,000 + 10,000+ 25,000 + 5,000 + 17,180 + 50,000) Rs. 6,37,180/-

10. In above view, the compensation awardable to the first respondent (claimant) in the case at hand is calculated at Rs. 6,37,180/- rounded off to Rs. 6,38,000/-. The award is enhanced accordingly. It shall carry interest as levied by the tribunal.

11. The insurance company had been directed by order dated 21.04.2011 to deposit the entire awarded compensation with upto date interest within the period specified and out of the said amount 50% was allowed to be released. The balance shall also be released to the claimant forthwith. The insurance company will be obliged in terms of the above order to pay further amount to the claimant. The amount payable in terms of the award modified as above, shall be deposited with the tribunal within 30 days whereupon it shall be released to the claimant.

12. Statutory deposit, if made, shall be refunded.

13. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 14, 2016

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