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

Date of Decision: 4th April, 2016

+ **MAC.APP. 685/2012**

ORIENTAL INSURANCE COMPANY LTD

..... Appellant
Through Mr. R K Tripathi, Adv.

Versus

MASTER ARUN & ORS

..... Respondent
Through Mr. K K Dubey, Adv. for R-1

**CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA**

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The motor accident claims tribunal (tribunal) by judgment dated 26.04.2012 while deciding accident claim case registered as MACT No.837/10/06 under Sections 166 and 140 of 1988 (MV Act) awarded compensation in the sum of Rs.4,95,386/- in favour of the claimant (first respondent) on account of injuries suffered by him in a motor vehicular accident that had occurred at about 5 PM on 18.09.2006 involving bus bearing registration No.DL 1PA 0761 (the offending vehicle), proved at the inquiry to have been driven in a negligent manner by the second respondent herein, it being owned by the third respondent and admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question.

2. During the inquiry, it was proved that the claimant had suffered disability to the extent of 56% in respect of his right upper and left lower limb on account of the injuries suffered, the said fact having been brought home through disability certificate (Ex.PW2/26) proved by PW3 (the doctor) who opined that there was no possibility of improvement in future. The claimant at the relevant point of time was 10 year old student of sixth standard.

3. The tribunal awarded the compensation, thus :

Pecuniary damages (Special damages):

a) Medical expenses -----	Rs.8,886/-
b) Notional income (Loss of income)-----	Rs.22,500/-
c) Loss of earning capacity -----	Rs.1,89,000/-
d) Special diet -----	Rs.10,000/-
e) Conveyance charges -----	Rs.15,000/-
f) Future medical expenses -----	Rs.25,000/-

Non-pecuniary damages (General damages):

g) Pain, sufferings, metal shock, trauma, etc. -----	Rs.50,000/-
h) Loss of amenities and shortening of life -----	Rs.75,060/-
i) Loss of marriage prospects, loss of expectation, etc. --	Rs.1,00,000/-
Total	Rs.4,95,386/-

4. The tribunal added the element of interest at 9% per annum and while directing the insurance company to satisfy the award further ordered Rs.31,000/- to be paid as counsel's fee with Rs.4,000/- as out-of-pocket expenses to the advocate engaged by the claimant.

5. By appeal at hand, the insurer expresses grievance as to the direction for payment of counsel's fee and out-of-pocket expenses and also about the calculation of loss of income and earning capacity on the ground the method of calculation of adding the element of future prospects of increase over and above the assumed income (Rs.15,000/- per annum) was inappropriate.

6. In *Master Mallikarjun v. Divisional Manager, The National Insurance*

Company Ltd. (2014) 14 SCC 396, the Supreme Court had 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)

7. By subsequent judgment *Kumari Kiran v. Sajjan Singh* (2015) 1 SCC 539, the view taken in *Master Mallikarjun* (supra) was reiterated and while the compensation was calculated on the method commended in *Master Mallikarjun* (supra), additions were made in the sum of Rs.1 lakh each on account of pain and suffering besides 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 charges. 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. It may be added here that in *Kumari Kiran* (supra), the claimants were two minor children who had suffered disability to the extent of 30% and 20% respectively.

8. The view taken by Supreme Court in *Master Mallikarjun* (supra) and *Kumari Kiran* (supra) was applied by this Court in judgment dated 14.03.2016 in MAC.APP.No.345/2011 *National Insurance Co. Ltd. v. Baby Heena* with following observations :

“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.”

9. There is no reason why the present case should not have resulted in similar award being made. Since the claimant here has proved to have

suffered permanent disability to the extent of 56%, following the directions in *Master Mallikarjun* (supra), the amount of Rs.4 lakhs deserves to be awarded as compensation in addition to actual expenditure incurred for treatment, attendant charges etc. Since the tribunal found it proper to add pecuniary damages including Rs.8,886/- for medical expenses, Rs.10,000/- towards special diet, Rs.15,000/- towards conveyance charges and Rs.15,000/- towards future medical expenses (total Rs.58,886/-), rounded off to Rs.60,000/-, the same have to be added besides inclusion of Rs.1 lakh towards pain and suffering, Rs.25,000/- towards agony of parents and Rs.50,000/- towards loss of marriage prospects.

10. Thus, the total compensation payable in the case is calculated as (4,00,000 + 60,000 + 25,000 + 50,000) Rs.5,35,000/-.

11. For the foregoing reasons, the compensation payable to the first respondent (claimant) is enhanced to Rs.5,35,000/-. It shall carry interest at 9% per annum from the date of filing of the petition till realization.

12. The direction of out-of-pocket expenses and counsel's fee to the appellant being uncalled for are, however, set aside.

13. The insurer had deposited the entire awarded amount except the counsel's fee etc. with UCO Bank, Delhi High Court branch, in terms of order dated 06.07.2012. From out of the said deposit 40% was allowed to be released with further Rs.1 lakh released by order dated 09.11.2012.

14. The Registrar General shall now take steps to release the balance amount lying in deposit to the claimant. In view of the above mentioned directions, modifying the award, the insurer will be obliged to pay more. It shall do so by depositing the requisite amount with the tribunal within 30 days whereupon it shall be released to the claimant.

15. The statutory deposit, if made, shall be refunded.
16. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 04, 2016
VLD

