

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3476 of 2005 (O&M)
Date of Decision: 19.12.2017

Baby Sonam

... Appellant

Versus

M/s Kamal Tours & Travels and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sandeep Kotla, Advocate,
for the appellant.

Mr. Vinod Chaudhary, Advocate,
for respondent No.2.

RAJIV NARAIN RAINA, J.(Oral)

Heard Mr. Kotla and Mr. Chaudhary for the claimant and the Insurance Company. The liability of the Insurance Company is not disputed and any enhancement made from the amount awarded would be shouldered by the insurer of the offending vehicle. The injury as a result of the accident is in nature permanent disability assessed at 22%. The injured child was a young girl of 10 years at the time of motor accident. She has suffered shortening of the right leg by an inch. The treatment was taken at Sir Ganga Ram Hospital, New Delhi. She was operated before the claim petition was filed. The Motor Accident Claims Tribunal, Fatehabad vide award dated April 20, 2005 has awarded compensation as ₹1,55,000/-. The appeal is for enhancement of compensation. Post award the appellant suffered another operation at Sir Ganga Ram Hospital, New Delhi in 2008 in follow up of the

old surgery arising out of the same accident and injury. During the second operation her family has incurred medical expenses to the tune of ₹2,22,834/- for which an application has been moved under Order 41 Rule 27 CPC to lead those documents by way of additional evidence in appeal. Opportunity was given to the Insurance Company on November 16, 2017 to verify the medical bills, copies of which were handed over long ago.

Mr. Chaudhary has forwarded those to his Company but does not join issue on the medical bills. They are, therefore, accepted as payable by the Insurance Company. The question which falls for consideration is as to the just compensation payable for loss of marriage prospects, the appellant may have suffered.

The appellant is present in Court today. She is by now 27 years of age. She says that she was married but the marriage broke down and she is divorced. The marriage broke up after nine months. She attributes her broken marriage to the shortening of leg and to the permanent disability she suffers.

It is not possible to return a finding on such an oral plea not substantiated by evidence but having regard to the physical disability of the appellant it can be assumed that she would have had a disadvantage in finding a suitable husband.

Mr. Chaudhary has cited judgments of the Supreme Court in M.D. Jacob v. United India Insurance Ltd. and another, 2014 (1) RCR (Civil) 874; Sanjay Kumar v. Ashok Kumar and another, (2014) 5 SCC 330; V.Mekala v. M.Malathi and another, (2014) 11 SCC 178; Kum. Michael v. Regional Manager Oriental Insurance Co. Ltd. and another, 2013 (2) RCR

(Civil) 139 & Sabitha Salim v. P.A. Gopi and others, 2017 ACJ 1046 to submit that caution demands that excessive amount should not be awarded in case of loss of marriage prospects. He cites cases where the Supreme Court has awarded only ₹75,000/- in a judgment which is of recent origin though the injuries may have been suffered in times past.

However, looking to the facts and circumstances of this case and the future of the appellant bleak having lost her father in 2003 and that she lives with the mother in Fatehabad in rented accommodation as per statement made at the Bar, and that is one of two sisters and the other is married, then be that as it may and all said and done, in the view of this Court ₹1 lakh compensation for permanent disability with publically visual handicap is not sufficient or just compensaion in an action brought under Section 166 of the MV Act, 1988 when rash and negligent driving is proved by the driver of the offending vehicle.

Having regard to the fact that the injured was young girl of 10 years and for to live with and reconcile with the permanent disability throughout her life, then for reduced marriage prospects, pain and suffering, psychiatric shock which remains permanently imbedded in mind, loss of society, loss of opportunities in life because of the handicap and the inability to overcome disability I feel that it would be proper, fair and just to enhance the compensation by ₹2 lakh more than awarded i.e. to the tune of ₹3 lakh. Medical expenses will add ₹2,22,834/- to the amount of compensation. ₹30,000/- towards medical expenses & transportation and for attendant. ₹25,000/- for pain and suffering is maintained.

The appeal is partially allowed. The award is modified. The

amount be calculated and deposited within six weeks before the MACT/Executing Court to be disbursed to the claimants without delay from the date of receipt of certified copy of the order. Rate of interest is maintained as awarded by the Tribunal

(RAJIV NARAIN RAINA)
JUDGE

19.12.2017
manju/Vimal

Whether speaking/reasoned *Yes*

Whether reportable *No*