IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 3814 of 2013 (O&M)
Date of decision: 17.08.2017

Jagroop Singh .... *Appellant*

Versus

Kulwant Singh and others ....*Respondents*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Kushagra Mahajan, Advocate
for the appellant

Mr. Sanjeev Goyal, Advocate
for respondent No. 3 Insurance Company

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Rekha Mittal, J.

The injured victim is in appeal seeking enhancement of compensation in regard to injuries sustained by him in a motor vehicular accident that took place on 09.04.2010.

The Motor Accidents Claims Tribunal, Amritsar (hereinafter to be referred as 'the Tribunal') awarded a sum of Rs.12,80,109.00 under the following heads:-

Loss of future Income on account of disability to the extent of 100%	Rs.6,48,000.00
Expenses on medical treatment	Rs.4,32,109.00
Physical pain and mental shock	Rs.1,00,000.00
Loss of amenities and expectation of life	Rs.1,00,000.00

Counsel for the appellant would contend that the Tribunal has assessed loss of income on account of disability by adopting a multiplier of 18 but income assessed by the Tribunal is on lower side. It is further argued that the Tribunal has not extended benefit of increase in income for future prospects while assessing loss with regard to disability/future income as the claimant suffered disability to the extent of 100%. It is further argued that compensation awarded for non-pecuniary damages is inadequate and needs enhancement.

Counsel representing the insurance Company would urge that the Tribunal has adopted a wrong approach while assessing compensation for loss of income as the injured victim is a child aged 13 years and student of 7th class at the relevant time. It is further argued that Hon'ble the Supreme Court of India in ***Master Mallikarjun v Divisional Manager, the National Insurance Company Limited, 2013 (4) R.C.R. (Civil) 295*** has laid down, the criteria to be followed for assessing compensation when the injured victim happens to be a child. It is argued with vehemence that compensation awarded by the Tribunal is much more than what is admissible in view of the criteria prescribed in the referred authority. For this purpose, he has further referred to judgment of Hon'ble the Supreme Court ***Kumari Kiran through Her father Harinarayan v. Sajjan Singh and others, 2014 (4) R.C.R. (Civil) 362*** wherein Hon'ble the Apex Court has reiterated what has been held by the earlier Division Bench in *Mallikarjun's* case (supra).

Counsel for the claimant has supported the multiplier method applied by the Tribunal for assessing loss of future income by relying upon judgment of Hon'ble the Supreme Court ***V. Mekala v. M Malathi and another 2014(2) R.C.R. (Civil) 880.***

I have heard counsel for the parties and perused the paper book particularly the award impugned.

It is undisputed position of the case that the injured victim was a child aged 13/14 years and student of 7th Class, therefore, he was not engaged in any occupation nor having a source of income.

Hon'ble the Supreme Court in *Mallikarjun's* case (supra) while dealing with grant of compensation in case of disability to a child victim has laid down in paras 8 and 9, reads as follows:-

> *8. 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 vs. M/s. Pest Control (India) Pvt. Ltd. and Others 1995 ACJ 366 (SC), 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. 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. 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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> *9. Sapna vs. United Indian Insurance Company Limited and Another 2008 ACJ 2148 (SC) is the case of a 12 year old girl who suffered 90% disability in her left leg. This Court granted a lump sum amount of Rs.2,00,000/- on these heads."*

This judgment was rendered by Hon'ble the Apex Court on 26.08.2013. Later, a two Judge Bench in *V Mekala's* case (supra) had allowed compensation for loss of future income to a child victim by adopting a multiplier but the Court had not considered the judgment passed by the earlier Bench in *Mallikarjun's* case (supra). Still later, another two Judge Bench in *Kumari Kiran*'s case (supra) of which Hon'ble Mr. Justice V Gopala Gowda was one of the members and also a member in *V Mekala's* case (supra) reaffirmed the views taken in *Mallikarjun's* case (supra) but without considering the judgment in *V Mekala's* case (supra). As the Bench that decided *V Mekala's* case (supra) did not take into consideration earlier judgment in *Mallikarjun*'s case (supra), the view held in *Mallikarjun's* case (supra) is to be followed for assessing compensation in cases where the injured happens to be a child victim. By following the ratio laid down in Mallikarjun's case (supra), the claimant shall be entitled to **Rs.6,00,000.00** for pain and suffering already undergone and suffering for future, mental and physical hardship, inconvenience and disability etc. and loss of amenities of life on account of permanent disability. Compensation of Rs.4,32,109.00 qua expenses on medical treatment awarded by the Tribunal is affirmed.

Counsel for the appellant has submitted that the Tribunal has not awarded any compensation for future medical expenses. Though there is no clear evidence available on record with regard to requirement of medical treatment in future but as the injured victim suffered disability to the extent of 100%, he is awarded Rs.25,000.00 for future medical expenses. Compensation awarded by the Tribunal to the tune of Rs.1,00,000.00 for physical pain and mental shock and another Rs.1,00,000.00 for loss of amenities and expectation of life is order to be set aside in view of the fact that the claimant has been awarded Rs.6,00,000.00 on various counts, detailed herein before.

In view of the above, total compensation payable to the claimant comes to **Rs.10,57,109.00** (6,00,000.00 + 4,32,109.00+ 25,000.00). As such, compensation awarded by the Tribunal is reduced to the extent of **Rs.2,23,000.0**0 (12,80,109-10,57,109).

The Tribunal has held that the claimant is entitled to interest at the rate of 6% per annum but the interest would be payable if the respondents fail to pay compensation within two months. The Tribunal has not assigned any reason to deny pendente lite interest to the claimant or allowing concession of interest to the respondents. It is not the plea of respondents that claimant can be attributed delay in conclusion of proceedings by the Tribunal. Under the circumstances, compensation assessed in appeal shall carry interest at the rate of 7.5 % per annum from the date of petition till realization disregarding whether compensation assessed by the Tribunal was paid within two months or otherwise. The insurance company shall be entitled to recover excess amount, if any, paid to the claimant, in accordance with law.

The appeal stands disposed of in the aforesaid terms.

No orders as to costs.

(Rekha Mittal)
Judge

17.08.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No