

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

FAO No.1406 of 2004

Date of Decision : 21.02.2019

Banika

....Appellant

V/S

Mrs. Krishna Devi and others

....Respondents

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Ms. Ekta Thakur, Advocate for the appellants.
Mr. Neeraj Khanna, Advocate for respondent-Insurance Company.
None for the other respondents.

B.S. WALIA, J.

[1] Appeal has been filed seeking enhancement of compensation of ₹70,000/- awarded by the learned Motor Accidents Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') on account of injuries suffered, resulting in 11% permanent disability *qua* whole body.

[2] Learned counsel for the appellant contends that the appeal is liable to be allowed, award modified and compensation payable enhanced by awarding ₹3,00,000/- on account of pain & suffering in the light of a decision of Hon'ble the Supreme Court in 'Master Mallikarjun versus Divisional Manager, The National Insurance Company Limited and another', 2015(1) SCC Civil 335 in view of the appellant having sustained 11% permanent disability *qua* whole body.

[3] The paper book and record of the FAO was destroyed in a fire. The paper book has been re-constructed from the salvaged record.

[4] I have considered the submissions of learned counsel for the appellant, as well as the respondent-Insurance Company in the light of the legal position, as well as decision of Hon'ble the Supreme Court in 'Master Mallikarjun's case (*supra*).

[5] The learned Tribunal by taking into account that the appellant had lost one year of her study, undergone pain & suffering, spent some money on her medical treatment and transportation and suffered disability of 11% in relation to her whole body as also that her condition was likely to improve, awarded a lump sum compensation of ₹70,000/-.

[6] Learned counsel for the appellant has placed reliance upon the decision in **Master Mallikarjun's** case (supra). Relevant extract of the aforementioned decision is reproduced as under:-

“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 upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization 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: -

HEAD	COMPENSATION AMOUNT
<i>Pain and suffering already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience, and discomforts, etc., and loss of amenities in life on account of permanent disability.</i>	Rs.3,00,000/-
<i>Discomfort, inconvenience and loss of earnings to the parents during the period of hospitalization.</i>	Rs.25,000/-
<i>Medical and incidental expenses during the</i>	Rs.25,000/-

<i>period of hospitalization for 58 days.</i>	
<i>Future medical expenses for correction of the mal union of fracture and incidental expenses for such treatment.</i>	<i>Rs.25,000/-</i>
<i>TOTAL</i>	<i>Rs.3,75,000/-</i>

[7] Learned counsel contends that in view of having suffered 11 % disability qua her whole body, the appellant is entitled to award of ₹3,00,000/- on account of pain & suffering alone. I have considered the submission of learned counsel and am of the view that in the light of the position as noted above, the appellant is entitled to a sum of ₹3,00,000/- on account of pain & suffering in addition to ₹70,000/- already awarded which shall be adjusted on account of loss of one year of studies of the appellant besides medical expenses, loss of amenities of life and future prospects, transportation expenses and special diet. Accordingly, the appellant is held entitled to total compensation of ₹3,70,000/- as against ₹70,000/- awarded by the learned Tribunal along with interest @ 9% per annum w.e.f. the date of claim petition, till date of payment.

[8] Needless further to mention, apportionment of liability shall be as fixed by the learned Tribunal i.e. 60% to be paid by the owner and driver of the offending vehicle and 40% by the driver of the vehicle in which the deceased was travelling. Besides Insurance Company shall make payment of the awarded amount as ordered by the learned Tribunal and shall be at liberty to recover the same as allowed by the learned Tribunal.

[9] Accordingly, appeal is *allowed*, award dated 06.12.2003, passed by the learned Tribunal, Chandigarh is *modified* to the extent as noted above.

(B.S. WALIA)
JUDGE

February 21, 2019
'Rajneesh'