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HIGH COURT OF CHHATTISGARH, BILASPUR**M.A. (C) No. 26 of 2015**

{Arising out of Award dated 03.09.2014 passed in Claim Case No. 13 of 13 by the 2nd Additional Member to the 1st Additional Motor Accident Claims Tribunal, Bilaspur }

Kartik Ram S/o Manmohan Singh, aged about 05 years, Minor, Through the father (natural guardian) Manmohan Singh S/o Pawan Singh, aged about 32 years, Resident of Village Banabel, Police Station Kota, Police Chowki Belgahna, District (Revenue & Civil) Bilaspur, Chhattisgarh.

---- Appellant**Versus**

1. Maikoo Prasad Yadaw S/o Pushpa Yadaw, aged about 36 years, Occupation Driver, R/o village Paraudi, Police Station Kotma, District Anuppur, Madhya Pradesh. (Driver of the Truck No. MP 18 GA 1608)
2. Deepnarayan Soni S/o D.D.Soni, aged about not known, resident of Purani Basti, Block Kotma, District Shahdol, Madhya Pradesh. (Owner of the Truck No. MP 18 GA 1608)
3. Branch Manager, Shri Ram General Insurance Company Limited, Branch Office, 4th Floor, Maruti Heights, GE Road, Raipur, Tahsil and District (Revenue & Civil) Raipur, Chhattisgarh. (Insurer of the Truck No. MP 18 GA 1608)

---- Respondents

For Appellant	: Shri Anand Kesharwani, Advocate.
For Respondent No. 1 and 2	: Shri Pravin Kumar Tulsyan, Advocate.
For Respondent No. 3	: Shri Sachin Singh Rajput, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**Per P.R. Ramachandra Menon, Chief Justice****07/01/2021**

1. Inadequacy of the compensation awarded by the Tribunal in respect of the serious injuries sustained by the minor Claimant in a road traffic accident is the subject matter of consideration in this appeal preferred by him through his father and natural guardian.
2. On the ill fated day i.e. 26.12.2012, the Appellant was returning home alongwith his uncle and when he reached the place of accident, he was knocked down by the offending Truck bearing registration No. MP 18 GA 1608) driven by the 1st Respondent, owned by the 2nd Respondent and

insured by the 3rd Respondent. Because of the serious injuries, the Appellant had to undergo treatment for about 45 days in the hospital as an in-patient from 26.12.2012 to 09.02.2013. Because of the seriousness of the injuries, all the five fingers of the left foot had to be amputated in order to avoid more serious consequence. After undergoing serious ordeal suffering much pain and hardships, the wrong committed to the Injured was sought to be compensated by filing a claim petition before the Tribunal.

3. The claim was sought to be resisted mainly on quantum and negligence. Existence of a valid insurance policy was not disputed by the 3rd Respondent and no violation of any statutory/policy conditions was pointed out. On conclusion of the trial, the Tribunal awarded a sum of Rs. 2,38,467/- towards the 'medical expenses' and a sum of Rs. 3000/- towards the 'travelling expenses', while compensation was ordered to be paid to an extent of Rs. 10,000/- towards the 'nutritious diet' and another Rs. 10,000/- towards the 'pain and suffering'; besides a paltry sum of Rs. 30,000/- towards the 'permanent disability' which was certified by the medical expert as 50%. It is in the said circumstances that enhancement of the quantum of compensation is sought for in this appeal.
4. Shri Anand Kesharwani, the learned counsel for the Appellant submits that the compensation awarded by the Tribunal towards the permanent disability is shockingly disproportionate to the injuries/damage resulted and it is without in regard to the future/life of the minor child. The learned counsel submits that the extent of disability was certified by the medical experts and the Doctor was also examined before the Tribunal. The learned counsel further submits that the award passed by the Tribunal is quite casual in nature and seeks for interference of this Court.
5. Shri Sachin Singh Rajput, the learned counsel appearing for the 3rd Respondent/Insurance Company submits that there is no dispute with

regard to the factual aspects pointed out and the materials brought on record, which was subjected to scrutiny by the Tribunal. According to the learned counsel, the disability certified by the medical expert is only the disability of the 'limb' and not the 'whole body' disability. This being the position, the disability certified as of 50% is not liable to be treated as the whole body disability.

6. We have gone through the pleadings and evidence on record. Admittedly, the injuries sustained by the Appellant who is a minor child are quite serious and there is no dispute to the fact that all the five fingers of the left foot have been amputated. Even if the certified disability as asserted in the evidence tendered by the Doctor fixing the same as 50% is not accepted as the whole body disability, considering the nature of the injuries sustained, the extent of amputation, it cannot be said that the certified disability would result in a permanent whole body disability of less than 30%.
7. Coming to the quantum of compensation payable in respect of permanent disabilities suffered by children, authoritative pronouncement has been made by the Apex Court in ***Mallikarjun v. Divisional Manager, National Insurance Company Limited & Another***; {(2014) 14 SCC 396}. The Apex Court has laid down the law holding that in respect of permanent disability to the extent of 10%, compensation of Rs. 1,00,000/- is payable unless exceptional circumstances are brought out to take a different yardstick. In respect of the permanent disability ranging from 10% to 30% of the whole body, the compensation payable is Rs. 3,00,000/- while in respect of disability above 30% and upto 60%, it is Rs. 4,00,000/-. Compensation payable for disability between 60% to 90% is Rs. 5,00,000/- whereas, a compensation of Rs. 6,00,000/- is payable in respect of the permanent disability above 90%.

8. Coming back to the case in hand, in view of the serious injuries caused to the Appellant as discussed above, and our finding that the certified proven permanent disability of 50% will result in a whole body disability of not less than 30%, it is a case coming within the range of '30% to 60%' as reckoned by the Apex Court in **Mallikarjun's** case (supra); which will warrant payment of compensation to the tune of Rs.4,00,000/-. It is awarded accordingly. This is in addition to the sum of Rs.2,38,467/- awarded by the Tribunal for the medical expenses. We find that the Apex Court has awarded a sum of Rs. 25,000/- in **Mallikarjun** (supra) for the discomfort, inconvenience and loss of earnings to the parents during the days of hospitalization of the Injured (which in the said case was for 58 days). In the instant case, since the hospitalization was for nearly 45 days from 26.12.2012 to 09.02.2013 as mentioned already, we find it appropriate to award a sum of Rs. 25,000/- under this head which will include the amount towards 'travelling expenses' as well. Thus, the total compensation payable comes to Rs.6,83,467/- {Rs.4,00,000/- + Rs.2,38,467/- + Rs.10,000/- + Rs.10,000/- + Rs.25,000/-}. The said amount, after giving credit to the amounts already satisfied, if any, is required to be satisfied with interest at the rate of 7% per annum; from the date of claim petition. Since existence of a valid policy is admitted, we direct the 3rd Respondent/Insurance Company to satisfy the amount due after giving credit to the amount, if any, satisfied already, as expeditiously as possible at any rate within a period of one month from the date of receipt of a copy of this judgment.
9. The appeal stands allowed to the extent indicated above.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE