

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

FAO-4581-2002
Decided on : 08.07.2022

Geeta

..... Appellant

Versus

Dalvinder Singh and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. R.S.Longia, Advocate
 for the appellant.

Mr. D.R.Bansal, Advocate
Mr. Neeraj Khanna, Advocate and
Mr. Ravinder Arora, Advocate for the Insurance Company.

Mr. Naamparkash S.Sandhu, Advocate for
Mr. Gurmeet S. Bajwa, Advocate
for respondents No.6 to 9.

Manjari Nehru Kaul, J.(Oral)

Instant appeal has been preferred by the injured claimant challenging the award dated 01.06.2002 passed by Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as 'Tribunal') in a claim petition under Section 166 of Motor Vehicle Act, 1988 wherein she was awarded compensation in the sum of Rs.3,72,000/- on account of the injuries received by her in a motor vehicular accident on 12.12.1996.

Learned counsel for the appellant-claimant (hereinafter referred to as 'injured') has vehemently argued that the injured was a school going child, aged 5 years, who due to the negligence of the offending vehicle i.e. matador bearing registration No.DL-4CB-1609 in which she was going to

her school was hit by a running train, when its driver tried to cross an unmanned railway crossing. Resultantly, she received serious injuries on her person. Learned counsel submits that on account of the injuries received, she was rendered 100% permanently disabled with diffused brain edema and other fractures on her body. Learned counsel further submits that despite being medically treated at PGI, Chandigarh, she had been rendered physically and mentally handicapped for the rest of her life and she was now leading a vegetative existence. While drawing the attention of this Court to the meagre compensation awarded by the Tribunal, learned counsel contends that the Tribunal failed to appreciate and take into account that the doctors, who stepped into the witness box before the Tribunal too had categorically deposed that the injuries sustained by the injured were of such nature that either she would not survive and in case she did, she would not be able to take care of herself and would always require the services of an attendant. Learned counsel still further submits that the injured was a bright student and her parents too had high expectations from her, however, on account of the injuries sustained in the accident all their hopes and expectations had been dashed to the ground.

Per contra learned counsel for the Insurance Company while opposing the prayer and submissions made by counsel opposite submits that the accident in question took place way back in the year 1996 and the amount of compensation awarded was just and adequate at that point of time. He, however, was not able to controvert the submissions made by counsel opposite that the injured had been permanently incapacitated for life on account of the injuries received by her in the accident in question.

Heard learned counsel for the parties and perused the relevant material available on record.

The following compensation was awarded by the Tribunal:

<i>Sr. No.</i>	<i>Head</i>	<i>Amount</i>
1	Pain and suffering and permanent disability	Rs.3,50,000/-
2	Expenses on medicines	Rs.10,000/-
3	Hospitalization	Rs.12,000/-
	Total compensation	Rs.3,72,000/-

This Court unhesitatingly finds force in the submissions made by learned counsel for the injured and is of the opinion that the amount of compensation awarded is inadequate and requires to be reassessed and modified as follows:

The injured was a 5 year old school going girl. After completing her education, the injured would have gone on to earn at least Rs.3,000/- per month i.e. the minimum wages payable to a skilled worker as per the notification of the State Government for the relevant period. An addition of 40% would thus, have to be granted to her towards future prospects. The correct multiplier applicable in the case of the injured would be '18'.

Besides this, the Court cannot lose sight of the fact that in view of 100% permanent disability suffered, the injured would require an attendant to take care of her and nurse her for the rest of her life. This Court has no hesitation in holding that since an attendant, who would be required round the clock to take care of the injured, would also have to be medically trained and skilled. The Supreme Court in *Gobald Motor Service Ltd. and*

another vs. R.M.K.Veluswami and others, 1962 AIR SC (1) and *Kajal vs. Jagdish Chand and others, 2020(4)SCC 413* has held that even for determining attendant charges etc., the multiplier system should be followed. Hence, an amount of Rs.3,000/- per month i.e. the minimum wages notified in the case of skilled workers for the relevant period would have to be taken and the multiplier of '18' would also have to be applied for computation of the attendant charges, which would work out to Rs.6,48,000/- (Rs.3,000 x 12 x 18).

The injured also deserves to be adequately compensated for loss of marriage prospects, pain and suffering and loss of amenities. The Hon'ble Supreme Court in *Kajal's case(supra)* has held as under:-

"6. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Act enjoins upon the courts to do. The court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by the victim. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. Such compensation is what is termed as just compensation. The compensation or damages assessed for personal injuries should be substantial to compensate the injured for the deprivation suffered by the injured throughout his/her life. They should not be just token damages.

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27. One factor which must be kept in mind while assessing the compensation in a case like the present one is that the claim can be awarded only once. The claimant cannot come back to court for enhancement of award at a later stage praying that something extra has been spent. Therefore, the courts or the tribunals assessing the compensation in a case of 100% disability, especially where there is mental disability also, should take a liberal view of the matter when awarding compensation. While awarding this amount we are not only taking the physical disability but also the mental disability and various other factors. This child will remain bedridden for life. Her mental age will be that of a nine month old child. Effectively, while her body grows, she will remain a small baby. We are dealing with a girl who will physically become a woman but will mentally remain a 9 month old child. This girl will miss out playing with her friends. She cannot communicate; she cannot enjoy the pleasures of life; she cannot even be amused by watching cartoons or films; she will miss out the fun of childhood, the excitement of youth; the pleasures of a marital life; she cannot have children who she can love let alone grandchildren. She will have no pleasure. Her's is a vegetable existence. Therefore, we feel in the peculiar facts and circumstances of the case even after taking a very conservative view of the matter an amount payable for the pain and suffering of this child should be at least Rs.15,00,000/-."

In view of the above, this Court deems it fit to grant Rs.5 lakhs towards loss of marriage prospects. Qua loss of pain and suffering and loss of amenities, the injured deserves to be compensated in the sum of Rs.15

lakhs. Still further, with the passage of time, it is but natural that the injured would require treatment for medical ailments, which she would/could face on account of her vegetative state. Assuming she would go on to live till the age of 70 years, she would have to be adequately compensated to take care of all her future medical expenses, which would/could be incurred. Hence, an amount of Rs.5 lakhs is assessed as compensation in the said regard.

Resultantly, the compensation awarded to the injured-claimant is reassessed and modified as under:

<i>Sr. No.</i>	<i>Head</i>	<i>Amount</i>
1	Monthly income	Rs.3,000/-
2	Future prospects (40%)	Rs.1,200/-
3	Total annual income (Rs.3,000 + Rs.1,200 x 12)	Rs.50,400/-
4	Multiplier	18
5	Permanent functional disability	100.00%
6	Total loss of future earnings	Rs.9,07,200/-
7	Medical expenses	Rs.10,000/-
8	Hospitalization	Rs.12,000/-
9	Future medical expenses	Rs.5,00,000/-
10	Loss of marriage prospects	Rs.5,00,000/-
11	Pain and suffering and loss of amenities	Rs.15,00,000/-
12	Attendant charges	Rs.6,48,000/-
	Total compensation	Rs.40,77,200/-

The enhanced amount of compensation shall carry interest @ 8% per annum from the date of filing of petition till its realization. The amount, if any, already paid by the respondents to the injured would stand deducted from the enhanced compensation.

No doubt, the amount of compensation awarded by this Court

in the instant appeal is higher than the compensation claimed by the injured, however, a Court must award just compensation in the facts and circumstances of each case, more so, in the pathetic facts and circumstances wherein a young 5 year old school going girl on account of the injuries sustained in the accident in question, had been rendered as a vegetable for the rest of her life. The Hon'ble Supreme Court in *Kajal's case(supra)* too has held that in case, just compensation is more than the amount claimed, it must be awarded especially where the claimant is a minor.

The insurance company shall deposit the enhanced amount of compensation assessed hereinabove, before the Tribunal in terms of the judgment within a period of 3 months from today. The Tribunal shall disburse an amount of Rs.10 lakhs out of the total amount to the guardian/next friend of the injured. The remaining amount of compensation shall be kept in a fixed deposit in a nationalised bank giving highest rate of interest. The interest payable on such remaining amount shall be paid on monthly basis to the guardian/next friend of the injured-claimant. This amount shall be spent for paying the attendant charges and for the care of the injured-claimant. After 5 years, since the injured-claimant for all intents and purpose shall remain a person under a disability, the MACT shall keep renewing the amount on these terms. It is further directed that in case the guardian/next friend moves an application for release of some amount to meet some special medical expenses, then MACT would in the light of sufficient grounds being made out consider and decide the same. No financial liability or loan etc. will be permissible against this FDR.

With the aforementioned modifications, the instant appeal stands disposed of.

(MANJARI NEHRU KAUL)
JUDGE

08.07.2022
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Whether speaking/reasoned:	Yes
Whether reportable :	Yes