

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

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FAO-2413-1996 (O&M)

Date of decision: 13.12.2023

Miss Veni Goel

.....Appellant

versus

Yash Pal Singh Malik and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Jitender Nara, Advocate
for the appellant.

Mr. Suvir Dewan, Advocate
for respondent No.3-Insurance Company.

AMAN CHAUDHARY, J.**CM-5388-CII-2020**

For the reasons mentioned in the application, the same is allowed. Order dated 23.10.2019 vide which it was held the appellant not entitled to interest on enhanced amount w.e.f. 25.05.2016 till the next date of hearing, is recalled insofar.

Main Case

1. Injured-appellant has filed the present appeal seeking enhancement of the compensation amount awarded by the learned Motor Accident Claims Tribunal, Ambala (for short 'the Tribunal') vide award dated 21.05.1996, on account of the injuries received by her in a motor vehicular accident.

2. This is a reconstructed case, as the original file was burnt in the fire that broke out in the concerned branch in the year 2011. Since the case is pending for the last more than 27 years, the counsel for the parties have

no objection, in case the same is decided on basis of the available record.

3. Learned counsel contends that the injured-appellant, who was 8 years old, had met with an accident on 07.11.1993, in which she had suffered multiple serious injuries including head injury, her jaws were completely broken, face was disfigured, little finger of her left hand was damaged, on account of which she sustained permanent disability to the extent of 40%. She remained admitted in the hospital for about 1½ months. Due to the head injury, she is suffering from Epilepsy and still the treatment is going on for which she had to visit the hospital for follow up. The Tribunal though noticed that the disability is permanent but failed to appreciate that the appellant would not be able to live a normal life and to perform daily chores and awarded only an amount of Rs.2,00,000/- on all heads, which is inadequate. He relies on the judgment of Hon'ble Supreme Court in **Kajal vs. Jagdish Chand and others** 2020(4) SCC 413; Civil Appeal No.2831 of 2023 titled as **Sudesh Juneja (Dead) and others vs. National Insurance Company Ltd. and others** decided on 17.04.2023 and **Rahul Ganpatrao Sable vs. Laxman Maruti Jadhav** 2023(3) R.C.R. (Civil) 573. He also relied upon the judgments of Delhi High Court as well as Andhra Pradesh High Court in MAC.APP.25/2017 titled as **Shri Ram General Insurance Co. Ltd. vs. Kamlesh Jha and others** decided on 18.05.2023 and **Macharla Lakshmi Kanthamma and others vs. Chagarlamudi Suresh Babu and others** 2023(1) Andh LD 539, respectively.

4. On the other hand, the learned counsel for respondent No.3-insurance company has opposed the present appeal by stating that just

and reasonable compensation has already been awarded to the appellant, which requires no enhancement. Therefore, he prays for the dismissal of the same.

5. Heard and perused.

6. It is apposite to refer to the judgment in **Sidram vs. Divisional Manager, United India Insurance Co. Ltd. and another**, 2023(1) RCR (Civil) 44, wherein Hon'ble the Supreme Court observed that, "This Court has emphasised time and again that "just compensation" should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident, (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face their lives." Further, while allowing the appeal the compensation was enhanced by taking into consideration the following:

"56. The evidence on record indicates that the appellant suffered paraplegia due to the accident. Paraplegia is a form of paralysis of lower body. It restricts everyday routine more particularly the physical activity and leads to (i) deprivation of simple pleasures and amenities of life, (ii) 100% loss of earning capacity, (iii) long term secondary complications requiring continuous care, medical treatment and hospitalization, (iv) feeling of helplessness, depression, anger, stress, anxiety, etc. In short, paraplegia impairs physical, mental and psychological health and has devastating impact on the social and financial well being of the victim.

57. In the case on hand, the appellant was in the business of selling utensils and used to travel to various villages to sell the same. With this disability in the form of paraplegia being suffered by the appellant, it is not possible for him now to walk a long distance or stand for a long period. His business could be said to have been

gravely impacted. Further, the appellant at the time of accident was just 19 years old...”

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(9) Marriage Prospects

99. The Tribunal held that the appellant was young, and due to the physical disability, his marriage prospects are now almost nil. The Tribunal awarded to Rs. 20,000/- under this head. The High Court upheld the amount of Rs. 20,000/-.

100. In Sanjay Kumar (supra), this Court observed as under:

“14... On the point of loss of marriage prospects, we feel that it is a major loss, keeping in mind the young age of the appellant and the High Court has gravely erred in not awarding adequate compensation separately under this head and instead clubbed it under “loss of future enjoyment of life” and “pain and suffering”. We thereby award Rs 75,000 towards loss of marriage prospects...”

101. In Ibrahim v. Raju and Others, (2011) 10 SCC 634, this Court held:

“19. On account of the injuries suffered by him, the prospects of the appellant's marriage have considerably reduced. Rather, they are extremely bleak. In any case, on account of the fracture of pelvis, he will not be able to enjoy the matrimonial life. Therefore, the award of Rs 50,000 under this head must be treated as wholly inadequate. In the facts and circumstances of the case, we feel that a sum of Rs 2 lakhs should be awarded to the appellant for loss of marriage prospects and enjoyment of life.”

(10) Loss of Amenities

104. The Tribunal held that an amount of Rs. 30,000/- should be awarded towards loss of amenities. The High Court upheld the amount of Rs. 30,000/- as awarded by the Tribunal. The claim of the appellant towards loss of amenities is Rs. 50,000/-.

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105. This Court in the case of Pappu Deo Yadav (supra), observed:

“6. The principle consistently followed by this court in assessing motor vehicle compensation claims, is to place the victim in as near a position as she or he was in before the accident, with other compensatory directions for loss of amenities and other payments. These general principles have been stated and reiterated in several decisions.

[Govind Yadav v. New India Insurance Co.

Ltd., (2011) 10 SCC 683]”

106. In R.D. Hattangadi (supra) it has been held:

“12. In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.

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17.When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life.....”

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110. Vijaykumar Babulal Modi (supra), the High Court of Gujarat observed as under:

“It appears that the claim under this head is to the tune of Rs.3 lac. However, the Tribunal has not awarded any sum under the head 'loss of amenities'. We are of the opinion that this head must take into account all aspects of a normal life that have been lost due to the injury caused. As per R.D. Hattangadi's case (supra), this includes a variety of matters such as the inability to walk, run or sit, etc. We include here too the loss of childhood pleasure such as the ability to freely play, dance, run, etc., the loss of ability to freely move or travel without assistance. Then, there is the virtual impossibility of marriage as well as a complete loss of the ability to have sex and to have and nurture children.”

111. In view of the aforesaid, we award an amount of Rs. 50,000/- for the loss of amenities taking into consideration the fact that the appellant was 19 years old at the time of the accident, and also considering the nature of injuries suffered by him and the extent of his disability.”

112. The total compensation awarded by us under different heads is as under:

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| 1. | Loss of earning due to disability | :Rs.7,77,600/- |
| 2. | Loss of earning for 6 months: | Rs.48000/- |
| 3. | Medical expenses | Rs.1,55,000/- |
| 4. | Future medical expenses | Rs.2,16,000/- |
| 5. | Attendant charges | Rs.4,32,000/- |
| 6. | Litigation charges | Rs.50,000/- |

7.	Loss of conveyance	Rs.50,000/-
8.	Pain and suffering	Rs.1,00,000/-
9.	Marriage prospects	Rs.3,00,000/-
10.	Loss of amenities	Rs.50,000/-
	Total	Rs.21,78,000/-”

7. Hon’ble the Supreme Court while formulating the principles for payment of compensation, especially in the case of a minor child suffering from disabilities on account of a vehicular accident, had in **Master Mallikarjun vs. Divisional Manager, The National Insurance Company Limited and another**, 2014 (14) SCC 396 observed and held that, “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) 1 SCC 551, 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 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.”

8. In **Kajal** (supra), the claimant, a 12 year old girl was struck by a truck causing head injury which led to her IQ to be less than 20% of a child her age and the mind was only that of a nine month old child, Hon’ble the Supreme Court held that, “The principles with regard to determination of just compensation contemplated under the Act are well settled. Injuries cause deprivation to the body which entitles the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by the claimant in an accident. On account of the injuries, the claimant may suffer consequential losses such as (i) loss of earning; (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges etc., (iii) loss or diminution to the pleasures of life by loss of a particular part of the body, and (iv) loss of future earning capacity. Damages can be pecuniary as well as non-pecuniary, but all have

to be assessed in Rupees and Paise.”

9. Moving to the present case, there is no dispute with regard to the accident that was caused by respondent No.1, driver of the offending vehicle wherein the appellant had suffered multiple injuries. In so far as the fact of accident and manner of its taking place, as well as liability fastened upon the driver, owner and insurer of the offending vehicle, to be joint and several are concerned, it is pertinent to mention that no challenge to the Award has been made and thus, this issue does not warrant any further examination. Perusal of the award reveals that the appellant remained admitted in PGI for about 1½ months. PW4 Dr. F.B. Bhot proved the discharge summary Ex.PW/4/A and Ex.PW/4/B copy of the discharge and follow up card. She was having a fracture of mandible (jaw). Two operations of her throat were conducted. PW6 Dr. S.K. Gupta, who proved the discharge summary Ex.P12, stated that the appellant was having head injury with diffuse brain oedema with fracture mandible and open fracture left finger and had been attending for follow up treatment upto 21.07.1995. PW7 Dr. A.K. Bansal, Dental Surgeon, conducted X-ray examination of the teeth and gave treatment to her. He proved the treatment record Ex.P14 and charged Rs.4500/- as treatment charges. PW8 Dr. Jitender Singh proved X-rays as Ex.P15 to Ex.P23 and found the disability of both the jaws of the appellant upto 40% would remain even after treatment. The Tribunal had awarded a sum of Rs.2,00,000/- to the appellant.

10. Keeping in view the peculiarity of facts and circumstances in light of the aforesaid dictum of law, this Court finds that for the ends of justice to be adequately met, the amount of compensation awarded to the

appellant deserves to be and is enhanced thus:

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| 1. Pain and suffering : | Rs.2,00,000/- |
| 2. Medical treatment and for follow up : | Rs.2,00,000/- |
| 3. Attendant, special diet,
conveyance charges: | Rs.2,00,000/- |
| 4. Loss of amenities/enjoyment of life : | Rs. 1,00,000/- |
| 5. Loss of marriage prospects: | Rs.3,00,000/- |
| 6. For physical disability
to the extent of 40%: | Rs.80,000/- |

11. Accordingly, the enhanced amount of compensation of Rs.8,80,000/- over and above the amount of Rs.2,00,000/- already awarded by the Tribunal, alongwith interest @ 7.5% per annum shall be paid to the claimant-appellant within a period of two months from the date of receipt of a certified copy of this judgment, failing which, the amount shall accrue an interest at the rate as already awarded by the Tribunal.

12. Modifying the award to the aforesaid extent, the present appeal is disposed of.

13. Since the main appeal has been decided, IOIN-FAO-2413-1996 also stands disposed of accordingly.

(AMAN CHAUDHARY)
JUDGE

13.12.2023
Hemant

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