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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 25.08.2023

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MAC.APP. 160/2020 & CM APPL. 9894/2020 & 9896/2020
THE ORIENTAL INSURANCE CO LTD

..... Appellant

Through: Mr. Pradeep Gaur & Ms. Sweta
Sinha, Advs.

versus

MASTER ANSHU KUMAR @ BHOLA & ORS

..... Respondents

Through: Mr. Pankaj Gupta, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the appellant challenging the Award dated 19.11.2019 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, Patiala House Courts, New Delhi (hereinafter referred to as the 'Tribunal') in MACP/Suit No. 143/2016 titled ***Master Anshu Kumar @ Bhola v. Sh. Munna Yadav & Ors..***

2. Briefly stated, the above Claim Petition was filed stating that the respondent no.1, the claimant herein, aged around 5 years on the date of the accident, that is, 17.01.2015, was riding pillion with his mother on a motorcycle being driven by his father. The said motorcycle was hit from behind by the truck bearing registration no. BR-04F-5741 (hereinafter referred to as the 'Offending Vehicle'). The respondent no.1 was rushed to a



local nursing home, where he was given First Aid, but the Doctor advised to take him to a hospital with higher facilities. He was then brought to the AIIMS Trauma Centre, New Delhi for treatment. As a result of the accident, the respondent no.1 suffered 70% permanent physical disability (impairment) in relation to his left lower limb and amputation thereof, below the knee level.

3. The challenge of the appellant in the present appeal is to the quantum of the compensation awarded in favour of the respondent no.1.

Functional Disability:

4. The learned counsel for the appellant submits that the respondent no.1 had suffered permanent disability of 70% only in relation to his left lower limb. He submits that the learned Tribunal has, therefore, erred in assessing the functional disability of the respondent no.1 towards the whole body at 50%, for determining the compensation payable. Placing reliance on the judgment of the Supreme Court in ***Raj Kumar v. Ajay Kumar and Another***, (2011) 1 SCC 343, he submits that the functional disability towards the whole body should have been determined only at 35%.

5. He submits that the learned Tribunal has separately awarded compensation in favour of the respondent no.1 for the prosthetic limb (though the quantum thereof is disputed in the present appeal) and, therefore, the functional disability would, in any case, get reduced.



6. He also places reliance on the judgment of the Supreme Court in *Master Mallikarjun v. Divisional Manager, National Insurance Company & Anr.*, (2014) 14 SCC 396, to submit that in the said case as well, though the permanent disability suffered by the child aged around 12 years was 34% in relation to his right lower limb, the functional disability was assessed at 18% for the whole body.

7. I have considered the submissions made by the learned counsels for the parties.

8. In the present case, the permanent disability suffered by the respondent no.1 as the result of the accident has been assessed by the Medical Board at 70% in relation to his left lower limb. The child was aged only 5 years and has suffered a loss of his left lower limb in the accident. He has his entire life left in front of him, which he shall have to pass with this physical disability. Even with a prosthetic limb, there would be various activities of a normal child, which he would not be able to perform and enjoy due to the injury suffered in the accident in question. Assessing the functional disability in case of such an injury for a child is a difficult exercise. It has to be necessarily determined on a notional basis, as it cannot be ascertained as to what job the child would have otherwise taken upon attaining the age of majority.

9. In my view, taking into account the nature of the permanent disability suffered by the respondent no.1 as a result of the accident, the learned Tribunal cannot be faulted with in assessing the functional disability of the respondent no.1 at



50%. I, therefore, find no merit in the above challenge of the appellant to the Impugned Award.

Loss of earnings:

10. The next challenge of the appellant to the Impugned Award is against the learned Tribunal awarding compensation on account of loss of earnings in favour of the respondent no.1 by placing reliance on the judgment of this Court in ***Chetan Malhotra v. Lala Ram & Ors.***, 2016 SCC OnLine Del 2981. The learned counsel for the appellant submits that as the Second Schedule to the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') stands repealed, the learned Tribunal's reliance on the above judgment cannot be sustained. He submits that even otherwise, the judgment in ***Chetan Malhotra*** (supra) considers cases of death of children in motor vehicle accidents and not where the child is injured. He submits that in case of injury to a child, only notional compensation can be awarded.

11. Placing reliance on the judgment of the Supreme Court in ***Rajendra Singh and Others v. National Insurance Company Limited and Others***, (2020) 7 SCC 256; and of this Court in ***National Insurance Co. Ltd. v. Master Shaurya & Ors.***, Neutral Citation no. 2023:DHC:5355, he submits that even in case of death of a child, notional income of only Rs. 36,000/- per annum (by the Supreme Court) and Rs. 50,982/- (by this Court) has been considered as reasonable for determining the compensation.

12. The learned counsel for the respondent no.1 does not dispute the submission of the appellant that the judgment of this



Court in ***Chetan Malhotra*** (Supra) should not have been applied by the learned Tribunal in awarding the loss of income in favour of the respondent no.1. He, however, submits that the notional income should be determined on the basis of minimum wages for a skilled worker that were applicable in the State of Bihar, where the respondent no.1 resided at the time of the accident. In support, he places reliance on the judgment of this Court in ***The United India Insurance Co. Ltd. v. Baby Raksha & Ors.***, Neutral Citation no.2023:DHC:5114.

13. I have considered the submissions made by the learned counsels for the parties.

14. As the learned Tribunal has determined the compensation payable to the Claimant/respondent no. 1 herein by placing reliance on the judgment of this Court in ***Chetan Malhotra*** (supra), and as the learned counsel for the respondent no. 1 agrees with the submission of the learned counsel for the appellant that the said judgment would no longer be applicable, the Impugned Award cannot be sustained and is liable to be set aside.

15. One course open to this Court thereafter, is to remand the Claim Petition to the learned Tribunal for a fresh determination of the compensation payable to the Claimant. However, in the facts of the present case, I do not consider this to be a fair and just manner for the disposal of this appeal. The accident in question had taken place on 17.01.2015; the Award was passed in favour of the respondent no. 1, on 14.11.2019. Therefore, more than eight years have passed since the date of the accident



and the respondent no. 1 is still struggling to have the compensation, payable to him, determined. I do not deem it appropriate to add to this agony and to the wait for the determination of 'just compensation' to him. I have, therefore, decided to proceed ahead with the determination of the compensation payable to the respondent no. 1 for the injury suffered by him in the accident.

16. As noted herein-above, the learned counsel for the appellant has submitted that only notional compensation is to be awarded in favour of the respondent no. 1. He has submitted that as the respondent no. 1 was aged only 5 years, therefore, there cannot be any loss of income attributed to the accident for awarding compensation.

17. I do not find any merit in the submission of the learned counsel for the appellant. In the present case, the respondent no. 1 has suffered permanent disability as a result of the accident. The injury would certainly restrict, and in some cases, completely exclude the job that he can do when he grows up to be an adult. Though, for his tender age at the time of the accident, he can now plan his future and aim for the jobs/vocation best suitable for him given his disability, it cannot be said that he would not suffer any loss of income.

18. Even otherwise, 'loss of income' is a manner of determination of compensation payable to the victim of a motor vehicle accident, which appears to the learned Tribunal to be 'just'. Instead of hazarding a guess on each case, without any objective criteria for determining the compensation which is



found to be 'just', various methods have been adopted by Courts to determine the compensation payable. I do not see any reason why the settled principles/methodology should not be adopted even in case of a child of tender age suffering an injury in a motor vehicle accident.

19. In **Rajendra Singh** (supra), the Supreme Court was considering an appeal against an Award passed by the Motor Accidents Claims Tribunal, with the appeal against the Award being dismissed by the High Court, which had determined the notional income of a child aged 12 years at Rs. 36,000/- per annum. The Supreme Court found the said determination to be fair in the facts of the said case.

20. In **Master Shaurya & Ors.** (supra), recently, another learned Single Judge of this Court has held that in **Rajendra Singh** (supra), the Supreme Court has not laid down any such principle that the notional income of a minor, who dies in a motor accident, should always be taken as Rs.36,000/- per annum. The Court held that the notional income cannot be an abstract figure but has to be fixed by the learned Tribunal taking into consideration the facts and circumstances of each case. The court refused to interfere with the Award passed by the learned Tribunal therein, fixing the notional income of the deceased child therein, aged about 9 years, at Rs. 50,982/- per annum.

21. The above judgments, therefore, have not laid down the basis on which notional income in case of a child is to be determined by the Tribunal, but have on facts of those cases,



held that the notional income determined by the learned Tribunal did not warrant any interference.

22. On the other hand, the Supreme Court in **Kajal v. Jagdish Chand & Ors.**, (2020) 4 SCC 413, has held as under: -

“Loss of earning

20. Both the courts below have held that since the girl was a young child of 12 years only notional income of Rs 15,000 p.a. can be taken into consideration. We do not think this is a proper way of assessing the future loss of income. This young girl after studying could have worked and would have earned much more than Rs 15,000 p.a. Each case has to be decided on its own evidence but taking notional income to be Rs 15,000 p.a. is not at all justified. The appellant has placed before us material to show that the minimum wages payable to a skilled workman is Rs 4846 per month. In our opinion, this would be the minimum amount which she would have earned on becoming a major. Adding 40% for the future prospects, it works to be Rs 6784.40 per month i.e. 81,412.80 p.a. Applying the multiplier of 18, it works out to Rs 14,65,430.40, which is rounded off to Rs 14,66,000.

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Attendant charges

22. The attendant charges have been awarded by the High Court @ Rs 2500 per month for 44 years, which works out to Rs 13,20,000. Unfortunately, this system is not a proper system. Multiplier system is used to balance out various factors. When compensation is awarded in lump sum, various factors are taken into consideration. When compensation is paid in lump sum, this Court has always followed the multiplier system. The multiplier system should be followed not only for determining the compensation on account of loss of income but also for determining the attendant charges, etc. This system was recognised by this Court in Gobald Motor Service Ltd. v. R.M.K. Veluswami, AIR 1962



SC 1. The multiplier system factors in the inflation rate, the rate of interest payable on the lump sum award, the longevity of the claimant, and also other issues such as the uncertainties of life. Out of all the various alternative methods, the multiplier method has been recognised as the most realistic and reasonable method. It ensures better justice between the parties and thus results in award of “just compensation” within the meaning of the Act.

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24. This Court has reaffirmed the multiplier method in various cases like *MCD v. Subhagwanti*, AIR 1966 SC 1750, *U.P. SRTC v. Trilok Chandra* (1996) 4 SCC 362, *Sandeep Khanuja v. Atul Dande* (2017) 3 SCC 351. This Court has also recognised that Schedule II of the Act can be used as a guide for the multiplier to be applied in each case. Keeping the claimant's age in mind, the multiplier in this case should be 18 as opposed to 44 taken by the High Court.”

(Emphasis supplied)

23. In ***Master Ayush v. The Branch Manager, Reliance General Insurance Co. Ltd. &Anr.***, (2022) 7 SCC 738, the Supreme Court has again awarded compensation towards loss of income in the case of a 5 year old victim of the road accident, by placing reliance on the minimum wages notified in the State of Karnataka, as was applicable in that case.

24. In ***Minor Roopa v. The Divisional Manager, New India Assurance Company Ltd.***, Civil Appeal No.5069 of 2022 decided on 03.08.2022, the Supreme Court again relied upon and assessed the compensation based on the minimum wages notified by the State of Karnataka in that case.



25. In ***Baby Raksha & Ors.*** (Supra), this Court, placing reliance on the judgment of the Supreme Court in ***Kajal*** (Supra), has held as under: -

“15. In my view, in a case of a child, as the actual income or potential thereof cannot be determined, the minimum wages as notified and applicable on the date of accident would give a reasonable basis for determination of the income of the child. There can, however, be no hard and fast rule laid for this purpose. It would depend on a case-to-case, and for various circumstances, it can be shown as to why reliance on the Notification of the minimum wages may not be an appropriate method. However, in the present case, no such exceptional circumstance has been pointed out either by the appellant or the respondent no.1.”

26. In view of the above decisions of the Supreme Court and of this Court, in my opinion, the most reasonable basis for determining the loss of income, even in the case of a minor, would be the minimum wages notified by the State Government where the minor resides at the time of the accident.

27. In the present case, the respondent no.1 was residing in the State of Bihar. The learned counsel for the respondent no.1 submits that at the time of the accident, the minimum wages applicable for a skilled worker were notified at Rs.236/- per day, equivalent to Rs.6136/- per month. In terms of the judgment in ***National Insurance Company Limited v. Pranay Sethi and Others***, (2017) 16 SCC 680 and in ***Kajal*** (supra), an addition of 40% is to be made towards future prospects.



28. In view of the above, the compensation payable to the respondent no.1 towards loss of income is assessed as under:-

$$6136 + 2454.5 \text{ (40\% of 6136)} \\ \times 12 \times 18 \times 50\% = \text{Rs.9,27,763/-}$$

Duplicity of heads:

29. The next challenge of the appellant to the Impugned Award is the award of Rs.4,65,000/- by the learned Tribunal in favour of the respondent no.1 towards non-pecuniary damages by placing reliance on the judgment of this Court in ***Chetan Malhotra*** (Supra).

30. In the present case, the learned Tribunal has, in addition, also awarded compensation towards non-pecuniary damages to the respondent no. 1 separately under different heads. There is, therefore, a duplication of the amount awarded in favour of the respondent no. 1, and the same cannot be sustained. The learned Tribunal has erred in granting non-pecuniary damages twice-over by placing reliance on the judgment of this Court in ***Chetan Malhotra*** (Supra).

31. Accordingly, the award of Rs.4,65,000/- by the learned Tribunal in favour of the respondent no. 1 as compensation on non-pecuniary head, placing reliance on the judgment of this Court in ***Chetan Malhotra*** (Supra) alone, is set aside.

Prosthetic Limb:

32. The learned counsel for the appellant next challenges the direction of the learned Tribunal in the Impugned Award, directing the appellant to procure a suitable prosthetic limb from any of the companies approved by the Committee appointed by



this Court and provide maintenance for the same for the entire lifetime of the respondent no.1, with replacements by the said Company, as and when the same may be required. In addition, the appellant has been directed to bear the cost of repair and replacement of the prosthetic limb on production of the requisite invoices and other related documents or bills by the respondent no.1.

33. The learned counsel for the appellant submits that an open-ended direction in this regard cannot be sustained; there has to be a determinative figure of compensation awarded in favour of the claimant. In support, he places reliance on the judgment of the Supreme Court in ***HDFC Ergo General Insurance Co. Ltd. v. Mukesh Kumar & Ors.***, 2021 SCC OnLine SC 859.

34. The above proposition of law is not disputed by the learned counsel for the respondent no.1. He submits that, however, this Court should determine a lump sum amount of compensation that would be payable to the respondent no.1 for the cost and maintenance of the prosthetic limb.

35. In ***HDFC Ergo General Insurance Co. Ltd.*** (supra), the Supreme Court has held that in cases involving compensation towards maintenance/replacement of prosthetic limb, an appropriate lump sum amount should be awarded towards procurement and maintenance of the prosthetic limb.

36. In view of the above, the direction of the learned Tribunal, which is really in the nature of a continuing mandamus, in colloquial sense, as found by the Supreme Court



in **HDFC Ergo General Insurance Co. Ltd.** (supra), cannot be sustained and is set aside.

37. The issue before me again is to either remand the appeal to the learned Tribunal to determine the compensation payable to the respondent no. 1 for the procurement and maintenance of the prosthetic limb or to determine the same myself.

38. For reasons recorded herein above, I am of the opinion that, in the facts of this case, it would be unfair and may amount to denial of justice to the respondent no. 1, for this Court to not determine the compensation payable itself. I have, therefore, proceeded to hear the submissions of the learned counsels for the parties on a reasonable amount of lump sum compensation that can be awarded to the respondent no.1 towards the cost and maintenance of the prosthetic limb.

39. The learned counsel for the appellant submits that before the learned Tribunal, the price list of Trans Tibial prosthesis for child amputee for activity level 3 and above had been received from the Committee appointed by this Court, showing the price of the recommended prosthesis for the respondent no.1 to be Rs.2,10,000/- for a period of two years. He submits that generally, the life of the prosthetic limb would be 4 to 5 years. He submits that the maximum period for which compensation can be awarded is 18 years as per the multiplier given in the judgment of the Supreme Court in **Pranay Sethi and Others** (Supra) and in **Master Ayush** (Supra) and **Minor Roopa** (Supra). He submits that, therefore, the cost of the prosthetic



limb be multiplied by a maximum of four times for determining the total compensation payable.

40. On the other hand, the learned counsel for the respondent no.1 places reliance on the judgment of the Supreme Court in ***Mohd. Sabeer alias Shabir Hussain v. Regional Manager, U.P. State Road Transport Corporation***, 2022 SCC OnLine SC 1701, to submit that in the said case, the Supreme Court had assessed compensation payable towards prosthetic limb till the age of at least 70 years of the victim. He submits that even taking the life of the prosthetic limb to be 4 to 5 years, and the age of the Injured/Respondent no.1, the cost is to be multiplied by for at least eleven prosthetic limbs. He submits that over and above this, compensation should also be awarded towards the maintenance of the prosthetic limb.

41. I have considered the submissions made by the learned counsels for the parties.

42. In ***Mohd. Sabeer*** (Supra), the Supreme Court, while considering a claim of an injured aged about 37 years, had observed and assessed the compensation as under:-

***“COMPENSATION FOR THE PURCHASE
AND MAINTENANCE OF THE
PROSTHETIC LEG***

22.The High Court has awarded a compensation of Rs.5,20,000/- for the prosthetic limb and Rs.50,000/- towards repair and maintenance of the same. The Appellant submits that the cost of the prosthetic limb itself is Rs. 2,60,000/- and the life of the prosthetic limb is only 5-6 years. The prosthetic limb also requires repair and maintenance after every 6 months to 1 year, and each repair costs between Rs.15,000 to



Rs.20,000/-. This would mean that the prosthetic limb would last the Appellant for only 15 years under the current compensation. The Appellant at the time of the accident was aged 37 years and has a full life ahead. It has been clearly stated by this Court in the case of Anant Son of Sidheshwar Dukre (Supra) that the purpose of fair compensation is to restore the injured to the position he was in prior to the accident as best as possible. The relevant paragraph of the judgment is being extracted herein:

“In cases of motor accidents leading to injuries and disablements, it is a well settled principle that a person must not only be compensated for his physical injury, but also for the non-pecuniary losses which he has suffered due to the injury. The Claimant is entitled to be compensated for his inability to lead a full life and enjoy those things and amenities which he would have enjoyed, but for the injuries.”

“The purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident.”

23. As per the current compensation given for the prosthetic limb and its maintenance, it would last the Appellant for only 15 years, even if we were to assume that the limb would not need to be replaced after a few years. The Appellant was only 37 years at the time of the accident, and it would be reasonable to assume that he would live till he is 70 years old if not more. We are of the opinion that the Appellant must be compensated so that he is able to purchase three prosthetic limbs in his lifetime and is able to maintain the same at least till he has reached 70 years of age. For the Prosthetic limbs alone, the Appellant is to be awarded compensation of Rs. 7,80,000 and for maintenance of the same he is to be awarded an additional Rs. 5,00,000/-.”





43. In my view, in case of a child, the maximum multiplier provided in *Pranay Sethi and Others* (Supra) cannot be applied in the case of determining the compensation that would be payable to a claimant towards the cost and maintenance of the prosthetic limb. The Supreme Court in *Mohd. Sabeer* (Supra) has observed that it would be reasonable to presume that the victim would live till he is 70 years old, if not more, and thereafter, determined the compensation amount based on the life of a prosthetic limb to be only 5 to 6 years. A similar methodology has to be followed for determining the lump sum compensation payable to the respondent no.1 towards the cost of prosthetic limb. The provision of prosthetic limb must last for a reasonable period of their life of the child. Keeping in view the age of the respondent no.1 at the time of the accident and today, I find a multiplier of eleven to be a reasonable standard for determining the lump sum compensation for the cost of the prosthetic limb.

44. The learned counsel for the appellant submits that as the lump sum amount would be granted to the respondent no.1, the same needs to be reduced taking into account the interest that the respondent no.1 would earn on such lump sum amount. On the other hand, the learned counsel for the respondent no.1 submits that the cost of the prosthetic limb does not remain stable but would increase exponentially over the period of time. He submits that, in fact, the cost of the prosthetic limb shall not remain static at Rs.2,10,000/- as was reported to the learned Tribunal; it would increase over the period of time.



45. I have considered the submissions made. While, on the one hand, the cost of the prosthetic limb will not remain static throughout the lifetime of the respondent no.1, at the same time, the respondent no.1 would receive the compensation in a lump sum, upfront. The two would, therefore, balance each other out in the final outcome. I, therefore, proceed to consider the cost of the prosthetic limb to be Rs. 2,10,000/-

46. Accordingly, the respondent no.1 shall be entitled to compensation of Rs.23,10,000/- (Rs. 2,10,000/- x 11) towards the cost of prosthetic limb.

47. In addition, the respondent no.1 shall be entitled to a sum of Rs.5,00,000/- towards the maintenance of the prosthetic limb.

Interest:

48. The learned counsel for the appellant submits that the learned Tribunal has erred in awarding interest at the rate of 9% per annum on the compensation awarded in favour of the respondent no.1. He submits that keeping in view the prevalent rate of interest and the judgment of this Court in *National Insurance Co. Ltd. v. Yad Ram and Others*, 2023 SCC OnLine Del 1849, it should not be more than 7.5%.

49. I have considered the submissions made.

50. In the present case, the accident had taken place on 17.01.2015, while the Award came to be passed on 19.11.2019. The appellant has not placed on record any material to show why 9% rate of interest should be declared as unreasonable in the facts of the present case. I find the rate of interest awarded



by the learned Tribunal to be reasonable, and as such, not warranting any interference by this Court.

51. The learned counsel for the appellant submits that the rate of interest prevalent during this period would be a matter of record and this Court should take judicial notice thereof. I do not agree with the said submission.

52. Accordingly, I find no merit in the challenge of the appellant to the Impugned Award on this aspect.

Reconsideration of the Non-Pecuniary Heads:

53. The learned counsel for the respondent no.1 submits that as this Court has set aside the compensation awarded towards the non-pecuniary heads by the learned Tribunal relying upon the judgment of this Court in *Chetan Malhotra* (Supra), the amounts awarded under various non-pecuniary heads separately by the learned Tribunal be also reconsidered by this Court. He submits that only a sum of Rs.50,000/- has been awarded in favour of the respondent no.1 towards marriage prospects. He submits that looking into the nature of the injury suffered by the respondent no.1, the same deserves to be enhanced.

54. The learned counsel for the appellant, on the other hand, submits that the compensation awarded in favour of the respondent no.1 on the said head is reasonable and deserves no interference.

55. I have considered the submissions made by the learned counsels for the parties.



56. Generally, in absence of a cross-appeal or cross-objections by the Claimant, this Court would not enhance the compensation awarded in favour of the Claimant, however, in the present case, as the learned Tribunal had awarded compensation on the non-pecuniary heads relying upon the judgment of this Court in **Chetan Malhotra** (Supra), the same would have influenced the learned Tribunal while determining the compensation payable to the respondent no. 1 for the non-pecuniary heads separately. I, therefore, have considered the claim of enhancement of compensation made by the respondent no. 1.

57. Keeping in view the nature of the injury suffered by the respondent no.1, which has also resulted in the amputation of the left lower limb below knee level, in my view, the award of only Rs.50,000/- towards loss of marriage prospect is unreasonable. The same shall stand enhanced to Rs.2,00,000/-.

58. The learned counsel for the respondent no.1 further challenges the compensation awarded towards pain and suffering, and towards the loss of amenities of life, quantified by the learned Tribunal only at Rs.1,00,000/- and Rs.50,000/- respectively. He reiterates that looking into the nature of the injury suffered by the respondent no.1, the same has to be enhanced.

59. The learned counsel for the appellant reiterates that the awarded amounts deserve no interference from this Court.

60. I have considered the submissions made by the learned counsels for the parties.



61. Apart from the permanent disability suffered by the respondent no.1, in the Impugned Award, it is further mentioned that the respondent no.1 had remained hospitalized till 12.05.2015, and had undergone a surgery in connection with the amputation of his left lower limb. He remained in continuous treatment in the above hospital for a considerable period of time, that is, more than one year, and had to be hospitalized again from 31.10.2015 to 04.11.2015. As noted hereinabove, the respondent no.1 was aged only about 5 years at the time of the accident, his pain and suffering cannot be measured in terms of money, but certainly only Rs.1,00,000/- awarded by the learned Tribunal is shockingly disproportionate. The same shall stand enhanced to Rs.5,00,000/-. As far as the loss of amenities of life, the same also deserves to be enhanced to Rs.2,00,000/-.

CONCLUSION:

62. In view of the present judgment, the total compensation payable to the respondent no.1 is re-assessed as under:-

10.	Computation of Compensation	
Sr. No.	Heads	Amount awarded
11.	Pecuniary loss	
(i)	Expenditure	Rs. 8,060/-
(ii)	Expenditure on conveyance	Rs. 30,000/-
(iii)	Expenditure on special diet	Rs. 20,000/-
(iv)	Cost of nursing/attendant	Rs. 1,00,000/-
(v)	Loss of earning capacity	Nil



(vi)	Loss of Income	9,27,736/-
(vii)	Any other loss which may require any special treatment or aid to the injured for the rest of his life	Nil
(viii)	Towards Cost & Maintenance of Prosthetic Limb	(Rs.21,10,000 + Rs.5,00,000) = Rs.26,10,000
12.	Non-pecuniary Loss:	
(i)	Compensation for mental and physical shock	Rs. 1,00,000/-
(ii)	Pain and suffering	Rs. 5,00,000/-
(iii)	Loss of amenities of life	Rs. 2,00,000/-
(iv)	Disfiguration	Rs. 1,00,000/-
(v)	Loss of marriage prospects	RS. 2,00,000/-
(vi)	Loss of earning, inconvenience, hardships, dis-appointment, frustration, mental stress, dejection and unhappiness in future life etc. loss of education	Rs.50,000/- (loss of education)
TOTAL COMPENSATION		Rs. 48,45,796/-

63. The respondent no.1 shall be further entitled to interest at the rate of 9% per annum from the date of the filing of the Claim Petition, that is, 30.06.2015, till the deposit of the entire amount/portion thereof with the learned Tribunal.

64. I may herein note that pursuant to the order dated 16.03.2020 of this Court, the appellant has deposited a sum of Rs.15,38,060/- along with interest at the rate of 9% per annum before the learned Tribunal. The same will be adjusted towards the compensation amount that has been re-determined hereinabove. The appellant shall deposit the balance awarded amount in terms of the present judgment with the learned



Tribunal, along with interest, within a period of eight weeks from today.

65. By the order dated 16.03.2020, it has been further directed that on the appellant depositing the amount, the learned Tribunal may release the same in favour of the respondent no.1 except Rs.4,65,000/- as per the disbursement scheme provided in the Impugned Award.

66. The learned counsel for the respondent no.1 submits that in terms of the disbursement scheme stipulated by the learned Tribunal in the Impugned Award, the entire compensation amount was directed to be kept in a fixed deposit for the period till the respondent no.1 attains 21 years of age. The learned counsel for the respondent no.1 submits that certain amount of compensation should be released in favour of the respondent no.1 for obtaining the prosthetic limb and for meeting the other expenses of the respondent no.1 and his special needs because of the injury suffered in the accident.

67. I find merit in the submission made by the learned counsel for the respondent no.1. Out of the compensation amount deposited or to be deposited by the appellant, a sum of Rs.5,00,000/- shall be released in favour of the respondent no.1 by the learned Tribunal. The remaining amount shall remain invested in a fixed deposit for the period till the respondent no.1 attains the age of 21 years, with only the monthly interest amount accrued thereon being released in favour of the respondent no.1 in the bank account as is mentioned in the Impugned Award. This shall, however, not preclude the



respondent no.1 to seek further premature release of the awarded amount from the learned Tribunal for reasons to be stated. The learned Tribunal shall consider the said request on its own merits remaining uninfluenced by any observation made by this Court in the present order.

68. The appeal along with the pending applications is disposed of in the above terms.

69. The statutory amount deposited by the appellant in the Registry of this Court shall be released in favour of the appellant along with interest accrued thereon.

NAVIN CHAWLA, J

AUGUST 25, 2023/rv/ss