IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2774-2006
Date of Decision: 05.11.2024

AKASHDEEP SINGH ...**Appellant**

vs.

KARTAR SINGH AND OTHERS ...**Respondents**

CORAM:- HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Shivinder Singh, Advocate for
Mr. B.S. Bhalla, Advocate
for the appellant.

Mr. Anil Kumar Spehia, Advocate
for respondent no.1.

***

SUDEEPTI SHARMA, J. *(Oral)*

1. The present appeal has been preferred against the award dated 03.04.2006 passed in the claim petition filed under Secton 166 of the Motor Vehicles Act, 1988, by the learned Motor Accident Claims Tribunal, Moga (for short, 'the Tribunal') for enhancement of compensation granted to the appellant.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that claimant Akashdeep son of Harinder Singh who was four years old, met with an accident near Punjab Dhaba Makhu Road, Kot Ise Khan on 01.05.2003 at about 12:00 p.m. in the area of Police Station, Zira. He received multiple injuries on his head. His left lower leg was crushed completely. He got treatment from Arora Neuro Centre Ludhiana and D.M.C. Ludhiana. He remained under

treatment from 01.05.2003 to 27.05.2003. About Rs. 1,14,000/- were spent on his treatment. Accident was caused by mini bus no. PB-05D-9655. The offending bus was owned by Kartar Singh, Darshan Singh and Gurdeep Kaur respondents no.1 to 3.

3. Upon notice of the claim petition, respondents appeared and contested the claim petition and denied the factum of accident/compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:

1. Whether claimant is entitled to compensation? If so, to what amount? OPP
2. If issue no.1 is proved that are the liabilities of respondents? OPP
3. Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs. 1,50,991/- along with interest @ 9% per annum. Hence the claimant/appellant filed the present appeal for enhancement of compensation awarded by the Tribunal.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

6. The learned counsel for the claimant-appellant contends that the amount assessed by the learned Tribunal is on the lower side and deserves to be enhanced, as the appellant suffered 65% permanent

disability and the learned Tribunal has erred in law in awarding only Rs.70,000/- for disability, pain and suffering, future prospects etc. Further the learned Tribunal has awarded meager amount of Rs.80,991/- for medical bills. He further contends that the learned Tribunal has committed a grave error for failing to consider the income of the appellant when awarding compensation. He further contends that no amount of compensation has been awarded for loss of future earning, special diet, loss of amenities of life. He further states that the appellant/claimant was a student of nursery class at the time of accident and his whole future has been ruined due to the permanent injury suffered by him, in the accident and the learned Tribunal has not granted any compensation for marriage prospects etc. Therefore, he prays that the present appeal be allowed and compensation be enhanced as per latest law.

7. Per contra, learned counsel for the respondent No. 1, however, vehemently argues that the award has rightly been passed and the amount of compensation as assessed by the learned Tribunal has rightly been granted. He, thus prays for dismissal of the appeal.

8. I have heard learned counsel for the parties and perused the whole record of this case.

9. A perusal of the record shows that the appellant was 04 years of age at the time of accident. The claimant/appellant suffered 65% permanent disability, as per the Disability Certificate (Ex PN). The appellant sustained multiple injuries and his left leg was to be amputated.

The learned Tribunal while granting the compensation has not taken into consideration the future of the appellant, consequent to the accident. The appellant was a young boy of 04 years old at the time of the accident. The learned Tribunal did not take into account the mental trauma suffered by the appellant or assessed his potential future income when determining compensation. The learned Tribunal has not assessed the income of the appellant while awarding compensation. With regard to assessing the income of a minor child in an injury case, reference at this stage can be made to a judgment of Hon'ble the Supreme Court in a case of ***Master Ayush Vs. The Branch Manager, Reliance Insurance Co. Ltd. & Anr***., ***(2022) 7 SCC 738***, wherein it has been held that the income of a minor to be assessed as per minimum wages on the assumption that the victim would have been able to earn after attaining adulthood. The relevant portion of the judgment reads as under:-

> *"8. Hence, as per the above extract, the minimum wages payable to a skilled workman in 2010-11 is to the tune of Rs. 3708.70. In this view, the minimum wages as on the date of accident is rounded off to Rs.3700/-. The compensation, therefore, is to be assessed on the basis of the said minimum wages on the assumption that the appellant would have been able to earn after attaining majority.*
>
> *9. In addition to the skilled minimum wages, the appellant would be also entitled to 40% for future prospects in view of*

the judgment of this Court in ***National Insurance Company Limited v. Pranay Sethi & Ors (2017) 16 SCC 680****.*

10. Thus, the compensation works out to be Rs.3700/- plus 40%, which amounts to Rs.5180/- per month. The multiplier of 18 would be applicable in view of the age of the appellant. The loss of future earnings due to the Permanent Disability for life thus works out to be Rs.11,18,880/-, i.e., (3700+1480=5180) x 12 x 18.

11. As per the medical certificate produced by the appellant, with Advanced Reciprocating Gait Orthosis (ARGO) with bilateral elbow crutches, the appellant can perform independent ambulation. Therefore, the condition of the appellant is not entirely comparable to Kajal who was confined to bed with mental age of 9 months' old child. The appellant herein is not able to move his both legs and had complete sensory loss in the legs, urinary incontinence and bowel constipation and bed sore.

12. The determination of damages in personal injury cases is not easy. The mental and physical loss cannot be computed in terms of money but there is no other way to compensate the victim except by payment of just compensation. Therefore, we find that in view of the physical condition, the appellant is entitled to one attendant for the rest of his life though he may *be able to walk with the help of assistant device. The device also requires to be replaced every 5 years. Therefore, it is reasonable to award cost of 2 devices i.e., Rs.10 lakhs. The appellant has not only lost his childhood but also adult life. Therefore, loss of marriage prospects would also be required to be awarded. The learned Tribunal has rejected the claim of taxi expenses for the reason that the taxi driver has not been produced. It is impossible to produce the numerous taxi drivers. Still further, the Tribunal should have realized the condition of the child who had complete sensory loss in the legs. Therefore, if the parents of the child have taken him in a taxi, probably that was the only option available to them. Accordingly, we award a sum of Rs.2 lakhs as conveyance charges."*

10. In view of the above referred to judgment in ***Master Ayush's*** **(supra)**, this Court assess the monthly income of the appellant/claimant as Rs.3000/- , in accordance with the minimum wages in the State of Punjab.

11. Hon'ble the Apex in case of ***Kajal Vs. Jagdish Chand and others, (2020) 4 SCC 413***, summarised the law regarding granting of compensation in a case of injuries or death of a minor child and held that the child is also entitled for grant of future prospects, marriage prospects, multiplier, loss of amenities, special diet, pain and sufferings, transportation

charges and attendant charges. The relevant portion of the judgment reads as under:-

> *"19. The High Court under the two heads of medical treatment and transport has awarded Rs. 1,88,501/-. Out of this an amount of Rs.1,38,501/- is the actual expense incurred on the treatment of Kajal. One must remember that amongst people who are not Government employees and belong to the poorer strata of society, bills are not retained. Some of the bills have been excluded by the courts below only on the ground that the name of the patient is not written on the bill. There is no dispute with regard to the long period of treatment and hospitalisation of this young girl. Immediately after the accident on 18.10.2007, she was admitted at a hospital in Karnal. From there, she was referred to the PGI, Chandigarh, where she remained admitted from 21.10.2007 till 12.11.2007 and, thereafter, she was again admitted in the hospital from 12.11.2007 till 08.12.2007. She was in the hospital for almost 51 days, and both Dr. Sameer Aggarwal (PW-3) from the hospital at Karnal and Dr. Rajesh Chhabra (PW-4), from PGI, Chandigarh, have supported this. Limiting the amount only to the bills which have been paid in the name of the claimant only, would not be reasonable. Therefore, the amount payable for actual medical expenses is increased from Rs. 1,38,501/- to Rs.2,00,000/-. The amount awarded for transportation at Rs. 50,000/- is reasonable. Therefore, under this head we award Rs.2,50,000/-.*

Loss of earnings

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/- per annum 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/- per annum. Each case has to be decided on its own evidence but taking notional income to be Rs. 15,000/- per annum 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 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 per annum. Applying the multiplier of 18 it works out to Rs. 14,65,430.40, which is rounded off to Rs. 14,66,000/-

21. Though the claimant would have been entitled to separate attendant charges for the period during which she was hospitalised, we are refraining from awarding the same because we are going to award her attendant charges for life. At the same time, we are clearly of the view that the tortfeasor cannot take benefit of the gratuitous service rendered by the family members. When this small girl was taken to PGI, Chandigarh, or was in her village, 2-3 family members must have accompanied her. Even if *we are not paying them the attendant charges they must be paid for loss of their wages and the amount they would have spent in hospital for food etc. These family members left their work in the village to attend to this little girl in the hospital at Karnal or Chandigarh. In the hospital the claimant would have had at least two attendants, and taking the cost of each at* L *500/- per day for 51 days, we award her* L *51,000/-.*

Attendant charges

22. The attendant charges have been awarded by the High Court @ Rs. 2,500/- 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 Supreme Court 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.*

23. It would be apposite at this stage to refer to the observation of Lord Reid in ***Taylor v. O'Connor, 1971 AC 115*** *:*

"Damages to make good the loss of dependency over a period of years must be awarded as a lump sum and that sum is generally calculated by applying a multiplier to the amount of one year's dependency. That is a perfectly good method in the ordinary case but it conceals the fact that there are two quite separate matters involved, the present value of the series of future payments, and the discounting of that present value to allow for the fact that for one reason or another the person receiving the damages might never have enjoyed the whole of the benefit of the dependency. It is quite unnecessary in the ordinary case to deal with these matters separately. Judges and counsel have a wealth of experience which is an adequate guide to the selection of the multiplier and any expert evidence is rightly discouraged. But in a case where the facts are special, I think, that these matters must have separate consideration if even rough justice is to be done and expert evidence may be valuable or even almost essential. The special factor in the present case is the incidence of Income Tax and, it may be, surtax."

24. This Court has reaffirmed the multiplier method in various cases like ***Municipal Corporation of Delhi v. Subhagwati and Ors., 1966 ACJ 57, U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors., (1996) 4 SCC 362, Sandeep Khanduja v. Atul Dande and Ors., (2017) 3 SCC 351 : 2017(1) RCR (Civil) 1017****. 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.*

25. Having held so, we are cleary of the view that the basic amount taken for determining attendant charges is very much on the lower side. We must remember that this little girl is severely suffering from incontinence meaning that she does not have control over her bodily functions like passing urine and faeces. As she grows older, she will not be able to handle her periods. She requires an attendant virtually 24 hours a day. She requires an attendant who though may not be medically trained but must be capable of handling a child who is bed ridden. She would require an attendant who would ensure that she does not suffer from bed sores. The claimant has placed before us a notification of the State of Haryana of the year 2010, wherein the wages for skilled labourer is Rs. 4846/- per month. We, therefore, assess the cost of one attendant at Rs. 5,000/-and she will require two attendants *which works out to Rs. 10,000/- per month, which comes to Rs. 1,20,000/- per annum, and using the multiplier of 18 it works out to Rs. 21,60,000/- for attendant charges for her entire life. This takes care of all the pecuniary damages.*

Pain, Suffering and Loss of Amenities

26. Coming to the non-pecuniary damages under the head of pain, suffering, loss of amenities, the High Court has awarded this girl only Rs. 3,00,000/-. In ***Mallikarjun v. Divisional Manager, The National Insurance Company Limited and Ors., 2013 (10) SCALE 668 : 2013(4) RCR (Civil) 295****, this Court while dealing with the issue of award under this head held that it should be at least Rs. 6,00,000/-, if the disability is more than 90%. As far as the present case is concerned, in addition to the 100% physical disability the young girl is suffering from severe incontinence, she is suffering from severe hysteria and above all she is left with a brain of a nine month old child. This is a case where departure has to be made from the normal rule and the pain and suffering suffered by this child is such that no amount of compensation can compensate.*

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 bed-ridden 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/-.*

Loss of marriage prospects

28. The Tribunal has awarded Rs. 3,00,000/- for loss of marriage prospects. We see no reason interfere with this finding.

Future medical treatment

> *29. The claimant has been awarded only Rs. 2,00,000/- under this head. This amount is a pittance. Keeping in view the nature of her injuries and the fact that she is bed-ridden this child is bound to suffer from a lot of medical problems. True it is that there is no evidence in this regard but there can hardly be such evidence. She may require special mattress which will have to be changed frequently. In future as this girl grows, she may face many other medical issues because of the injuries suffered in the accident. Keeping in view her young age and assuming she would live another 50-60 years, it would not be unjust to award her Rs. 5,00,000/- for future medical expenses.*

12. Further recently Hon'ble the Supreme Court in a case of ***Ms. Rushi @ Ruchi Thapa, through her father Sri Dhan Bahadur Thapa vs. M/s. Oriental Insurance Co. Ltd. and Another, 2024(13) Scale 64*** reiterated the law settled by Hon'ble the Supreme Court in **Kajal's case (supra)**. The relevant portion of the judgment is reproduced as under:-

> *5. Dissatisfied with this compensation, the appellant, through her father, filed an appeal in MACApp./539/2018 before the Gauhati High Court. By judgment dated 20.02.2023, a learned Judge of the Gauhati High Court disposed of the said appeal, enhancing the compensation to Rs.18,97,371/-. The learned Judge was of the opinion that the appellant's permanent disability, as per Ext.8 disability certificate, ought to have been accepted and accordingly assessed the same as 75%. The*

learned Judge placed reliance on the decision of this Court in Master Ayush v. Branch Manager, Reliance General Insurance Company Limited and another (2022) 7 SCC 738, which involved determination of compensation payable to a five-year old victim of a road accident, and held that compensation in that regard was to be assessed as per the minimum wages on the assumption that the victim would have been able to earn after attaining adulthood. The learned Judge, accordingly, took note of the minimum wages payable to unskilled labour at the time of the accident, i.e., Rs.169 per day, and computed the notional loss of income of the appellant as Rs.5,070/- per month. The multiplier was taken as 15 in terms of the age of the appellant and the loss of earnings was worked out as Rs.9,12,600/- (Rs.5070X12x15). In addition thereto, the learned Judge held that a sum of Rs.3 lakh was payable for pain, suffering and loss of amenities; and a further sum of Rs.3 lakh was payable towards loss of marriage prospects. The learned Judge, however, confirmed that the medical expenses would be as per the bills produced, i.e., Rs.84,771/-. In all, the learned Judge determined the compensation payable to the appellant as Rs.18,97,371/-. The interest component was left intact. The break-up of the learned Judge's quantification is as under:

No.	***Head***	***Amount(in rupees)***
1.	*Medical and hospitalization expenses*	*84,771/-*
2.	*Pain, suffering and loss of amenities*	*3,00,000/-*
3.	*Loss of marriage prospects*	*3,00,000/-*
4.	*Future medical treatment*	*3,00,000/-*
5.	*Loss of future earnings*	
	(Income X Multiplier) (Rs.5,070x12x15)	*9,12,600/-*
	TOTAL **=**	***18,97,371/-***

The learned Judge directed that a sum of Rs.5,59,771/- should be immediately released to the appellant's father and the rest of the amount should be invested in one or more fixed deposit(s) so as to attract the maximum rate of interest.

6. Claiming that the compensation determined by the learned Judge was still on the lower side, the appellant chose to file the present appeal through her father. She quantified her total claim under various heads at Rs.71,80,000/-. M/s. Oriental Insurance Company Limited, respondent No. 1 before us, is represented by learned counsel. The owner of the vehicle, respondent No. 2, did not choose to appear despite service of notice. The driver of the vehicle, respondent No. 3, stood deleted from the array of parties at the risk of the appellant, vide order dated 20.03.2024.

7. On 13.09.2024, upon hearing the learned counsel for the parties, this Court directed them to submit their respective computations of the damages/compensation. Both parties accordingly filed their computation statements. The insurance company, while asserting that the compensation determined by the High Court was just and proper, stated that token compensation, between Rs.4 lakh to Rs.5 lakh, may be awarded towards attendant charges. The appellant, however, filed a statement computing her total claim, aggregating to Rs.48,68,000/- under various heads.

8. At this stage, we may note that this Court had occasion to consider a similar case involving a twelve-year-old child in Kajal v. Jagdish Chand and others (2020) 4 SCC 413. In that case, the child had suffered 90% permanent disability due to the accident. The argument before this Court was that as the child was just twelve years of age, notional income of Rs.15,000/- per annum should be adopted. However, this Court rejected this argument and adopted the minimum wages payable to a skilled workman for quantifying the notional loss of earnings of the child. In the case on hand, the igh Court adopted the minimum wages payable to unskilled labour, i.e., Rs.169 per day, but there is no justification for the same as the appellant was a school-going child at the time of her accident.The *minimum wages payable to a skilled workman, as per the Notification dated 01.03.2013 of the Government of Assam, stood at Rs.175 per day, which is more acceptable. On that basis, the notional loss of income of the appellant would work out to Rs.5,250/- per month and the multiplier applicable would be 15, considering her age at the time of the accident. In effect, the notional loss of earnings would work out to Rs.9,45,000/- (Rs.5250X12x15). The High Court failed to consider the loss of future prospects @ 40% of the monthly salary, in terms of the law laid down by this Court in Kajal (supra). Therefore, a further sum of Rs.3,78,000/- (Rs.2100X12x15) would be payable to the appellant under that head. The sum of Rs.3 lakh computed by the High Court for pain, suffering and loss of amenities is just and warrants no interference. Similarly, the compensation of Rs.3 lakh for loss of marriage prospects is sufficient. However, though the High Court calculated compensation for future medical treatment as Rs.3 lakh, we are of the opinion that the same would be deficient, given the nature of the permanent disability suffered by the appellant. She would be entitled to Rs.5 lakh under this head, as claimed by her in her computation statement. Further, attendant charges would also have to be considered as the appellant would be helpless without assistance. In Kajal (supra), this Court opined that the* *multiplier method would be the most realistic and reasonable method for this purpose. The monthly expense for one attendant was quantified as Rs.5,000/-. Adopting the same, the appellant would be entitled to Rs.9 lakh under this head. Though, the claim for Rs.13 lakh towards the expenses incurred for treatment and hospitalization is reiterated, the fact remains that the appellant's father could produce bills only for Rs.84,771/-. We are, therefore, not inclined to accept this claim without proof. In effect, the appellant is held entitled to the following compensation:*

No.	*Head*	*Amount (in Rupees)*
1.	*Loss of earnings (Income x Multiplier) (Rs.5,250x12x15)*	*9,45,000/-*
2.	*Loss of future prospects (40% of Rs.5,250/-) (Rs.2,100x12x15)*	*3,78,000/-*
3.	*Attendant charges for lifetime (Rs.5,000x12x15)*	*9,00,000/-*
4.	*Pain, suffering and loss of amenities*	*3,00,000/-*
5.	*Loss of marriage prospects*	*3,00,000/-*
6.	*Future medical treatment*	*5,00,000/-*
7.	*Medical and hospitalization expenses*	*84,771/-*
	TOTAL =	***34,07,771/***

13. In view of the above referred to judgments, the present appeal is allowed and award dated 03.04.2006 is modified. Accordingly, as per the settled principles of law as laid down by Hon'ble Supreme Court as mentioned above, the appellant-claimant is held entitled to the compensation amount as calculated below:-

Income	Rs.3000/- per month
Loss of Future Prospect 40%	Rs.1200/-(3000X40%)
Annual Income	Rs.50400/- (4200 X12)
Loss of future earning on account of 65% disability	Rs.32,760/- (65% of 50,400)
Multiplier of 18	Rs.5,89,680/- (32760X18)
Medical Expenses	Rs.80,991/-
Pain and suffering	Rs.3,00,000/-
Attendant Charges	Rs.2,00,000/-
Transportation Charges	Rs.40,000/-
Loss of amenities of life	Rs.2,00,000/-
Special Diet	Rs.1,00,000/-
Marriage Prospects	Rs.3,00,000/-
Total compensation awarded:-	**Rs.18,10,671/-**
Deduction:- Amount awarded by Tribunal	**Rs.1,50,991/-**
Enhanced amount of compensation	**Rs.16,59,680/- (18,10,671- 1,50,991)**

14. So far as the interest part is concerned, as held by Hon'ble Supreme Court in ***Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma*** **2019 ACJ 3176** and ***R.Valli and Others VS. Tamil Nandu State Transport***

Corporation **(2022) 5 Supreme Court Cases 107,** the amount so calculated shall carry an interest @ 9% per annum from the date of filing of the claim petition, till the date of realization.

15. As per award dated 03.04.2006, respondent No.1 is directed to deposit the enhanced amount along with interest with the Tribunal within a period of two months from the date of receipt of copy of this judgment. The Tribunal is directed to disburse the same to the appellant-claimant in his bank account. The appellant-claimant is directed to furnish his bank account details to the Tribunal.

16. Disposed off accordingly.

17. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

05.11.2024
G Arora

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