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

**FAO-4837-2007 (O&M)
Date of Decision: 18.11.2024**

Miss Pooja ......Appellant

Vs.

Sanjay Kumar and others ......Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Ms. Aarti Sharma, Advocate, for
Mr. Shalender Mohan, Advocate,
for the appellant.

Mr. Neeraj Khanna, Advocate, for
Mr. Ravinder Arora, Advocate,
for respondent No.3-Insurance Company.

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SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 13.03.2007 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Jind (for short, 'the Tribunal') for enhancement of compensation, granted to the appellant/claimant to the tune of Rs.1,85,000/- along with interest at the rate of 7.5% per annum, on account of injuries sustained by the appellant in a Motor Vehicular Accident, occurred on 29.08.2004.

2. As sole issue for determination in the present appeal is confined to quantum of compensation awarded by the learned Tribunal, a detailed narration of the facts of the case is not reproduced and is skipped herein for the sake of brevity.

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SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

3. Learned counsel for the appellant/complainant contends that compensation awarded by the learned Tribunal is on the lower side and deserves to be enhanced, as the injured-claimant/appellant was only 04 years' old girl child at the time of accident, who suffered 15% permanent disability in a Motor Vehicular Accident. She further submits that the learned Tribunal has not considered the matter from the correct perspective as due to this accident, she has lost her bright future. She further submits that her permanent disability will become a hurdle at the time of her marriage and would loss a chance of becoming a sport person. She further submits that the learned Tribunal did not assess the functional disability of the appellant/claimant in terms of settled law. Learned counsel further contends that appellant/claimant would not walk properly throughout her life other than obviously losing all normal pleasures of life. Learned counsel further contends that the appellant/claimant would face an additional layer of discrimination due to bodily disability. She would also face difficulty in finding an appropriate match for her. Therefore, she prays for the enhancement of the compensation, as per latest law.

4. *Per contra*, learned counsel for the respondent No.3-Insurance Company, 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. Therefore, he prays for dismissal of the appeal.

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

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6. A perusal of the award shows that the appellant/claimant was 04 years of age at the time of accident. The appellant/claimant suffered 15% permanent disability. The appellant sustained multiple injuries including fracture in her left thigh. The learned Tribunal while granting the compensation has not taken into consideration the future of the appellant, consequent to the accident. The learned Tribunal has erred in granting compensation in lumpsum of Rs.1,85,000/-. The learned Tribunal did not take into account the trauma suffered by the appellant/claimant or assessed her potential future income when determining the compensation. The learned Tribunal has not assessed the income of the appellant/claimant while awarding compensation. Further, the learned Tribunal has not applied the multiplier method while assessing the compensation and no amount of compensation was granted towards future prospectus, loss of marriage prospectus, loss of amenities of life, pain and suffering, transportation charges, special diet etc. Therefore, the award requires indulgence of this Court.

7. With regard to the determination of compensation in case of injury or death of a minor child, this court has already summarize the law in **FAO-2774-2006** titled as **'Akashdeep Singh Vs. Kartar Singh and others'** decided on 05.11.2024. The relevant portion of the judgment reads as under:-

> *"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*

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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 been 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****.*

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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

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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.7600/- , 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

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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

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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*

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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***

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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 clearly 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

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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

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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."

8. In view of the above referred to judgment in ***Akashdeep Singh's case (supra)***, this Court assess the monthly income of the appellant/claimant as Rs.10,000/-, in accordance with the minimum wages in the State of Haryana. The present appeal is allowed and award dated 13.03.2007 is

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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 enhanced compensation amount as calculated below:-

Sr. No.	***Heads***	***Compensation Awarded***
1	Monthly Income	Rs.10,000/-
2	Loss of future prospects (40%)	Rs.4,000/- (40% of Rs.10,000/-)
3	Annual Income	Rs.1,68,000/- (Rs.14,000/- X 12)
4	Loss of earning due to disability (15%)	Rs.25,200/- (15% of Rs.1,68,000/-)
5	Multiplier	18
6	Loss of future earning per annum	Rs.4,53,600/- (Rs.25,200 X 18)
7	Medical Expenses	Rs.2,500/-
8	Pain and Suffering	Rs.50,000/-
9	Special Diet	Rs.20,000/-
10	Transportation charges	Rs.15,000/-
11	Attendant Charges	Rs.35,000/-
12	Loss of amenities of life	Rs.50,000/-
13	Medical Expenses for future treatment	Rs.40,000/-
14	Loss of marriage prospects	Rs.1,00,000/-
	Total Compensation	**Rs.7,66,100/-**
	awarded by the Tribunal	**Rs.1,85,000/-**
	Enhanced Compensation	**Rs.5,81,100/-**

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9. 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 appellant-claimant is granted the interest @ 9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

10. The Insurance Company-respondent No.3 is directed to deposit the enhanced amount of compensation along with interest with the Tribunal within a period of two months from today. The Tribunal is further directed to disburse the enhanced amount of compensation along with interest in the accounts of the appellant/claimant. The appellant/claimant is directed to furnish his bank account details to the Tribunal.

11. Respondent No.3-Insurance Company is hereby directed to disburse the current scheduled fee to Mr. Ravinder Arora, Advocate, within a period of ten days from the date of receipt of the copy of this judgment.

12. Disposed off accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

18.11.2024
Virrendra

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No

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