IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-188-2008 (O&M)
Date of decision : 27.11.2024

Khushi Gupta ….Appellant

Versus

State of Haryana & ors. ….Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Subhash Goyal, Advocate
for the appellant.

Mr. Sandeep Singh Mann, Addl. A.G., Haryana

Mr. R.C.Kapoor, Advocate
for respondent No.4-Ins. Co.,

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PANKAJ JAIN, J.(ORAL)

1 Claimant is in appeal seeking enhancement of the compensation. She was 3 ½ years of age when she met with an accident leading to 20% permanent disability.

2 Tribunal while awarding compensation observed as under :-

"29. Minor Khushi Gupta was examined by the Medical Board on 21.2.2007 for assessment of permanent disability and report given by the Board is Ex. P-23 which speaks that petitioner Khushi Gupta aged about 5 years suffered 20% permanent disability with relation to her lower limb. Expenses incurred by her on her treatment have not been proved in this case. However, as petitioner Khushi Gupta minor sustained injuries and sustained disability, she must have spent some amount on her treatment and must have undergone pain

and agony. On these counts, I allow to her Rs. 20,000/- for pain and agony, medical expenses, special diet etc. For disability I allow Rs. 40,000/- to petitioner Khushi Gupta. In total, I allow Rs. 60,000/- to petitioner Khushi Gupta in claim petition No. 228 of 2005 titled "Khushi Gupta Vs. State of Haryana etc."

3 The claimant suffered permanent disability. Owing to the injury suffered in the hip joint, she was rendered incapable of squatting and sitting cross legged. Tribunal instead of assessing her functional disability has awarded compensation as per the permanent disability awarding her lump sum amount of Rs.60,000/-. The approach of the Tribunal is erroneous and cannot be sustained. Supreme Court in the case of ***Miss Rushi @ Ruchi Thapa, through her father, Sir Dhan Bahadur Thapa Vs. M/s Oriental Insurance Co. Ltd & anr. 2024(13) Scale 64*** while dealing with the compensation payable to 11 years old child leading to 75% disability observed as under :-

"*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 High 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/-

4 Keeping in view the aforesaid ratio, this Court deems it appropriate to apply the multiplier method. Keeping in view the permanent disability suffered by the appellant which has rendered her crippled for whole of her life, her functional disability is taken to be 50%. The compensation needs to be assessed applying multiplier method. Her notional income is to be assessed as per the minimum wages notified by the State for the skilled workmen on the relevant date.

5 Counsels are *ad-idem* that on the date of accident the minimum wages notified by State Government were Rs.3,500/-. She is further entitled for 40% future prospects. Multiplier of 18 would be applicable. She is further entitled for an amount of Rs.10,000/- on account of medical expenses. Rs.10,000/- is granted for attendant charges. Rs.10,000/- is granted for special diet. Rs.1,00,000/- is granted on account of pain and suffering. Rs.1,00,000/- is granted for loss of marriage prospects. Rs.1,00,000/- is granted for loss of amenities.

6 Disposed off accordingly.

(PANKAJ JAIN)
JUDGE

27.11.2024
Pooja Sharma-I

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