



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-6793-2015 (O&M)
Date of Decision: December 17, 2024

Baby Nandini
... Appellant

Versus

Virender Singh and others
... Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Mohit Jasuja, Advocate for
Mr.Amit Chaudhary, Advocate
for the appellant.

Mr.Mukund Gupta, Advocate for
Mr.Rajiv Sharma, Advocate
for respondents No.1 and 2.

Mr.Nigam K. Bhardwaj, Advocate
for respondent No.3.

ARCHANA PURI, J.

The present appeal has been filed by appellant-claimant Baby Nandini, thereby seeking enhancement of the compensation awarded, on account of injuries sustained by her, in a motor vehicular accident, which took place on 11.01.2009.

On appraisal of the evidence brought on record, learned Tribunal, vide questioned Award, had granted compensation to the extent of Rs2,67,000/-, qua injuries sustained by Baby Nandini. The liability of the respondents i.e. driver, owner and insurer of the offending vehicle was held



to be joint and several. The compensation granted by the learned Tribunal, is reproduced in a tabular form, as herein given:-

1.	Medicine and treatment charges	Rs.1,22,000/-
2.	Transportation charges	Rs.8000/-
3.	Attendant charges	Rs.6000/-
4.	Special diet	Rs.5000/-
5.	Pain and suffering	Rs.20,000/-
6.	Disability	Rs.66,000/-
7.	Loss of enjoyment and amenities in life	Rs.40,000/-
	Total	Rs.2,67,000/-

So far as, the factum and manner of taking place of the accident, as well as, the liability, fastened upon the respondents is concerned, it should be noted that none of the respondents, have chosen to assail the award. Hence, this aspect calls for no further scrutiny.

Learned counsel for the parties heard.

At the very outset, while making reference to the evidence, brought on record and also making reference to the various counts, upon which the compensation, has been granted and also to various counts, to which amiss has been given, while calculating the compensation, it is submitted by the learned counsel for the appellant that the compensation granted, looking at the kind of injuries sustained by Baby Nandini, as such, in no manner, can be called to be ‘just’ compensation. It is submitted that going by the opinion of the medical board, the appellant had incurred permanent disability to the extent of 29.22%. At the time of accident, the appellant-claimant was minor, aged about 4 years and its serious consequences and impact is reflected in the medical certificate issued, pursuant to her examination by the Board. In these circumstances, it is



submitted that the compensation granted, is miserably on a lower side, which calls for extensive enhancement.

Rather, on the other hand, learned counsel for the insurance company has submitted that the compensation granted by learned Tribunal is just and reasonable, while taking into consideration the injured to be a child, who is a non-earning person.

Balram, father of the appellant-claimant, had stepped into witness box as PW-7 and in his affidavit Ex.PW7/A, besides deposing about his relationship with the appellant and her age to be 4 years, has further deposed about the serious injuries sustained by the appellant-claimant, in the accident in question, all over her body, which also include fracture on her right leg. He further stated about the detail of the treatment undergone by her. He also deposed that appellant was taken to Escorts Hospital and Research Centre, Faridabad, for treatment, where she remained admitted. Also, the said witness stated about the follow-up treatment.

Even, PW-3 Dr.Ashok Dhar, Senior Consultant, Orthopaedic Fortis Escorts, Faridabad, has deposed about admission of Baby Nandini in the hospital on 11.01.2009 and she was diagnosed as a case of type III compound fracture both bones right leg and fracture dislocation ankle joint. He also categorically stated about the said patient to have suffered such injury from road traffic accident. He further deposed that after initial stabilization of the patient, she was operated and wound debridement and stabilization of fracture was done with external fixator and she was discharged from the hospital on 17.01.2009. She was advised to come up for follow up in OPD for further management.



PW-4 S.N.Ahmed, Deputy Manager, Medical Records had proved the bills of the admission and treatment of the appellant-claimant and the same are Ex.P8 to Ex.P48.

Furthermore, PW-6 Gagandeep, Record Keeper, Escorts Hospital had proved the bill Ex.P74, in the name of patient Nandini, who was again admitted in the hospital on 17.02.2009 and was discharged on 20.02.2009. Besides the same, PW-5 Rajesh Kumar, Clerk, Shiv Medicos, also proved the bills, which are Ex.P49 to Ex.P73, which related to claimant Baby Nandini.

PW-8 Dr.Ravi Shankar Gaur, Orthopaedic Surgeon, B.K.Hospital, Faridabad also deposed about Baby Nandini to have been medically examined by the board of doctors, for the purpose of the assessment of the disability and also deposed about his being member of the said board. The disability assessed was to the extent of 29.22%, on account of operated case of 'Epiphyseal injury lower tibia and ankle dislocation right with restricted movements right ankle with calceneus deformity right ankle with unable to bear weight on right lower limb with shortening right leg by 1.5 inch'. The said disability certificate is Ex.P79. Copy of the MLR is Ex.P80 and further bills relating to the treatment of the appellant are Ex.P81 to Ex.P83 and discharge summary is Ex.P84 and Ex.P85.

The evidence aforesaid, do amply establish about the grievous injuries suffered by the appellant-claimant in the accident in question and the same caused 29.22% disability.

Looking at the aforesaid evidence, coming forth, the extent of compensation, as granted by learned Tribunal do call for further



enhancement.

However, before re-assessment of the compensation, it should be noted that the appellant-claimant, is asserted to be 4 years old, at the relevant time. The injuries, so caused, obviously had made her crippled person, which would be lifelong haunting, both mentally and physically and the same virtually doomed her future. It is quite obvious that the injuries so caused, would have hampered her future hopes and growth in life to a great extent. The appellant-claimant's impaired condition would have definitely impacted her chances of settlement in life. Having suffered 29.22% disability, has obviously put the claimant into handicapped category, more particularly, with shortening of leg by 1.5 inch, which in itself, is bound to restrict the chances of settlement in life and shut many job avenues, which calls for highest standard of physical well being. Even, the chances of her marriage prospects, ought to be restricted to a great extent. The state of physical disability, so suffered, by the appellant would have impacted the life of her family members also. Their resources and strength are bound to be stressed by the need to provide full time care to the appellant-claimant, for a sufficiently long period of time, till she adept a skill to be self-sufficient to her maximum capacity.

The Motor Vehicles Act is in the nature of social welfare legislation and its provisions make it clear that compensation should be '**justly**' determined. A person, therefore, is not only to be compensated for the injury suffered due to the accident but also for the loss, on account of the injury and his/her inability to lead the life, he/she led prior to the life altering event. In '**Jagdish Vs. Mohan and others, 2018 (4) SCC 571**', the Hon'ble



Supreme Court made the following relevant observations, on the intrinsic value of human life and dignity that is attempted to be recognised, through such compensatory awards:-

“...the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law.”

The Courts should, as such, strive to provide a realistic recompense, having regard to the realities of life, both in terms of assessment of the extent of disability and its impact, including the income generating capacity of the claimant and not only that, even the impact of the accident on his/her life, on account of his/her physical disability. The Courts should be mindful of the fact that though, the physical disability may be on the lesser count but the functional disability, on account of injury sustained, can always be on higher side.

The extent of economic loss, arising from a disability, may not be measured in proportions, to the extent of permanent disability. In this regard, suffice to make reference to the decision rendered by the Hon'ble Supreme Court in '***Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343***'.

The efforts of the Courts must always be, to substantially ameliorate the misery of the claimant and recognize his/her actual needs, by



accounting for the ground realities. However, the measures should be in correct proportion.

Now, advertent to the case in hand. As already observed aforesaid, the appellant-claimant had suffered serious injuries resulting into disability to the extent of 29.22%, as evident from disability certificate Ex.P79. Considering this kind of crippling condition, more particularly, when there was restricted movement of right ankle and unable to bear weight and having 1.5 inch shortening of right leg, the appellant-claimant has become dependent upon others to some extent. Considering this kind of injury, it is pertinent to mention that though the disability is on lower part of the body, but it is bound to affect the body functionality, more particularly, having restricted her chances of gainful employment.

Keeping in view the same, to work upon the compensation, income, ought to be notionally fixed for the calculation purposes, while taking into account the fact that appellant-claimant was aged about 4 years, at the time of accident. Simultaneously also, for fixation of notional income, it ought to be taken into consideration that for the treatment purposes, the appellant-claimant was taken to Fortis Escorts Hospital, Faridabad, which in itself, is a good pointer to consider, about the reasonably good financial condition of the family of the appellant-claimant.

Suffice to make mention that while considering the case of death of non-earning persons i.e. children below the age of 15, time and again, the Courts have considered earnings of the deceased as Rs.30,000/- and work on to calculate the notional income, while applying the multiplier '15'.



Reference is made to '*Kishan Gopal and others vs. Lala and others, 2013(4) RCR (Civil) 276*', wherein, while taking the notional income of the child as Rs.30,000/- per annum, the compensation was worked upon. However, the accident, in the aforesaid case law, related to year 1992. Considering the long period having passed by and also considering the devalue of rupee since then and also considering the date of accident to be 11.01.2009 and also the minimum wages, prevalent at that time, to be approximately Rs.4000/-, per month in modest estimate, proximate to the reality, the notional income inclusive of future prospects, can conveniently be taken to be Rs.50000/-per annum.

The appropriate and the suitable multiplier to be applied is '15'. While considering 29.22% disability to be there, the loss of earnings is worked upon as **Rs.50000x15x29.22%=Rs.2,19,150/-**.

In view of the nature and kind of injuries suffered by the appellant-claimant and also her hospitalization and the fact of her having remained admitted two times, soon after the accident, it is quite obvious that on account of use of the conveyance for 'to and fro' to the hospital, substantial amount must have been spent by the family of the appellant-claimant. The amount of Rs.8000/- granted by learned Tribunal, on this count, stands enhanced to **Rs.15,000/-**.

Obviously, during the period of treatment and some time thereafter, in the minimum, the appellant-claimant must have been put on special rich diet, for the healing process. On this count also, compensation of **Rs.15,000/-** is granted instead of Rs.5,000/-, as awarded by learned Tribunal.

Looking at the kind of injuries suffered, definitely, the



appellant-claimant is bound to be looked after by a by-stander/attendant throughout, as there was need for assisted living, more particularly, keeping in view her age.

Though, learned counsel for respondent-insurance company submits that there is no material, as such, produced by the appellant-claimant, on actual expenses, incurred for the services of the attendant and it is argued that no further claim is merited under this head, but however, this submission is not tenable. Considering the extent of disability suffered, besides the family members, the appellant-claimant ought to have been looked after by one attendant throughout. Even if, the appellant-claimant was being looked after only by her family members, then also, it should be noted that they could perform the role of care-giver, only by diverting their own time, from any form of gainful employment, which could have generated some income. Thus, towards the count of 'attendant charges', the compensation is enhanced to **Rs.15,000/-** from Rs.6,000/-

Considering the nature of injuries, suffered by the appellant-claimant in the accident in question and her age, at the relevant time, which traumatized her mentally and physically and also it being life altering event, definitely, the appellant-claimant, ought to passed through painful transition. Thus, on the count of 'pain and suffering', the compensation is enhanced from Rs.20,000/- as granted by learned Tribunal to **Rs.50,000/-**.

Considering the disability, so suffered, it is quite obvious, the marriage prospects of the appellant-claimant have also become very restricted and on this count, she is entitled to be compensated and therefore, on this count, compensation is granted to the extent of **Rs.1,50,000/-**.



Besides the aforesaid, the appellant-claimant is also entitled to medical expenses, incurred on her treatment, which on the basis of various bills, proved in the evidence is taken as Rs.1,22,000/- as awarded by learned Tribunal.

Though, in the claim petition, the extent of compensation is sought as Rs.5,00,000/-, but however, the amount of compensation claimed is not a bar for the Tribunal and High Court to Award more than what is claimed, provided it is found to be just and reasonable. In fact, it is the duty of the Court to assess fair compensation. Reference in this regard is made to *Chandramani Nanda vs. Sarat Chandra Swain and another, 2024(4) RCR (Civil) 614.*

Thus, on various counts, as detailed aforesaid, the compensation is re-computed as herein given:-

1.	Loss of earnings	Rs.2,19,150/-
2.	Transportation charges	Rs.15,000/-
3.	Special rich diet	Rs.10,000/-
4.	Attendant charges	Rs.15,000/-
5.	Pain and suffering	Rs.50,000/-
7.	Loss of Marriage prospects	Rs.1,50,000/-
8.	Medical Bills	Rs.1,22,000/-
	Total	Rs.5,81,150/-

As such, the compensation, so awarded by learned Tribunal, stands enhanced from Rs.2,67,000/- to Rs.5,81,150/-.

On the enhanced amount of the compensation i.e. **Rs.5,81,150-2,67,000=Rs.3,14,150/-**, the appellant-claimant shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present



appeal, till realization of the enhanced amount of compensation. The remaining terms of the impugned Award, shall remain the same.

Furthermore, it should also be noted that the appellant-claimant is minor child. Keeping in view her age and also considering the injuries sustained by her, it shall be appropriate, if the amount enhanced along with proportionate interest, is invested in the form of Fixed Deposit Receipt (FDR), with a nationalized bank, for an initial period of five years. However, in the eventuality of the need, if made out, to its satisfaction, learned Tribunal shall be at the option to release of the interest amount, at first instance, or some amount from the awarded amount, while taking into consideration, the extent of need of the appellant-claimant.

With the above observations, the present appeal stands allowed.

December 17, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No