



2024:DHC:10219



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 02nd December, 2024

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MAC.APP. 218/2023**MOHD SADIK THROUGH FATHER ANISH AHMAD**

(Appellant is minor through his father and natural guardian Sh. Anish Ahmad)

R/o Village Sotkhedi, Post Mahamdabad, Haldaur, Chandpur, Bijnor,
U.P.-246726AppellantThrough: Mr. Anshuman Bal, Advocate
through VC.

versus

1. **UTTAR PRADESH STATE ROAD TRANSPORT
CORPORATION**Head Quarter, Tehri Kothi, MG Marg, Lucknow 2260001, U.P.
.....Respondent No.12. **REGIONAL MANAGER**Uttar Pradesh State Road Transport Corporation
Kanpur, Dehat, U.P.Respondent No. 23. **UDAYVEER SINGH**S/o Sh. Ved Singh
C/o Uttar Pradesh State Road Transport Corporation
Sahibabad, Ghaziabad, U.P.Respondent No.3Through: Mr. Shadab Khan, Advocate for R-1
through VC.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**



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1. The Appeal under *Section 173* of the *Motor Vehicles Act, 1988* has been filed on behalf of the Appellant-Injured, aged 12 years, to seek enhancement of compensation granted in the sum of Rs. 2,10,000/- along with interest @ 6% per annum *vide* Award dated 29.11.2022, on account of injuries suffered by him in a road accident on 12.05.2018.
2. ***Briefly stated***, on 12.05.2018 at about 11:30 pm, the injured child, Mohd. Sadik, around 12 years old, was travelling with his relative Altaf, in bus bearing No. UP-77AN-1949 (*offending bus*). While they were getting down from a bus at Shastri Park Red Light Bus stand, the driver suddenly drove the bus in a rash and negligent manner, due to which Mohd. Sadik fell and his right leg got crushed under the wheel of the bus. The driver speedily went towards Kashmere Gate.
3. The child was taken to GTB Hospital, Shahdara, Delhi for treatment
4. The ***FIR bearing No. 360/18 under Section 279/337 of the Indian Penal Code 1860*** was registered at PS New Usmanpur, North East District, Delhi. Subsequently, a Claim Petition under Section 166 read with Section 140 of the Motor Vehicle Act, 1988 was filed on behalf of the Appellant through his father on 30.08.2018, while DAR was filed separately by the Police.
5. *The Appellant has sought enhancement of compensation on the following grounds:*
 - (i) that he had suffered the permanent disability of 6% in his Pelvis area and he has been given only a lump sum Rs. 1,00,000/- as compensation on account of his pain and suffering, mental and



physical shock, hardship, inconvenience and discomfort etc., and loss of amenities; and

(ii) that the rate of interest @ 6% granted to the Appellant should be enhanced to 9% per annum.

6. ***Learned counsel for the Respondent No. 1-UPSRTC*** submits that the compensation of Rs. 1,00,000/- has been granted in terms of the Judgment of the Apex Court in Mallikarjun vs. Divisional Manager, The National Insurance Company Limited and Ors., MANU/SC/0878/2013, wherein it was observed that where the permanent disability is upto 10%, a compensation of Rs. 1,00,000/- may be granted, unless there are exceptional circumstances.

7. It is further submitted that there is no infirmity in the impugned Award dated 29.11.2022 and the Appeal is liable to be dismissed.

8. **Submissions heard and Record Perused.**

Compensation on Account of Permanent Disability/ Pain and Suffering:

9. ***The first ground*** on which the enhancement of the compensation has been sought, is that though the Appellant, who was 12 years old at the time of accident on 12.05.2018, has been granted only a lump sum of Rs. 1,00,000/- towards pain and suffering, mental and physical shock, hardship, inconvenience and discomfort etc., and loss of amenities.

10. Learned counsel for the Appellant has claimed that the Appellant is still suffering from abdomen and leg and his earning capacity has been hampered forever in future.

11. In order to appreciate the contention of the Appellant, it is pertinent to refer to the Disability Certificate dated 14.09.2021 wherein it is certified



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that the *Loco Motor Disability* on account of fracture of the pelvis is 2%, in relation to the pelvic region and further there is scarring over previous operated side (both leg, thigh, buttock), which has been assessed as 4%. *Total Permanent Disability* therefore, has been certified as 6%.

12. It is evident from the Disability Certificate that the Permanent Loco Motor Disability has been certified as 2%. The disability of 4% is only on account of scarring at the surgery side.

13. In this backdrop, it is pertinent to refer to the testimony of *the injured child, PW-3*, who has deposed that he had earlier been taking treatment and had visited OPD till February, 2019 but now there is lot of improvement in his leg and he can walk on his own, without any support. Sometimes, he feels pain in his abdomen and in his leg, for which he takes medicines from outside. He is not continuing with his treatment with Guru Teg Bahadur Hospital.

14. From the evidence on record, the learned Tribunal has rightly assessed that the injured child suffered 3% *disability with respect to his whole body*. The Hon'ble Supreme Court in the Case of *Mallikarjun (supra)*, observed as under:

“Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of the various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant etc. should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 Lakhs; upto 60%, Rs.4 Lakhs. For permanent disability upto 10%, it should be Rs.1 Lakh, unless there are exceptional



circumstances to take different yardstick”

15. Therefore, in the facts and circumstances of the present case, as the disability is less than 10%, *the amount granted by the learned tribunal towards Permanent Disability, does not warrant any interference.*

16. Furthermore, the learned Tribunal has granted Rs.20,000/- towards the Loss of Earning to the parents during the period of hospitalisation. Rs.36,000/- towards Medical Expenses and Rs.25,000/- towards Loss of Marriage Prospects. In addition, Rs.29,000/- lump sum has been awarded towards the Conveyance and Special Diet.

17. However, as has been rightly contented on behalf of the Appellant, no compensation has been granted for *Pain and Suffering*.

18. Considering the nature of injuries and the period for which the Appellant remained under treatment, he is awarded an additional sum of Rs.75,000/- towards under this Head. *The total compensation is thus enhanced to Rs.2,10,000/- + Rs.75,000/- = Rs.2,85,000/-.*

Rate of Interest:

19. *The second ground of challenge* is that the interest has been granted @ 6% p.a. though it should have been at least @ 10% p.a.

20. In *National Insurance Co. Ltd. vs. Yad Ram*, 2023 SCC OnLine Del 1849, this Court has opined that the rate of interest awarded on compensation payable should be decided on a case-to-case basis, rather than having a fixed measure of the same, as what may be reasonable in one case may not be so in another.

21. Therefore, in the present case, the accident is of 12.05.2018 and considering the prevailing rate of interest, *the same is enhanced to 9% p.a.*



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Conclusion:-

22. The Appeal is allowed and the compensation is enhanced to Rs.2,85,000/- along with the interest @ 9% p.a., from the date of institution of the Petition till the date of disbursement. The enhanced compensation be deposited within three months, to be disbursed in terms of the Award dated 29.11.2022.

23. The Appeal is accordingly disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

DECEMBER 2, 2024
S.Sharma/RS