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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 23rd January, 2024**
Judgment pronounced on : 12th March, 2024
+ **MAC.APP. 227/2022**
MASTER RUPENDRA SINGH @ RUPENDRA Appellant
Through: Mr. Pankaj Gupta, Adv.

versus

AJJAPPA & ORS. Respondents
Through: Ms. Garima Sachdeva, SPC for
R-2 and 3.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The appellant through his mother and natural guardian has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988¹ assailing the impugned judgment-cum-award dated 08.04.2022 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Patiala House Courts, New Delhi², in MACP No. 443/2016 and is thereby seeking enhancement of compensation on various grounds.

FACTUAL BACKGROUND:

2. Shorn of unnecessary details, the appellant who was a boy of 4½ years, met with a motor accident on 01.09.2015 involving an

¹MV Act

²Tribunal



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Army Truck 2.5 ton bearing registration No. 13C-09289Y³ being driven by respondent No.1. Suffice to state that the accident resulted in the appellant sustaining prolonged medical treatment and eventually suffered permanent disability to the extent of 90% that resulted in amputation of the left upper limb. Learned Tribunal *inter alia* held that the respondent No.1 was driving the offending vehicle belonging to the respondents No. 2 and 3 in a rash and negligent manner that resulted in causing injuries to the appellant, which has not been assailed in the present appeal.

3. As pointed out above, the appellant assails the impugned judgment-cum-award insofar as the quantum of compensation is concerned, which is claimed to be on the lower side. Learned Tribunal while deciding the issue No.2 as to the quantum of compensation referred to the proposition of law decided by the Supreme Court as well as this Court and found that no bills were submitted towards medical treatment, apparently since father of the appellant is an Army Man and the same was taken care of. While deciding the actual and future earnings or pecuniary loss, learned Tribunal relied on decision in the case of **Mallikarjun v. Divisional Manager National Insurance Company Ltd.**⁴ and held that the appellant was entitled to Rs. 4,00,000/- for having suffered permanent disability of more than 60%. It would be apposite to reproduce other

³Offending vehicle

⁴2014 (14) SCC 396



heads of compensation/itemization that were drawn by the learned Tribunal, which goes as under:-

Loss of actual and future earnings or pecuniary loss:	Rs. 4,00,000/-
Loss of destruction of prospects of marriage:	Rs.1,00,000/-
Disfiguration:	Rs. 1,00,000/-
Conveyance, Special Diet and Attendant Charges:	Rs.82,000/- (For six months)
Total:	Rs. 6,82,000/-

4. Accordingly, a total compensation of Rs. 6,82,000/- was awarded to the appellant along with an interest of @ 6% per annum from the date of filing of the petition except for providing the amount of interim award and interest for the suspended period, if any, during the course of inquiry, which would be excluded from the above amount and from calculation of the compensation.

5. Needless to state that the liability to pay compensation was fastened jointly and severally on the respondents No.1 and 2 with directions to deposit the entire amount of compensation within 90 days of the judgment, failing which they were made liable to pay penal interest @ 9% for the delayed period.

ANALYSIS & DECISION:

6. Having given my thoughtful consideration to the submissions advanced by the learned counsels for the parties at the Bar and on perusal of the record of the present appeal as also the digitized Trial Court Record, unhesitatingly, this Court finds that the amount of



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compensation awarded by the learned Tribunal is on an extremely lower side and overlooks the various legal parameters which are required to be considered while awarding a just and reasonable compensation. The proposition of law is replete with the judicial policy that the determination of quantum of compensation must be liberal and not done niggardly as the law values life and limb in a free country. The whole position of law was summarized in a decision by the Supreme Court titled **Raj Kumar v. Ajay Kumar**⁵, wherein the Supreme Court after discussing several case laws on the subject held as under:-

"The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

- (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.
- (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:
 - (a) Loss of earning during the period of treatment;
 - (b) Loss of future earnings on account of permanent disability.
- (iii) Future medical expenses.

Non-pecuniary damages (General damages)

- (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
- (v) Loss of amenities (and/or loss of prospects of marriage).
- (vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the

⁵(2011) 1 SCC 343





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evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life." (Paragraph 6)

7. There is no gainsaying that there can be no actual amount of compensation for anguish of the heart or for the mental and psychological tribulations caused to the victim and their kin in a motor vehicle accident. The MV Act is a beneficial legislation when it comes to compensatory jurisdiction and certainly this Court has to guard that compensation is not such which is either in the nature of a bonanza or a windfall but then it should not be something which is a mere pittance or is unconscionable.

8. Reverting back to the instant matter, first things first, the learned Tribunal relied on the case of *Mallikarjun (supra)* as to the factors for determining compensation on account of loss of earning capacity or future earning is concerned, that stands impliedly discarded in view of the subsequent pronouncements by the Supreme Court. There is no gainsaying that determination of compensation in case of child, as in this case, who was hardly 4½ years of age, is an extremely difficult exercise since his life was yet to come and take shape. He hails from a family which is socially, economically and educationally well placed in society and would have had access to various facilities in life required to grow and mature into a person with full bodily abilities capable of enjoying life, pursuing a career of his





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choice and so on. The motor accident in question has resulted in denuding the child of a comfortable lifestyle which would now be definitely marred by discomfort, inconvenience and loss of prejudices in life. The award of Rs. 4,00,000/- towards such head is no longer a good criterion in view of decision in **Kajal v Jagdish Chand**⁶ wherein the child was 12 years of age and due to brain injuries suffered, she is left with a low IQ of 20% and her social age was assessed to be that of a child aged only nine years, requiring constant medical care, attention and treatment resulting in 100% disability.

9. Further, in the case of **Minor Roopa D/o Basappa Minor Rep. by her Natural Guardian and Father by Name Basappa v. Divisional Manager, New India Assurance Company Limited**⁷, the child was six years old, when she suffered permanent disability in the nature of amputation of her right leg as also loss of right lower limb with half of the pelvis affecting her private parts as well. In the case of **Master Ayush v. Branch Manager, Reliance General Insurance Company Limited**⁸ the injured was five years of age. In the aforesaid cases, instead of going by the notional annual income of Rs. 15,000/- as provided in the Second Schedule of the MV Act, the Apex Court reckoned that the appropriate criterion in such cases would be to assess loss of future earning/earning capacity or loss of earning capacity as per the minimum wages applicable to a skilled workman.

⁶(2020) 4 SCC 413

⁷2022 SCC OnLine SCC 2089

⁸Civil Appeal No. 2205-2206 of 2022 decided on 29.3.2022



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10. In view of the aforesaid disposition by the Supreme Court, in the instant case the minimum wages applicable for a skilled workman in the year 2015 was Rs. 10,998/-. 40% of the minimum wages have to be reckoned for loss of future prospects. Accordingly, annual notional income comes to Rs. 10998 (10998x12) = Rs 1,31,976/-. The functionally disability has to be reckoned @ 65% having regard to the fact that the boy child in the instant case has suffered amputation of his left upper limb and multiplier of 18 is to be applied. The compensation is accordingly worked out to be Rs. 21,61,762/-.

11. Having regard to the decisions of the Supreme Court referred above viz. *Kajal*, *Minor Roopa* and *Master Ayush*, the other heads of compensation are also required to be suitably modified. The amount of pain and suffering is enhanced to Rs. 3,00,000/-; loss of amenities of life to Rs. 3,00,000/-; loss of marriage prospects is enhanced to Rs. 5,00,000/-. Further, Rs. 1,00,000/- is awarded towards disfigurement while the amount for conveyance, attendant and special diet are packed @ Rs. 1,00,000/-. Accordingly, the total compensation is arrived as under:-

Sr. No.	Head of Compensation	Amount
1.	Annual Income	Rs. 1,31,976/-
2.	Amount towards loss of future prospects	Rs. 52,790/- (40% of 1,31,976/-)
3.	Multiplier	18
4.	Functional disability	65%
5.	Loss of functional disability/earning capacity	Rs. 21,61,762/ (1,84,766 x 18 x 65%)
6.	Pain and suffering	Rs. 3,00,000/-



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7.	Loss of marriage prospects	Rs. 5,00,000/-
8.	Disfigurement	Rs. 1,00,000/-
9.	Loss of amenities of life	Rs. 3,00,000/-
10.	Conveyance /attendant/special diet	Rs. 1,00,000/-
Total Compensation		Rs. 34,61,762/-

12. It is pertinent to mention that this Court is not awarding any compensation towards prosthetics since mother of the appellant *vide* affidavit dated 08.01.2021 declined to seek any compensation for cost of prosthetics, evidently on the ground that being a child of an army personnel, all his medical expenses and prosthetics till the age of 25 years would be taken care of by the Army, as was informed during the course of arguments.

13. In view of the foregoing discussion, the impugned judgment-cum-award dated 08.04.2022 is hereby modified, thereby providing that the appellant shall be entitled to total compensation of Rs. 34,61,762/- along-with interest @ 7.5% from the date of filing of the petition till its realization.

14. In supersession of all previous orders, it is directed that 75% of the amount be deposited in the FDR in the name of appellant or in any other interest bearing bonds besides any other beneficial investments in the discretion of the mother and natural guardian. The amount of compensation be directly credited in the bank account of the appellant, which for now would be operated through his mother and natural guardian; and the Bank Manager concerned shall ensure that the amount towards investment in Fixed Deposit and/or interest bearing



bonds or in any other viable financial investment, is released through RTGS or electronic transfer mode so as to ensure that the said amount is utilized towards the financial well-being of the child in future.

15. The amount of compensation so enhanced be deposited with the learned Tribunal within four weeks from today, failing which, the respondents No. 1 and 2 shall be jointly and severally liable to pay it with an enhanced interest @ 12% per annum from the date of this judgment till realization.

16. The appeal stands disposed of accordingly.

DHARMESH SHARMA, J.

MARCH 12, 2024

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