



2024:DHC:10226



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: 5th December, 2024*+ **MAC.APP. 540/2023, CM APPL. 29844/2024 (for placing on record the fresh address of the Respondent No. 3)**

VARENIA JAIN

D/o Sh. Vivek Jain

R/o H-No B-1904, 3rd Floor

Shastri Nagar, Delhi-110052

Through her father Sh. Vivek Jain

Her legal and natural guardian

.....Appellant

Through: Mr. Vikram Gujral, Mr. Prem Lal,
Ms. Akanksha Singh and Mr. Aryan
Kalia, Advocates.

versus

1. DEEPAK

S/o Sh. Ved Prakash

R/o H. No. S-128, Jhuggi Kibery Place

Delhi Cantt, New Delhi

.....Respondent No.1.

2. Smt. Renu

W/o Sh. Dinesh Chand

R/o H. No. T-2287, Ashok Pahari

Faiz Road Karol Bagh

New Delhi-110005.

.....Respondent No.2.

3. Future General India Insurance Company Limited

Address: 1st Floor, Unit No.10 to 115

Krishna Apartment, Business Square, Opra

Plot No.D-46, Distt Centre Netaji Subhash Place,

New Delhi.

.....Respondent No.3.

Through: Counsel for Respondents (appearance
not given)



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CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T (Oral)

MAC.APP. 540/2023

1. The Appeal under Section 173 of the Motor Vehicle Act, 1988 ('M.V. Act' *hereinafter*) has been filed on behalf of the Appellant, for enhancement of the compensation awarded *vide* impugned Award dated 01.09.2023 in the sum of Rs.47,71,254/- along with the interest @ 8% p.a. on account of injuries suffered by the Claimant in a road accident on 07.03.2018.
2. ***Briefly Stated***, on 07.03.2018 at about 12.10 p.m. at a spot in B-Block Gurudwara Road, Near Lalita Block School, Shastri Nagar, Delhi-110052, the Claimant/Varenja Jain (*the injured, aged 3 years*) along with her grandfather was walking back from her Play School to home. All of a sudden, a Maruti Suzuki Eeco (White colour) bearing registration no. DL-ILV-4232 (*the offending vehicle*) which was driven by Respondent No.-1/Sh. Deepak in a rash and negligent manner, at a fast speed without observing the traffic rules, hit the Child who sustained multiple severe injuries on her head, hands, legs and other parts of the body.
3. The *FIR No. 92/2018* was registered at Police Station Sarai Rohilla under *Sections 279/338 of the Indian Penal Code, 1860*.
4. After the investigation, DAR was filed by the Investigating Officer on 23.05.2018. Subsequently, the Claim Petition was filed under Section 166 read with Section 140 of the Motor Vehicle Act, 1988.
5. *The Claimant has sought enhancement of the quantum of compensation of the following grounds:-*



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- (i) that the lump sum amount for future earning capacity granted is incorrect, in the light of observations in the case of Kajal vs. Jagdish Chand & Ors., MANU/SC/0126/2020, decided on 05.02.2020, that the Loss of Future Income in the case of Permanent Disability should also be calculated on the principle of multiplier; and
- (ii) that the Attendant Charges and the Loss of Earnings of Parents, have also not been considered.

6. ***Learned counsel on behalf of the Insurance Company*** submits that the observations in Kajal vs. Jagdish Chand & Ors., AIR 2020 SC 776., has been made in the peculiar facts of this case and does not overrule the Judgment of Master Mallikarjun vs. Divnl. Mgr. National Ins. Co. Ltd. & Anr., (2015) 1 SCC (CRI) 372, decided on 26.08.2013, defining the lump sum compensation payable in case of child suffering injuries/death.

7. It is further submitted that the compensation granted under all other Heads namely, Conveyance, Diet, Discomfort, is highly excessive and in case of applying the multiplier method to calculate the compensation, the requisite corresponding adjustments need to be made under these Heads.

8. **Submissions Heard and Record Perused.**

Earning Capacity of the Injured:-

9. *The Appellants have asserted that the learned Tribunal has erred by not granting any amount for loss of future earnings of the injured and the same should have been calculated on the basis of Kajal (supra).*

10. In this regard, it is pertinent to refer to the Disability Certificate of the injured child dated 13.10.2020, which states that she is a case of *post head injury sequelae with profound mental retardation. Her physical and mental impairment is 100% in relation to all four limbs and mental abilities.*



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11. The learned Tribunal assessed the *Functional Disability of the injured* as 100% with respect to her whole body.

12. Similar facts were considered in the case of Kajal (*supra*) wherein the 12-year-old injured girl suffered from mental disability where her IQ got reduced to less than 20% and the Medical Board assessed her social age to be only of a 9-months' old child. The Hon'ble Supreme Court held as under:-

*“6. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Act enjoins upon the courts to do. The court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by the victim. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, the compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. Such compensation is what is termed as just compensation. **The compensation or damages assessed for personal injuries should be substantial to compensate the injured for the deprivation suffered by the injured throughout his/her life. They should not be just token damages.***

...

*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 the 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 bedridden for life.*



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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 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."

13. Relying upon the case of Kajal (supra), the same principle was applied in the case of Master Ayush vs. Branch Manager, Reliance General Insurance Co. Ltd. & Anr., (2022) 7 SCC 738, wherein the Supreme Court awarded compensation on the Minimum Wages criteria, towards loss of income in the case of a 5 year old victim who was left in a paraplegic state due to the road accident suffered in 2010.

14. The Apex Court in Baby Sakshi Greola vs. Manzoor Ahmad Simon, 2024 SCC OnLine SC 3692 relied on Kajal (supra), and Master Ayush (supra) wherein it was held that taking notional income is not the correct approach. ***Instead, the minimum wages payable to a skilled workman in the State concerned has to be taken into consideration because, that would be the minimum amount which she would have earned on becoming a major.***

15. The learned Tribunal has thus, wrongly assessed the amount of compensation by not following the Multiplier method. *Thus, it would be*



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appropriate to calculate compensation on the basis of **Minimum Wages for a Skilled Worker in Delhi in 2018, which is Rs.16,468/-**.

Future Prospect and Multiplier:-

16. In this regard, it is pertinent to refer to the case of Master Ayush (supra), wherein it was held as under:

“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.

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.”

17. Thus, as per the principles laid down in the case of National Insurance Company Limited vs. Pranay Sethi and Others, (2017) 16 SCC 680 and Master Ayush (supra), it is appropriate to add **future prospects to income at the rate of 40%** along with the **appropriate multiplier of ‘18’**.

18. Thus, the *Loss of future earnings due to the Permanent Disability for life, is calculated as under:*

i. Rs.16,468/- p.m. + 40% (Future Prospects) = Rs. 23,053/-

ii. Rs. 23,053 x 12 x 18 = **Rs. 49,79,923/-**

NON-PECUNIARY HEADS:-

Pain, suffering and Loss of Amenities:-

19. The learned Tribunal has granted a compensation of Rs. 6,00,000/- by relying upon the case of Mallikarjun vs. Divisional Manager, The National Insurance Company Limited and Ors., MANU/SC/0878/2013 for Loss of



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earnings, inconvenience, hardships, disappointment, frustration, mental stress, dejection and unhappiness in future life etc.

20. The injured is a young child of 3 years. She has been 100% disabled due to the accident. The compensation for pain and suffering, and for loss of amenities in the tune of Rs.6,00,000/- cannot be considered excessive. *Thus, in the facts and circumstances of the present case, the same does not warrant any interference.*

Loss of Marriage Prospects:-

21. The learned Tribunal has granted Rs. 10,00,000/- to the Claimant/injured for loss of Marriage Prospects on account of grievous injuries suffered by the injured child in the road accident.

22. In the case of Kajal (supra), the Apex Court granted a sum of Rs.3,00,000/- for compensation under the Loss of Marriage Prospects to a child with 100% permanent disability. Similarly, in the case of Master Ayush, (supra), the Court observed that the injured child has not only lost his childhood but also adult life. Therefore, loss of marriage prospects at the rate of Rs.3,00,000/- was awarded.

23. In this regard, *the Apex Court in Baby Sakshi Greola (supra) held as under:-*

“ ... Marriage/companionship is an integral part of the natural life of a human being. Although, in the present case the appellant is capable of reproduction, it is near impossible for her to rear children and enjoy the simple pleasures of marital life and companionship. However, the learned Tribunal in the present case did not award any compensation to the appellant under this head and the High Court, in appeal, without appreciating the impact of the non pecuniary loss suffered by the appellant only awarded compensation of Rs. 1,00,000/- for the loss of marriage prospects.



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43. We are, therefore, of the opinion that this a fit case where the compensation award awarded under the head of loss marriage prospects by the High Court is inadequate and the same must be enhanced to Rs. 5,00,000/-."

24. *The Loss of Marriage Prospects granted by the Tribunal appears to be on the higher side and thus, is thus re-assessed at Rs. 3,00,000/-.*

Future Medical Treatment:-

25. The learned Tribunal has granted Rs. 10,00,000/- each to the Claimant/injured, for Future Medical Treatment and Attendant Charges.

26. The *medical document dated 15.01.2019, EX.PW2/N* states that the injured was admitted on 07.03.2018 with severe head injury and had a prolonged ICU course and has suffered 100% Disability since then. She has been showing a very slow but gradual recovery. She also had repeated hospital admissions due to her head injury. ***Thus, an amount of Rs.3,00,000/- is awarded towards future Treatment.***

Attendant Charges:-

27. The nature of Disability which has left the child completely physically challenged, it is evident that ***she needs supervised nursing at home for a long time.*** In the case of Kajal (supra) it was held that 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. which was calculated thus:

"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



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Rs.21,60,000/ for attendant charges for her entire life. This takes care of all the pecuniary damages.”

28. Though no evidence has been led about the actual engagement of an attendant, it cannot be overlooked that the parent or some family member would have to work additionally to take care of the child. The Minimum Wages of a Skilled Worker in Delhi in 2018 is **Rs.16,468/-p.m.** which in the circumstances of the case as taken as basis to take 50% of **Rs.16,468/-p.m. i.e. Rs. 8,234/ p.m. as the multiplicand to calculate the Attendant charges.** Furthermore, considering the compensation on account of the charges for an attendant which would be payable in future is being given as on present day, thus, the cost of Attendant Charges is calculated at 50%. It is calculated as under:-

$$\text{Rs. 8,234/-} \times 12 \times 18 \times 50\% = \text{Rs. 8,89,272/-}.$$

Loss of Earnings to the Parents of the Injured:-

29. The Appellants have challenged that the amount given under the head of loss of earnings to the parents is on the lower side and needs to be re-calculated as per their Certificates of leave.

30. The learned Tribunal has granted Rs. 5,00,000/- to the Claimant/injured for discomfort, inconvenience and loss of earnings to the parents during the period of hospitalisation.

31. The *Certificate of Leave* dated 14.05.2019 for the father of the injured/Vivek Jain *Ex.PW2/M* states that he worked in The North Cap University, Gurugram as Assistant Manager in the Administration Department. He was on leave from 08.03.2018 to 01.04.2018 i.e. 24 days and that the financial impact on him was of Rs. 30,205/-.



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32. The *Certificate of Leave* dated 29.11.2019 for the mother of the injured/ Srishti Jain *Ex.PW2/L* states that she was working as Manager at Allahabad Bank, Zonal Office in Delhi NCR and was on leave without pay from 01.07.2018 to 01.02.2019 i.e. seven months. Her gross salary as of June, 2018 was Rs. 63,621.18 per month.

33. Considering the two Leave Certificates, the loss of income to the father is of Rs.30,205/- and the loss of income to the mother is Rs.4,45,349/- (income for 7 months). The total loss of Leave of the Parents is calculated as Rs.4,75,554/-.

34. The learned Tribunal has granted a lump sum amount of Rs. 5,00,000/-. The amounts calculated herein on the basis of the Leave Certificates of the parents of the injured comes to Rs. 4,75,554. Thus, the learned Tribunal has rightly assessed the Loss of Earnings to the Parents of the injured child and *warrants no interference*.

Conclusion:-

35. The compensation is thus, re-calculated as under:-

S. No.	Heads		Final Amount granted by this court
<i>Pecuniary Heads</i>			
1.	Loss of future earnings due to the Permanent Disability for life	NIL	Rs. 49,79,923/-
2.	Medical/Treatment Expenses	Rs.6,71,254/-	Rs.6,71,254/- (Same)
3.	Conveyance Charges	Rs.5,00,000/-	Rs.5,00,000/- (Same)



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4.	Special Diet	Rs.5,00,000/-	Rs.5,00,000/- (Same)
5.	Future Medical Treatment and Attendant Charges	Rs. 5,00,000/- Rs. 5,00,000/-	Rs.3,00,000/- Rs. 8,89,272/-
Non-Pecuniary Heads			
6.	Loss of marriage prospects	Rs. 10,00,000/-	Rs. 3,00,000/-
7.	Loss of earnings, inconvenience, hardships, disappointment, frustration, mental stress, dejection and unhappiness in future life etc.	Rs. 6,00,000/-	Rs. 6,00,000/- (Same)
8.	Discomfort, inconvenience and loss of earnings to the parents during the period of hospitalisation	Rs. 5,00,000/-	Rs. 5,00,000/- (Same)
	TOTAL COMPENSATION	Rs. 47,71,254/-	Rs. 92,40,449/- rounded off to Rs. 92,40,500/-

Relief:-

36. *The Appeal is allowed and the compensation is enhanced to Rs.92,40,500/- along with the interest @ 9% p.a., from the date of institution of the Petition till the date of disbursement. The enhanced*



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compensation be deposited within three months, to be disbursed in terms of the Award dated 01.09.2023.

37. The Appeal is accordingly disposed of.

NEENA BANSAL KRISHNA, J

DECEMBER 5, 2024/RS