



2024-000000000000



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 22nd January 2024**
Judgment pronounced on : 6th March, 2024

+ **MAC. APP. 17/2016**

BABY NIKITA KUMARI Appellant
Through: **Mr. Manish Maini & Mr. Dheeraj Jani, Advocates.**

versus

PARHLAD SINGH & ORS (UNITED INDIA INSURANCE COMPANY LTD). Respondent

Through: **Mr Amit Kr Singh, Mr. K. Enatoli Sema & Ms Chubalemla Chang, Advocates for United India Insurance Co. Ltd. Ms. Manisha Singh, Mr. Ashu Pathak, Mr. George Pothan Poothicote & Ms. Jyoti Singh, Advocates for R- 1&2 (DTC).**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgment shall decide the present appeal preferred by the appellant/claimant under Section 173¹ of the Motor Vehicles Act

¹ 173. Appeals. - (1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court, unless he has deposited with it twenty-five thousand rupees or fifty per cent. of the amount so awarded, whichever is less, in the manner directed by the High Court:



1988², assailing the impugned judgment-cum-award dated 28.08.2015 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, North-East District, New Delhi, agitating that the quantum of compensation has been awarded on a lower scale, being unjust and unfair.

FACTUAL BACKGROUND:

2. Shorn of unnecessary details, it is an admitted fact that the appellant/claimant, who is a minor girl aged about 13 years, had suffered grievous injuries, requiring prolonged hospitalisation and medical treatment, arising out of a motor accident that occurred on 18.07.2011, involving the offending Delhi Transport Corporation (DTC) bus bearing No. DL-1PC-0656, driven by respondent No.1, which resulted in registration of an FIR bearing No.289/2011 under Sections 279/338 IPC at PS Nand Nagari, Delhi.

3. The respondent No.1/driver, respondent no. 2/DTC as well as respondent no. 3/Insurance Company has not challenged the findings rendered by the learned Tribunal in holding that the accident occurred due to rash and negligent driving of respondent No.1/driver of the offending bus. The DTC bus was evidently insured with respondent No.3.

4. It was brought to the fore during the proceedings/trial that the appellant has suffered disability to the extent of 87% as per permanent disability certificate (Ex. PW-4/A) which was substantiated by PW-4/

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

² MV Act



Dr. Basant Kumar, Senior Orthopaedics, GTB hospital indicating 87% locomotor disability with left upper limb. The injured girl sustained the following crush injuries:

- “a) De-gloving injuries (L) hand & forearm;
- b) Debridement done;
- c) S.S.G. (Split Skin Grafting) done from right thigh region)
- d) External Fixator applied;
- e) Amputation of left little finger;
- f) Left elbow and wrist deformed;
- g) Left wrist drop;
- h) Dressings & physiotherapy (follow-up)
- i) Multiple abrasion and blunt injuries all over the body.”

5. It is a matter of record that the appellant was studying in VII standard at the time of the accident. The grievance of the appellant/injured is that loss of future income has been assessed on a lower side inasmuch as her notional annual income has been assumed to be Rs.30,000/-p.a. and multiplier of ‘18’ has been applied. It is also pointed out by the learned counsel for the appellant that no compensation has been awarded towards future medical expenses and the amount of compensation awarded towards disfiguration, marital prospects, loss of enjoyment of life, pain and suffering, compensation towards conveyance, special diet, attendant’s charges, and loss of studies have been assessed in a very mechanical manner being patently unjust and unfair. The compensation awarded by the learned Tribunal as also claimed by the appellant are tabulated as under:

S.No.	Head of Compensation	MACT Award	Claimed by the appellant in this Court
1.	Medical Expenses	60,074/	Rs.60,074/- + Rs.5,00,000/- (future medical



2024-1002:1040



			expenses)
2.	Disfiguration	Rs. 70,000/-	1,00,000/-
3.	Marital Prospects	Rs. 1,00,000/-	3,00,000/-
4.	Amenities +Enjoyment of life	Rs. 50,000/-	3,00,000/-
5.	Pain & Suffering	Rs. 80,000/-	5,00,000/- (past & future)
6.	Loss of future income (on account of P.D.)	Rs. 4,69,800/- 30,000/- p.a. X 18 X 87%	Rs. 22.36,774/- (8.502+40% future incr.) X 12 X 18 X 87%
7.	Conveyance	Rs. 5,000/-	25,000/-
8.	Special Diet	Rs. 5,000/-	50,000/-
9.	Attendant charges	Rs. 15,000/-	25,000/-
10.	Loss of Studies during treatment period	NIL	1,00,000/-
	Total	Rs. 8,54,874/- + 9% interest	Rs. 41,96,848/- + 9% interest

6. *Per contra*, learned counsel for the respondent No.3/Insurance Company has urged that the injured girl was not earning and the learned Tribunal has been fair in awarding total compensation of Rs.8,54,874/- with interest.

ANALYSIS & DECISION:

7. I have given my thoughtful consideration to the submissions advanced by learned counsels for the rival parties at the Bar. I have also perused through the relevant records of the case, including the digitized Tribunal Court record.

8. At the outset, this Court finds that the learned Tribunal has adopted an incorrect approach of law to arrive at the amount of



2024-1002:1040



compensation. As regards loss of earning capacity, the law is no longer *res integra* that when it comes to injured persons, who are minor and have suffered permanent disability, the notional income should be reckoned as equivalent to that of minimum wages provided for a graduate. As per Notification F. No. 12(142)/02/MW/VII/ Part file/ 2618-2641 dated 23.05.2022 issued by the Labour Department, Govt. of NCT of Delhi, the minimum wage of a graduate is now at Rs.21,756/-. A Co-ordinate Bench of this Court in the case of **United India Insurance v. Baby Raksha**³, where the girl was about 5 years of age and suffered 68% permanent disability in her right lower limb, assumed the notional income to be the minimum wages provided for a graduate.

9. Considering that in the instant case the appellant was about 13 years of age, it would be fair to assume that her notional income should be reckoned as Rs.8502/- p.m., being minimum wages prescribed for a graduate. As per the decision in **National Insurance Company Limited v. Pranay Sethi**,⁴ loss of future prospects can be reckoned @ 40%, and therefore, the notional income is reckoned at Rs.1,68,000/- p.a. Applying the multiplier of '15'⁵ and reckoning disability at 87% the loss of earning on account of permanent disability comes to Rs.21,92,400/-.

10. Further, evidently, the learned Tribunal has only awarded reimbursement of medical expenses of Rs.60,074/-, but has not given

³ 2023 SCC On Line Del 4548

⁴ (2017) 16 SCC

⁵ Multiplier of 15 is applied in terms of the decision in **Divya vs. National Insurance Co. Ltd.** [2022 SCC OnLine SC 1488]



any compensation towards future medical expenses. Considering that the appellant girl shall require regular dressing and physiotherapy hence a notional sum of Rs.2 lacs is awarded towards future medical expenses. The compensation for disfiguration is enhanced from Rs.70,000/- to Rs.1,00,000/-. Likewise, the compensation towards loss of marital prospects is enhanced from Rs.1,00,000/- to Rs.3,00,000/-⁶ while the loss of enjoyment of life would be covered under the loss of marital prospect, and compensation towards amount of pain and suffering is enhanced from Rs.80,000/- to Rs.5,00,000/-⁷.

11. Lastly, as frequent follow-up medical treatment would be required entailing the transport and conveyance charges, the same is enhanced to Rs.25,000/-, special diet is enhanced from Rs.5,000/- to Rs.15,000/-, the attendant's charges is enhanced from Rs.15,000/- to Rs.20,000/-. No amount of compensation is warranted towards loss of studies during the treatment period as it has been taken care of under the head of "loss of future income or loss of earning capacity". There is no gainsaying that the appellant girl shall suffer irreparable discomforts and handicaps as well as serious prejudices in her life. Accordingly, the compensation is tabulated as under:

S.No.	Head of Compensation	Compensation Awarded
1.	Annual Income	Rs. 1,02,024/- (Rs.8,502/- X 12)
2.	Addition towards Future Prospects	Rs. 40,809/- (40% of 1,02,024)
3.	Multiplier	15

⁶ Reference be made to **Kajal v. Jagdish Chand** [(2020) 4 SCC 413]

⁷ Reference be made to **United India Insurance Vs. Baby Raksha** [2023 SCC On Line Del 4548]



2024-03-06 15:48:13



4.	Loss of Future Income (on account of Permanent Disability)	Rs. 18,63,970/- [Rs.1,42,833 X 15 X 87%]
5.	Re-imbursement of Medical Expenses	Rs. 60,074/-
6.	Future Medical expenses	Rs. 2,00,000/-
7.	Disfiguration	Rs. 1,00,000/-
8.	Marital Prospects	Rs. 3,00,000/-
9.	Pain & Suffering	Rs. 5,00,000/-
10.	Conveyance	Rs. 25,000/-
11.	Special Diet	Rs. 15,000/-
12.	Attendant charges	Rs. 20,000/-
	Total	Rs. 30,84,044/-

12. Accordingly, the present appeal is allowed. The impugned judgment-cum-award dated 28.08.2015 is hereby set aside and the amount of compensation is enhanced to Rs. 30,84,044/-. Further, providing an interest @ 9% per annum from the date of filing of the claim petition till realisation. The amount of compensation so enhanced be deposited by the respondent No.3/Insurance Company with the learned Tribunal within four weeks from today and the same be released to the appellant/claimant with a direction that 70% amount of the compensation shall remain deposited in a fixed deposit in the name of the claimant, which shall be released to her with accrued interest as and when she seeks higher education on attaining age of majority or proposes to get married, whichever is earlier.

13. The appeal is disposed of accordingly.

DHARMESH SHARMA, J.

MARCH 06, 2024/ck