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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

FAO-2596-2015 (O&M)  
Date of Decision : 09.05.2024

Samrin ..... Appellant(s)

Versus

Vakil Ahmad and Ors. .... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Digvijay, Advocate for the appellant.

Mr. Rajneesh Malhotra, Advocate for respondent No.3.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the claimant-appellant aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Gurgaon vide award dated 29.01.2015.
2. Since the facts, as recorded in the impugned award passed by the Tribunal, are not in dispute, the same are not being reproduced herein for the sake of brevity.
3. The Tribunal in the present case had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	In respect of permanent disability	Rs.5,00,000/-
2	Medical expenses	Rs.4,17,321/-
3	Transportation	Rs.20,000/-



4	Pain and Suffering	Rs.50,000/-
5	Special diet	Rs.10,000/-
6	Reduction of prospects of marriage	Rs.1,00,000/-
7	<b>Total Compensation</b>	<b>Rs.10,97,321/-</b>
	<b>Interest</b>	<b>7.5% per annum</b>

4. Learned counsel for the claimant-appellant would contend that the injured claimant-appellant was 8 years of age at the time of the accident and that due to the accident which took place on 05.01.2014 she sustained grievous injuries with fractures on her left leg and the disability suffered by her is to the extent of 70% which is permanent in nature. Learned counsel for the injured claimant-appellant would further contend that the amount of compensation awarded is on the lower side inasmuch as the Tribunal ought to have awarded the compensation by fixing the notional income of the child as well as by applying the multiplier and that the amounts under the heads pain and suffering and reduction of prospects of marriage are on the lower side. Learned counsel for the injured claimant-appellant has relied upon the judgment passed by the Hon’ble Supreme Court in the case of **Kurvan Ansari @ Kurvan Ali & Anr. vs. Shyam Kishore Murmu & Anr. [2022 (1) RCR (Civil) 165]** to contend that notional income of the child was fixed as Rs.25,000/- per annum for an accident which took place in the year 2004.
5. *Per contra*, the learned counsel for respondent No.3-Insurance Company has vehemently argued that sufficient amount has already been awarded as compensation in the present case and that there is no scope of any enhancement.
6. I have heard the learned counsel for the parties.



7. In the present case the injured claimant-appellant was 8 years of age at the time of the accident and due to the accident her left leg has been shortened by 1½ inches and hence she has suffered permanent disability to the extent of 70%. Hon'ble Supreme Court in the case of **Kurvan Ansari @ Kurvan Ali** (supra) in the case of death of a 7-year old child assessed the notional income as Rs.25,000/- and applied a multiplier of '15' in an accident which took place in the year 2004. In the present case, the accident had taken place in the year 2014 and hence this Court is inclined to assess the notional income of the injured claimant-appellant as Rs.50,000/- per annum as per the dictum laid by the Hon'ble Supreme Court in the case of **Kurvan Ansari @ Kurvan Ali** (supra) and apply a multiplier of '15'.

8. Further in the case of **Kajal Vs. Jagdish Chand & Ors.** [(2020) 4 SCC 413] the Supreme Court while dealing with the case of 100% disability on the issue of Pain and Sufferings has held as under :

*"26. Coming to the non-pecuniary damages under the head of pain, suffering, loss of amenities, the High Court has awarded this girl only Rs.3,00,000/. In Mallikarjun v. Divisional Manager, The National Insurance Company Limited and Ors.2013(10) SCALE 668: 2013(4) RCR (Civil) 295, this Court while dealing with the issue of award under this head held that it should be at least Rs.6,00,000/-, if the disability is more than 90%. As far as the present case is concerned, in addition to the 100% physical disability the young girl is suffering from severe incontinence, she is suffering from severe hysteria and above all she is left with a brain of a nine month old child. This is a case where departure has to be made from the normal rule and the pain and suffering suffered by this child is such that no amount of*



*compensation can compensate.*

*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 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. 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/-."*

9. Accordingly, the amounts under the heads pain and suffering and reduction of prospects of marriage are enhanced to Rs.5,00,000/- each.

The amounts awarded towards medical expenses, transportation and special



diet are maintained. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Notional annual income	Rs.50,000/-
2	Annual Income of the appellant as per 70% permanent disability	Rs.35,000/-
3	Loss of income after applying multiplier ‘15’	[Rs.35,000x15] = Rs.5,25,000/-
4	Pain and suffering	Rs.5,00,000/-
5	Medical expenses	Rs.4,17,321/-
6	Transportation	Rs.20,000/-
7	Special Diet	Rs.10,000/-
8	Reduction of prospects of marriage	Rs.5,00,000/-
	Total Compensation	<b>Rs.19,72,321/-</b>

10. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the entire amount.

11. In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

09.05.2024

Yogesh Sharma

( ALKA SARIN )

JUDGE

NOTE: Whether speaking/non-speaking: Speaking

Whether reportable: YES/NO