

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-6643-2015 (O&M)
Date of Decision: February 14, 2024

Najma

... Appellant

Versus

M/s Swamy Logistics Pvt. Ltd. and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr. Ashish Gupta, Advocate,
for the appellant.

None for respondent No.1.

Service of respondent No.2 dispensed with.

Mr. Amit Kumar Goyal, Advocate,
for respondent No.3 – Insurance Company.

ARCHANA PURI, J.

The present appeal has been filed by appellant-claimant Najma, thereby, seeking enhancement of the compensation awarded, on account of injuries sustained by her, in a motor vehicular accident.

Vide the Award dated 07.05.2015, learned Tribunal had decided two claim petitions bearing **MACT Petition No.57 of 2014** and **MACT Petition No. 58 of 2014**, which related to the injuries sustained by Najma as well as Mubina, in a motor vehicular accident, which took place on 30.06.2013.

On appraisal of the evidence brought record, learned Tribunal, vide questioned Award, had granted compensation to the extent of Rs.3,31,400/- to Najma, qua the injuries sustained by her. The liability of the respondents i.e. owner, driver and insurance company was held to be joint and several. The compensation granted by the learned Tribunal, is reproduced in a tabular form, as herein given:-

i.	Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.	Rs.6400/- + Rs.10,000/- + Rs.10,000/- + Rs.10,000/- = Rs.36,400/-
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.	Rs.90,000/-
iii.	Future medical expenses	Rs.5000/-
iv.	Damages for pain, suffering and trauma as a consequence of the injuries.	Rs.50,000/-
v.	Loss of amenities/Loss of prospect of marriage.	Rs.1,00,000/-
vi.	Loss of expectation of life (shortening of normal longevity)	Rs.50,000/-
	Total	Rs.3,31,400/-

So far as, the factum and manner of taking place of the accident, as well as, the liability, fastened upon the respondents is concerned, it should be noted that none of the respondents, have chosen to assail the award. Hence, this aspect calls for no further scrutiny.

Learned counsel for the parties heard.

At the very outset, while making reference to the evidence, brought on record and also making reference to the various counts, upon which the compensation, has been granted and also to various counts, to which amiss has been given while calculating the compensation, it is

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submitted by the learned counsel for the appellant that the compensation granted, looking at the kind of injuries sustained by Najma, as such, in no manner can be called to be 'just' compensation. It is submitted that going by the opinion of the medical board, the appellant had incurred permanent disability, which was to the extent of 40%. At the time of accident, the appellant-claimant was minor, aged about 4 years and its serious consequences and impact is reflected in the medical certificate issued, pursuant to her examination by the Board. In these circumstances, it is submitted that the compensation granted, is miserably on a lower side, which calls for extensive enhancement.

Rather, on the other hand, learned counsel for the insurance company has submitted that the compensation granted by learned Tribunal is just and reasonable, while taking into consideration the injured to be a child, who is a non-earning person.

Rafiq, father of the appellant-claimant, had stepped into witness box as PW-5. In his affidavit Ex.PW5/A, besides deposing about his relationship with the appellant and her age to be 4 years, has further deposed about the grievous injuries sustained by the appellant-claimant, in the accident in question. He deposed about there to be exposed injury with skin loss on her right leg. She was firstly taken to Bhiwadi, but due to her serious condition, without any treatment and delay, she was referred to JPNATC (AIIMS), Delhi, where, she stayed for one day, but, due to unavailability of bed, she was further transferred to Safdarjang Hospital, Delhi, where she remained admitted from 01.07.2013 till 28.07.2013 and was operated. Also, this witness deposed about the follow up treatment undergone at Safdarjang

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Hospital as well as Medical College Nalhar and that she has become permanently disabled. She suffered muscles loss. There is shortening of leg and she has become disfigured and walks with limping.

Even, Dr.Farooq of General Hospital Mandi Khera, District Mewat has been examined as PW1, who has deposed about having examined Najma on 29.10.2014 and assessed her disability as 40%, on account of '*post-traumatic severe restriction of movements at right knee with right foot drop with severe dorsiflexion of right foot following severe degloving injury right lower limb with neuro vascular injury*'. The disability certificate has been proved as Ex.P1, which contains the recitals of the condition of the appellant-claimant, on account of injuries sustained in the accident in question.

PW-2 Tasvir Singh has proved the copy of MLR of Najma, is Ex.P3 and treatment record with transfer sheet of Najma, Ex.P7. Suresh Kumar, Record Keeper, Safdarjung Hospital, New Delhi, has been examined as PW7, who had brought the treatment record of Najma, who was admitted in the hospital on 01.07.2013 and was discharged on 20.07.2013 after operation. The photocopy of discharge summary is Ex.P15. Besides the same, various bills of the treatment undergone have also been proved.

The evidence aforesaid, do amply establish about the grievous injuries suffered by the appellant-claimant, Najma, in the accident in question and the same caused 40% permanent disability.

Looking at the aforesaid evidence, coming forth, the extent of compensation, as granted by learned Tribunal do call for further enhancement.

However, before re-assessment of the compensation, it should be noted that the appellant-claimant, is asserted to be 4 years old, at the relevant time. The injuries, so caused, obviously had made her crippled person, which would be lifelong haunting, both mentally and physically and the same virtually doomed her future. It is quite obvious that the injuries so caused, would have hampered her future hopes and growth in life to a great extent. The appellant-claimant's impaired condition would have definitely impacted her chances of settlement in life. Having suffered 40% permanent disability, has obviously put the claimant into handicapped category, which in itself, is bound to restrict the chances of settlement in life and shut many job avenues, which calls for highest standard of physical well being. Even, the chances of her marriage prospects, ought to be reduced to a great extent. The state of physical disability, so suffered, by the appellant would have impacted the life of her family members also. Their resources and strength are bound to be stressed by the need to provide full time care to the appellant-claimant, for a sufficiently long period of time, till she adept a skill to be self-sufficient to her maximum capacity.

The Motor Vehicles Act is in the nature of social welfare legislation and its provisions make it clear that compensation should be 'justly' determined. A person, therefore, is not only to be compensated for the injury suffered due to the accident but also for the loss suffered, on account of the injury and his/her inability to lead the life, he/she led prior to the life altering event. In '*Jagdish Vs. Mohan and others, 2018 (4) SCC 571*', the Hon'ble Supreme Court made the following relevant observations, on the intrinsic value of human life and dignity that is attempted to be

recognised, through such compensatory awards:-

“...the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law.”

The Courts should, as such, strive to provide a realistic recompense, having regard to the realities of life, both in terms of assessment of the extent of disability and its impact, including the income generating capacity of the claimant and not only that, even the impact of the accident on his/her life, on account of his/her physical disability. The Courts should be mindful of the fact that though, the physical disability may be on the lesser count but the functional disability, on account of injury sustained, can always be on higher side.

The extent of economic loss, arising from a disability, may not be measured in proportions, to the extent of permanent disability. In this regard, suffice to make reference to the decision rendered by the Hon'ble Supreme Court in '*Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343*'.

The efforts of the Courts must always be to substantially ameliorate the misery of the claimant and recognize his/her actual needs, by accounting for the ground realities. However, the measures should be in correct proportion.

Now, adverting to the case in hand. As already observed

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aforesaid, the appellant-claimant had suffered serious injuries resulting into permanent disability to the extent of 40%, as evident from disability certificate Ex.P1. Considering this kind of crippling condition, obviously, the appellant-claimant had become dependent upon others. Though the disability is on lower part of the body, but it is bound to affect the body functionality, more particularly, as there is neuro vascular injury, which had restricted her chances of gainful employment.

Keeping in view the same, to work upon the compensation, income, ought to be notionally fixed for the calculation purposes, while taking into account the fact that appellant-claimant was aged only about 4 years, at the time of accident. Simultaneously also, for fixation of notional income, it ought to be taken into consideration that being resident of Mewat, at the time of accident, for treatment of the appellant-claimant, she was taken to Delhi, which in itself, is a good pointer to consider, about the reasonably good financial condition of the family of the appellant-claimant.

Suffice to make mention that while considering the case of death of non-earning persons i.e. children below the age of 15, time and again, the Courts have considered earnings of the deceased as Rs. 30,000/- and work on to calculate the notional income, while applying the multiplier '15'.

Learned Tribunal had also made reference to '*Kishan Gopal and others vs. Lala and others, 2013(4) RCR (Civil) 276*', wherein, while taking the notional income of the child as Rs.30,000/- per annum, the compensation was worked upon. However, the accident, in the aforesaid case law, related to year 1992. Considering the long period having passed by and also

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considering the devalue of rupee since then and also considering the date of accident to be 30.06.2013 and also the minimum wages, prevalent at that time, to be Rs.5639/-, per month in modest estimate, proximate to the reality, the notional income inclusive of future prospects, can conveniently be taken to be Rs.9,000/-per month, annual whereof, comes to be Rs.1,08,000/-.

The appropriate and the suitable multiplier to be applied is '15'. While considering the 40% disability to be there, the loss of earnings is worked upon as **Rs.108000x15x40/100=Rs.6,48,000/-**.

In view of the nature and kind of injuries suffered, the appellant-claimant, would require future medical treatment, from time to time, on account of inevitable consequences of the injuries suffered by her, which is bound to require specialized nursing care. Considering the same, on the count of 'future medical needs', the compensation awarded by learned Tribunal to the extent of Rs.10,000/-, is too meagre an amount, which stands enhanced to **Rs.2 lakh**. Besides the same, on account of bills, which have been proved, which are to the extent of Rs.1400/-, learned Tribunal had also granted another sum of Rs.5000/-, while considering the fact of medical bills are not being preserved by the victims of the accident. Thus, the aforesaid amount of Rs.6400/- was granted, which also be considered.

Besides the same, looking at the kind of injuries sustained by the appellant-claimant, it is quite obvious that on account of use of the conveyance for 'to and fro' to the hospital, substantial amount must have been spent by the family of the appellant-claimant. Thus, on the count of

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‘transportation charges’ a sum of **Rs.50,000/-** is awarded.

Obviously, during the period of treatment and some time thereafter, in the minimum, the appellant-claimant must have been put on special rich diet, for the healing process. On this count also, another sum of **Rs.50,000/-** is granted.

Looking at the kind of injuries suffered, definitely, the appellant-claimant is bound to be looked after by a bye-stander/attendant throughout, as there was need for assisted living, more particularly, keeping in view her age. However, learned Tribunal has overlooked this aspect, while making assessment of the compensation.

Though, learned counsel for respondent-insurance company submits that there is no material, as such, produced by the appellant-claimant, on actual expenses, incurred for the services of the attendant and it is argued that no further claim is merited under this head, but however, this submission is not tenable. Considering the extent of disability suffered, besides the family members, the appellant-claimant ought to have been looked after by one attendant throughout. Even if, the appellant-claimant was being looked after only by her family members, then also, it should be noted that they could perform the role of care-giver, only by diverting their own time, from any form of gainful employment, which could have generated some income. Thus, towards the count of ‘attendant charges’ a sum of **Rs.2,00,000/-** is granted.

Considering the nature of injuries, suffered by the appellant-claimant, in the accident in question, which made her immobile and it being life altering event, definitely, the appellant-claimant ought to pass through

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painful transition. Thus, on the count of ‘pain and suffering’, an amount of **Rs.2,00,000/-** is granted.

Considering the disability, so suffered, it is quite obvious, the marriage prospects of the appellant-claimant have also become very restricted and on this count, she is entitled to be compensated and therefore, the compensation, so granted by learned Tribunal, to the extent of Rs.1,00,000/-, is enhanced to **Rs.2,00,000/-**.

Thus, on various counts, as detailed aforesaid, the compensation is re-computed as herein given:-

1.	Loss of earnings	Rs.6,48,000/-
2.	Future medical needs	Rs.2,00,000/-
3.	Medical Bills	Rs.6,400/-
4.	Transportation charges	Rs.50,000/-
5.	Special rich diet	Rs.50,000/-
6.	Attendant charges	Rs.2,00,000/-
7.	Pain and suffering	Rs.2,00,000/-
8.	Loss of Marriage prospects	Rs.2,00,000/-
	Total	Rs.15,54,400/-

As such, the compensation, so awarded by learned Tribunal, stands enhanced from **Rs.3,31,400/-** to **Rs.15,54,400/-**.

On the enhanced amount of the compensation i.e. **Rs.15,44,000-3,31,400=Rs.12,23,600/-**, the appellant-claimant shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation. The residue terms of the impugned Award, shall remain the same.

Furthermore, it should also be noted that the appellant-claimant

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is minor child. Keeping in view her age and also considering the injuries sustained by her, it shall be appropriate, if the amount enhanced along with proportionate interest, is invested in the form of Fixed Deposit Receipt (FDR), with a nationalized bank, for an initial period of five years. However, in the eventuality of the need, if made out, to its satisfaction, learned Tribunal shall be at the option to release of the interest amount, at first instance, or some amount from the principle corpus, while taking into consideration, the extent of need of the appellant-claimant.

With the above observations, the present appeal stands allowed.

February 14, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No