

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 30th OF JANUARY, 2024

MISC. APPEAL No. 6185 of 2022

BETWEEN:-

SOMTI BAI D/O SANTOSH KOL, AGED ABOUT 15
YEARS MINOR THROUGH GUARDIAN BALI MA
KALABAI W/O SANTOSH KOL AGE 30 YEARS HOUSE
WIFE GRAM BUDHI TEHSIL AND THANA MAJHOLI
DISTRICT JABALPUR (MADHYA PRADESH)

.....APPELLANT

(BY SHRI ABHAY KUMAR JAIN – ADVOCATE)

AND

1. CHHABLAL @ CHHABILAL PATEL S/O GOPAL
PATEL RESIDENT OF HARDUA KALA TEHSIL SEHORA
DISTRICT JABALPUR (MADHYA PRADESH) [DEAD]

2. CHANDRIKA PRASAD S/O S.N.LODHI RESIDENT
OF DONI TEHSIL THANA MAJHOULI DISTRICT
JABALPUR (MADHYA PRADESH) [DEAD]

3. NATIONAL INSURANCE COMPANY LIMITED
THROUGH DIVISIONAL MANAGER 495 MADHATAL
KARAMCHAND CHOWK JABALPUR (MADHYA
PRADESH)

.....RESPONDENTS

(MS. ANJALI BANERJEE – ADVOCATE FOR RESPONDENT NO.3)

This appeal coming on for admission this day, the court passed the following:

ORDER

Heard on I.A.No.5989/2023 application for deleting name of
respondents No.1 and 2 from the memo of appeal as both have expired.

Learned counsel for respondent No.3 has no objection.

After due consideration, I.A.No.5989/2023 is allowed at the risk and cost of the appellant and it is directed that the word 'Dead'/'मृत' be written next to the name of respondents No.1 and 2 in the cause-title.

Let the correction be carried out by the appellant during course of the day.

Accordingly, I.A.No.5989/2023 is disposed of.

Also Heard on I.A.No.15911/2021 application for condonation of delay of 196 days in filing the appeal.

Considering the averments mentioned in the application which is supported by affidavit I.A.No.15911/2021 is allowed and delay in filing of the appeal is hereby condoned.

Accordingly, I.A.No.15911/2021 is disposed of.

Heard on the admission.

Admit.

With the consent of parties, heard final arguments.

The appellant/claimant has filed this Appeal under Section 173(1) of the Motor Vehicles Act, 1988 for enhancement of the compensation amount being aggrieved with the award dated 25.01.2021 passed by Motor Accident Claims Tribunal, Sehora District Jabalpur in Claim Case No.85/2018, by which the learned Claims Tribunal awarded a total sum of Rs.4,29,108/- (Four lakhs twenty nine thousand one hundred and eight) with 6% interest to the appellant/claimant by way of compensation for the injuries, which he has sustained in a motor vehicle accident.

2. According to claimant i.e. appellant herein, the compensation awarded by the learned Claims Tribunal is on lower side and hence, need to be enhanced.

3. Since, this appeal is for the enhancement in the compensation amount awarded by the Claims Tribunal, hence the question that arises for consideration is whether any case for enhancement in compensation awarded by the learned Claims Tribunal on facts and evidence adduced, is made out and if so to what extent?

4. It is not necessary to narrate the entire facts in detail, such as how the accident occurred, who was negligent in driving the offending vehicle, who is liable for paying compensation etc. It is for the reason that firstly all these findings are recorded in favour of appellant/claimant by the Tribunal. Secondly, the findings though recorded in claimant's favour are not under challenge at the instance of any of the respondents such as owner/driver or insurance company either by way of filing an appeal or cross-objection. In this view of the matter, there is no justification to burden this order by detailing facts on all these issues.

5. The learned Claims Tribunal has awarded a total sum of Rs.4,29,108/- (Four lakhs twenty nine thousand one hundred and eight), breakup of which is as under :

Towards loss of income	Rs.4,00,000/-
Towards medical expenses	Rs.2,108/-
Towards travelling expenses	Rs.2,000/-
Towards physical & mental pain & sufferings	Rs.10,000/-
Towards special diet	Rs.2,000/-
Towards attendant	Rs.3,000/-
Towards loss of income for 3 months	Rs.10,000/-

6. Learned counsel for the appellant submitted that the learned tribunal has assessed only 50% permanent disability, although the Medical Board has issued disability certificate Ex.P-56 in which it is mentioned that the appellant sustained 70% permanent disability. Learned counsel for the appellant further submitted that the Claims Tribunal has awarded Rs.4,00,000/- in lumpsum towards loss of income

keeping in view the law laid down by Hon'ble Apex Court in the case of *Master Mallikarjun Vs. Divisional Manager, The National Insurance Co. Ltd. (2014) 14 SCC 396*, which is on lower side looking to the nature of injuries sustained by appellant in the alleged incident.

7. Learned counsel further submitted that the learned Tribunal has not assessed the future loss of income, which should be assessed keeping in view the law laid down by Hon'ble Apex in the case of *National Insurance Company Ltd. vs. Pranay Sethi & ors (2017) 16 SCC 680*. Learned counsel also submitted that learned Tribunal awarded meagre amount in other heads, hence, it is prayed that the appeal be allowed and amount of compensation be enhanced substantially.

8. Per contra, learned counsel for the respondent No.3/National Insurance Company submits that the learned tribunal has passed the impugned award after appreciating all the evidence on record, so no case for enhancement is made out. It is prayed that the appeal be dismissed.

9. I have heard the learned counsel for the parties, perused the record.

10. It reveals from para 28 to 32 of the impugned award that the tribunal has assessed 50% permanent disability with regard to the entire body whereas Dr.Sharad Dwivedi who has examined the injured and issued permanent disability certificate Ex.P-56 assessing 70% disability only in regard to the right leg, hence it cannot be said that assessment of permanent disability by the tribunal is erroneous, hence no interference is required in that respect.

11. The tribunal has assessed the age of the injured/claimant as 16 years in para 52 of the impugned award without any cogent evidence

whereas in MLC report Ex.P-35 age of the injured is mentioned as 15 years and in claim petition, the claimant herself has mentioned her age as 15 years on the date of incident. Therefore, age of the injured on the date of incident should be considered as 15 years for assessment of award.

12. Learned tribunal has awarded Rs.4,00,000/- (Four Lakhs) lumpsum as compensation for 50% disability caused in vehicular accident placing reliance on the case of Mallikarjun (supra) and additional amount of Rs.29,108/- (Twenty Nine Thousand One Hundred Eight) in the head of medical expenses, travelling expenses, pain & sufferings, special diet, attendant and loss of income during treatment.

13. Since on the date of incident, age of the injured/claimant was only 15 years and she was a student as stated by her mother (AW-3), as mentioned in para 51 of the impugned award, though no educational documents have been enclosed in the claim case. Since on the date of incident claimant had no earning, hence, loss of income during treatment and loss of future prospect could not be assessed as per minimum wages act prevailing on the date of incident. Also, it would not be proper to follow the structured formula as per Schedule-II of the Motor Vehicles Act as held in the case of Mallikarjun (supra) in para 8 which is reproduced below :

“8. While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act for reasons more than one. The main stress in the formula is on pecuniary damages. For children there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs.15,000 per year. A child cannot be

equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. The appropriate compensation for disability should take care of all the non-pecuniary damages. In other words, apart from this head, there shall only be the claim for the actual expenditure for treatment, attendant, transportation, etc.”

14. Since the age of the victim in the present case is established as 15 years on the date of incident, hence multiplier system should be followed and as per the principle laid down in the case of *Sarla Verma Vs. DTC, 2009 (6) SCC 121*, multiplier of 18 should be used.

15. It is undisputed fact that in the case that the claimant/injured had not any income on the date of incident, hence placing reliance on a recent judgment of the Hon’ble Apex Court in case of *Meena Devi vs. Nunu Chand Mahto @ Nemchand Mahto (2023) 1 SCC 204* notional income for children of the age of 12 years is assessed to Rs.30,000/- (Thirty Thousand) per annum including future prospect, hence relying on the above case of Meena Devi (supra), in considered opinion of this Court, the income of the injured/claimant of the case should be assessed as Rs.30,000/- (Thirty Thousand) yearly including future prospect. Applying the multiplier of 18 for assessing loss of future prospect to the claimant which comes to Rs.5,40,000/- (Five Lakhs Forty Thousand).

16. Learned tribunal has awarded meagre amount in the head of travelling expenses, special diet and attendant which is total Rs.7,000/-

(Seven Thousand). In the considered opinion of this Court, it should be Rs. 15,000/- (Fifteen Thousand). The tribunal has awarded only Rs.10,000/- (Ten Thousand) in the head of pain & sufferings and has not awarded any amount in the head of grievous injury. In the considered opinion of this Court, Rs.40,000/- should be awarded in the head of pain & sufferings and grievous injury.

17. In view of above discussion, appellant/claimant shall be entitled for the following amount of compensation :-

<i>Sr.No.</i>	<i>Head</i>	<i>Compensation</i>
1	Loss of future prospect and loss of income during treatment	5,40,000/-
2	Pain & suffering and grievous injuries	40,000/-
3	Attendant, special diet and conveyance	15,000/-
4	Medical expenses	2,801/-
	Total	Rs.5,97,801/-

18. Thus, appeal filed by the appellant/claimant is allowed. The appellant/claimant will be entitled for a total sum of Rs.5,97,801/- (Five Lakhs Ninety Seven Thousand Eight Hundred One) instead of Rs.4,29,108/- (Four lakhs twenty nine thousand one hundred and eight). Thus, there shall be enhancement to the tune of Rs.1,68,693/- (One Lakh Sixty Eight Thousand Six Hundred Ninety Three) which shall fetch interest @ 6% per annum from the date of filing of claim petition till the date of actual payment except the period of delay in filing of the appeal. Other terms and condition of the award shall remain intact. The enhanced amount be paid within 60 days from the receipt of the copy of this order.

19. With the aforesaid, appeal stands disposed of.

20. Record of the claims Tribunal be sent back alongwith copy of this order for information and necessary compliance.

No order as to costs.

**(AMAR NATH (KESHARWANI))
JUDGE**

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