



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Miscellaneous Appeal No. 5421/2018

HDFC Ergo General Insurance Company Ltd. through Manager,
Branch Office Plot No. 711/4, K.C. Complex, Fourth Floor,
Daulatbagh Ajmer (Raj), having its Local Office at Office No. 2,
Third Floor C-99, Singhvi Upasana Tower, Shubhash Marg, C-
Scheme, Jaipur Through its Constituted Attorney

----Non Claimant Appellant

Versus

Khushi D/o Shri Kishore Lal Verma, Aged About 14 Years,
B/c Koli R/o Plot No. 306/34 Gurjar Tiba Nagra, District
Ajmer (Raj) Minor Through Natural Guardian Father Shri
Kishorlal Sharma

Abid Khan S/o Shri Hameed Khan, B/c Pathan R/o Nayi
Abadi Patwariya Road Garoth District Mandisor (Madhya
Pradesh) (Driver Of Truck No. RJ-33-Ga-2056)

3. Abhishek Patidar S/o Shri Rajendra Kumar Patidar, R/o
Bhanipura Road Tehsil Garoth District Mandisor (Madhya
Pradesh) (Owner Of Truck No. RJ-33-GA-2056)

----Non Claimants Respondents

Connected With

S.B. Civil Miscellaneous Appeal No. 1074/2019

Khushi D/o Shri Kishor Lal Verma, Aged About 14 Years, B/c Koli
R/o Plot No. 306/34 Gurjar Teeba Nagra, District Ajmer (Raj)
Minor Through Natural Guardian Father Shri Kishorlal Verma

----Appellant

Versus

1. Aabid Khan S/o Shri Hamid Khan, Aged About 40 Years,
B/c Pathan, R/o Nai Aabadi, Patwariya Road, Garoth,
District Mandisor (Madhya Pradesh)
2. Abhishek Patidar S/o Shri Rajendra Kumar Patidar, R/o
Bhanipura Road, Tehsil Garoth, District Mandisor, (Madhya
Pradesh) (Vehicle Owner)
3. HDFC Ergo General Insurance Company Limited Through
Manager, Branch Office Plot No. 711/4 K.C. Complex
Fourth Floor, Daulatbag, Ajmer (Raj)

----Respondents



For Insurance Co. : Mr. Virendra Agarwal, Advocate
(through VC)

For claimant(s) : Mr. Bhanu Prakash, Advocate
(through VC)

HON'BLE MR. JUSTICE PRAKASH GUPTA

Judgment



These two appeals arise out of the judgment and award dated 4.9.2018 passed by the Motor Accident Claims Tribunal, Ajmer (for short 'the Tribunal'), whereby the Tribunal awarded a sum of Rs. 6,68,820/- as compensation in favour of the claimant.

One Appeal - S.B. Civil Misc. Appeal No. 5421/2018 has been filed by the Insurance Co. for modification of the judgment and award dated 4.9.2018, whereas another appeal - S.B. Civil Misc. Appeal No. 1074/2019 has been filed by the claimant for enhancement of compensation.

Alongwith the appeal no. 1074/2019, an application under Section 5 of the Limitation Act has also been filed. The said application is allowed for the reasons mentioned therein and the delay of 49 days in filing the appeal is condoned.

Claimant through her father filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation on account of the injuries sustained by her in the motor vehicle accident which occurred on 1.7.2014.

At the very outset, learned counsel for the Insurance Co. has submitted that claimant was 11 years of age. At the time



of the accident which took place on 01.07.2014, 8 persons were sitting in the Car, but none of them was examined except the claimant. The claimant being minor at the time of accident, was incompetent to depose evidence against the Insurance Co. The claimant has failed to examine any eye witness to prove the negligence of the driver. Testimony of the claimant, who is the sole

witness, being minor cannot be relied upon. He further submits that so far as quantum of compensation is concerned, the claimant sustained permanent disability to the extent of 34.35%.

However, to prove the same, the Doctor has not been examined.

He further submits that as per the judgment of the Hon'ble Apex Court in the case of Master Mallikarjun Versus Divisional Manager,

The National Insurance Company Limited reported in (2013) 4 RCR (Civ) 295 if the disability is upto 30%-60%, then claimant would be entitled to Rs. 4.00 lakh as compensation, but the Tribunal has awarded Rs. 6,68,820/- as compensation, which is on the higher side. Hence, the impugned judgment and award passed by the Tribunal is required to be modified.

On the other hand, learned counsel for the claimant has submitted that on account of accident which took place on 1.7.2014, different claim petitions were filed. In some of the claim petitions, the Insurance Co. entered into compromise and this fact is well established from the order sheet dated 9.9.2017 of the Tribunal. For this reason, the Insurance Co. is estopped from challenging the judgment and award passed by the Tribunal on the issue of quantum and liability. He further submits that at the time of deposition, the claimant was 15 years of age. At the time of recording her statement, she was studying in 11th class. She was mature and she was cross-examined also. Out of the total eight



passengers who were travelling in the Car, seven died and claimant was the only eye witness, who remained alive. From her entire statement, it does not appear that she was incompetent to give evidence. In her cross-examination, no question was asked by the counsel for the Insurance Co., which could show that she was immature and did not understand the questions properly. She sustained 34.35% permanent disability, which is well proved from Ex-6 issued by the Medical Board of C.H.C. Sanganer. On account of these injuries, her leg was shortened and she is unable to squat and sit cross legged. However, Tribunal granted very meager amount compensation hence the said amount requires enhancement. In support of his arguments, learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court in

I have considered the rival submissions made by the learned counsel for the parties.

The Hon'ble Apex Court in **Kumari Kiran Thr. Her father Harinarayan Vs. Sajjan Singh & Ors. 2015 (1) R.A.R.87 (SC)** has observed as under:-

"With regard to the appellant-minors

12. *With respect to compensation towards future loss of income due to permanent disability for appellant-minors, we refer to the case of Master Mallikarjun v. Divisional Manager, the National Insurance Company Limited & Anr.4, wherein this Court held as under:-*

"8. It is unfortunate that both the Tribunal and the High Court have not properly appreciated the medical evidence available in the case. The age of the child and deformities on his body resulting in disability, have not been duly taken note of. As held by this Court in R.D. Hattangadi v. Pest Control (India) Pvt.



Ltd. and Ors. [(1995) 1 SCC551], while assessing the non-pecuniary damages, the damages for mental and physical shock, pain and suffering already suffered and that are likely to be suffered, any future damages for the loss of amenities in life like difficulty in running, participation in active sports, etc., damages on account of inconvenience, hardship, discomfort, disappointment, frustration, etc., have to be addressed especially in the case of a child victim. For a child, the best part of his life is yet to come. 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. 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. (Emphasis laid by this Court)''





The Tribunal has calculated the future loss of income by taking the notional income of each the appellant-minor as Rs.15,000/- per annum. We are of the considered view that a child's notional income cannot be ascertained as per the figure given for a non-earning individuals in the second schedule of the Motor Vehicles Act, 1988. As the Tribunal and the High Court have not followed the principles laid down by this Court in the above case by awarding loss of future income due to permanent disability, therefore, we set aside the same. Further, reiterating the same principles as held in Master Mallikarjun's case (supra), we award Rs.1,00,000/- each towards shock, pain and suffering (non-pecuniary head) in place of loss of future income due to permanent disability. Further, in Master Mallikarjun case (supra) with respect to compensation for permanent disability this Court held thus:-

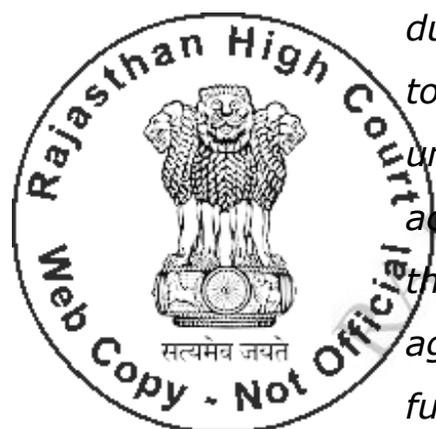
"12. Though, it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Rs.1 lakh, unless there are exceptional circumstances to take different yardstick..."

Hence, this Court in accordance with the principles laid down by this Court in the above case (supra), and after examining the facts, evidence on record and circumstances of the case on hand, we deem it fit and





proper to award Rs.3,00,000/- towards permanent disability of the appellant-minors viz. Kumari Kiran and Master Sachin, since they have suffered 30% and 20% permanent disability respectively, due to the shortening of their right leg by one inch after the injuries sustained in the motor accident. Further, upon considering the age of appellant minors, they have a long journey ahead of them in their lives, during which they along with their parents will have to endure an immeasurable amount of agony and uncertain medical expenses due to this motor-vehicle accident. Thus, based on the principles laid down in the above case, we award Rs.25,000/- each towards agony to parents and Rs.25,000/- each towards future medical expenses. "



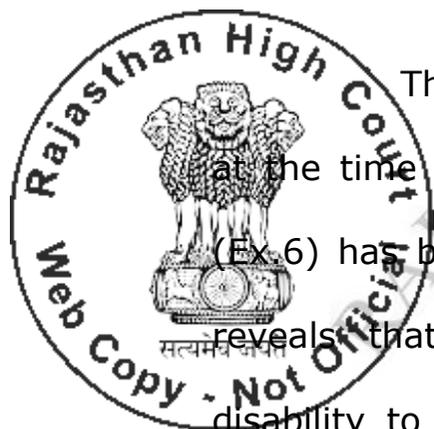
X X X X X X X X X X X

20. As a result, the appellants shall be entitled to compensation under the different heads as per the following table:

Particulars	Kumari Kiran	Master Sachin	Harinarayan
1. Loss of future income due to disability	-	-	Rs.2,70,000/-
2. Pain and suffering	Rs.1,00,000/-	Rs.1,00,000/-	Rs.50,000/-
3. Agony to parents	Rs.25,000/-	Rs.25,000/-	-
4. Medical Expenses	Rs.69,844/-	Rs.84,876/-	Rs.1,86,154/-
5. Attendant	Rs.90,000/-	Rs.9,000/-	Rs.9,000/-
6. Transportation	Rs.5,00/-	Rs.5,000/-	Rs.5,000/-
7. Special Diet and Nutrition	Rs.10,000/-	Rs.10,000/-	Rs.10,000/-
8. Permanent Disability/loss of amenities	Rs.50,000/-	Rs.50,000/-	Rs.50,000/-
9. Future Medical Expenses	Rs.25,000/-	Rs.25,000/-	-
Total	Rs.5,43,844/-	Rs.5,58,876/-	Rs.5,80,154/-



Thus, the total compensation payable to all the appellants by the respondent Insurance Company will be as per the total amount indicated in the preceding table with interest @ 9% from the date of filing of the application till the date of payment."



There is no dispute that the appellant was 15 years old at the time of recording her statement. The disability certificate (Ex-6) has been issued by the Board of Doctors. Perusal thereof reveals that the appellant had suffered permanent physical disability to the extent of 34.35%. It is mentioned in the said certificate that due to the injuries sustained by the appellant, there is restricted movement of her hips and knee joints, right elbow, disability in walking. Rather, she is unable to squat & sit cross legged. This permanent disability of 34.35% has been said to be in relation to whole body. Hence, in view of the decision given in **Kumari Kiran's case (supra)**, appellant was entitled to receive Rs.4,00,000/- towards permanent disability/loss of amenities and was also entitled to receive Rs.1,00,000/- towards pain and suffering as the appellant had remained under treatment for about 21 days. Thus, the appellant was entitled to receive Rs.1,00,000/- (pain and suffering) + Rs.4,00,000/- (permanent disability/loss of amenities) + Rs.4,18,820/- towards other heads, as awarded by the Tribunal = Rs.9,18,820/-.

Taking into consideration the fact that in other claim petitions filed on account of the same accident, the Insurance Co. has entered into a compromise, age of the claimant at the time



of recording her statement, her statement and more particularly the fact that out of the eight passengers travelling in the car, seven died and claimant only remained alive and she sustained number of injuries, I find no force in the argument of Mr. Virendra Agarwal, that claimant was incompetent to give evidence against the Insurance Co. Accordingly, the appeal filed the Insurance Co. fails and the same is hereby dismissed.

However, in view of the facts and circumstances, as mentioned above, the appeal filed by the claimant is partly allowed. Impugned award dated 4.09.2018 passed by the Tribunal is modified to the extent that claimant would be entitled to receive Rs.9,18,820/- as compensation instead of Rs.6,68,820/- as awarded by the Tribunal. Other terms and conditions of the award shall remain unchanged. The Insurance Company shall deposit the enhanced amount along with interest @ 6% p.a. from the date of filing the claim petition till the date of payment, with the tribunal within a period of two months from today. The enhanced amount along with interest shall be invested by the tribunal in fixed deposit with a nationalised bank, for a period of two years and the interest accrued thereon shall be paid to the claimant on monthly basis.

(Prakash Gupta), J.

DK/14-15