

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 4179 of 2018****FOR APPROVAL AND SIGNATURE:****HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	<b>NO</b>
2	To be referred to the Reporter or not ?	<b>YES</b>
3	Whether their Lordships wish to see the fair copy of the judgment ?	<b>NO</b>
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	<b>NO</b>

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**AARTIBEN RAMESHSHING TOMAR**

Versus

**NASURUDDIN CHANDANBHAI FAKIR**

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Appearance:

MR R G DWIVEDI(6601) for the Appellant(s) No. 1

MR TANMAY B KARIA(6833) for the Defendant(s) No. 3

RULE UNSERVED for the Defendant(s) No. 1,2

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**CORAM:HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**

**Date : 18/01/2023**

**ORAL JUDGMENT**

1. This is an appeal filed under Section 173 of the Motor Vehicles Act, 1988 (MV Act) by the appellant – original claimant, challenging the

judgment and award dated 22.03.2018 passed in Motor Accident Claim Petition No. 276 of 2001 by the learned Motor Accident Claims Tribunal (Auxiliary), Vadodara, whereby, against a claim of Rs.1 lakh for the injuries sustained by the original claimant – a minor at the relevant time, in an accident that had occurred on 14.05.2000, the Tribunal has awarded an amount of Rs.30,000/- with 9% interest *per annum* from the date of filing the claim petition till realization holding the opponents therein jointly and severally liable to pay the compensation. Accordingly, the appellant – claimant has filed this appeal for enhancement of compensation.

2. Learned advocate Ms. Bhavna D. Acharya states at bar that she appears for the respondent Nos. 1 and 2. She may file her appearance, if yet not filed.

3. Heard, learned advocate Mr. R. G. Dwivedi for the appellant, learned advocate Mr. Tanmay B. Karia for the respondent No. 3 – insurance company and learned advocate Ms. Bhavna Acharya for the respondent Nos. 1 and 2.

4. The sole contention that has been raised by the learned advocate for the appellant in this appeal is that the Tribunal has not considered the ratio

laid down in the decision of the Apex Court in ***Mallikarjun V. Divisional Manager, The National Insurance Company Limited and Others, MANU/SC/0878/2013***, and thereby, has erred in awarding the compensation to the original claimant, who was minor at the relevant time and had suffered 6% disability body as a whole and accordingly, he has urged to enhance the compensation in view of the aforesaid decision as well as on other heads and thereby, to allow this appeal.

4.1 As against this, Mr. Tanmay Karia, the learned advocate for the respondent No. 3 – insurance company and learned advocate Ms. Bhavna Acharya for the respondent Nos. 1 and 2, while resisting this appeal, have submitted that the appellant – injured was a minor at the relevant time and considering all the aspects of the matter, the Tribunal has awarded the compensation, which is just and proper and accordingly, it is requested that this Court may not interfere in the impugned judgment and award and eventually, it is requested to dismiss this appeal.

5. Regard being had to the submissions made and considering the impugned judgment and award, it appears that in a vehicular accident, the appellant, a minor at the relevant time, had sustained fracture injury and had to avail treatment for the same. The permanent disability of the appellant –

claimant was assessed at 6% for the body as a whole. Considering the same as well as the age, treatment taken and other such aspects, the Tribunal has awarded a sum of Rs.30,000/- towards compensation.

5.1 In the aforesaid backdrop, if the decision of the Apex Court in ***Mallikarjun (supra)***, is referred to, it is held that:

*“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 Re. 1 lakh, unless there are exceptional circumstances to take different yardstick.** In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization for about two months causing also inconvenience and loss of earning to the parents.”*

5.2 Thus, as per the above pronouncement, if the disability is upto 10%, appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be Rs.1 lakh. As referred to herein above, the Tribunal has awarded a sum of Rs.30,000/- under all heads, however, in view of the aforesaid decision of the Apex Court, the Tribunal has manifestly erred in awarding the just compensation and accordingly, this appeal requires favourable consideration.

6. In the aforesaid view of the matter, this appeal succeeds and is accordingly allowed in part. The impugned judgment and award is modified in view of the decision of the Apex Court in *Mallikarjun (supra)* and it is held that the appellant – claimant shall be entitled to the compensation as under:

<b>Head</b>	<b>Compensation (Rs.)</b>
Special Diet, Attendant and Transportation Charges and Medical Expenses	5,000/-
Pain and suffering already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience, and discomforts etc., and loss of amenities in life on account of permanent disability.	1,00,000/-
<b>Total</b>	<b>1,05,000/-</b>
<b>Minus:</b> Compensation awarded by the Tribunal	30,000/-
<b>Difference</b>	<b>75,000/-</b>

6.1 The difference amount shall be deposited within a period of 30 days. The appellant – claimant shall be entitled to interest @ 6% *per annum*, on such enhanced amount of compensation from the date of claim petition till realization. Rest of the impugned judgment and award is not disturbed. R&P, if received, be sent back forthwith to the Tribunal concerned.

[ A. C. Joshi, J. ]

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