2024 INSC 837 **Non-Reportable**

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. ………………. OF 2024
(@ SPECIAL LEAVE PETITION (C) NO. 6176 OF 2023)

Miss Rushi @ Ruchi Thapa,
through her father,
Sri Dhan Bahadur Thapa … Appellant

Versus

M/s. Oriental Insurance Co. Ltd. and Another … Respondents

JUDGMENT

SANJAY KUMAR, J

1. Leave granted.

2. On 13.04.2013, when she was still a child of less than twelve years of age, the appellant was involved in an accident that left her permanently disabled to the extent of 75%. The vehicle in which she was travelling with her father was hit by the Max Pick Up Van bearing Registration No. AS-01CC-3349. In the result, she suffers from severe Hemiparesis in her left upper and lower limbs.

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Date: 2024.11.05 16:27:03 IST
Reason:

3. MAC Case No. 1431 of 2014 was filed on her behalf by her father, Dhan Bahadur Thapa, before the Motor Accident Claims Tribunal No. 3, Kamrup (Metro), Guwahati (for brevity, 'the MACT'). M/s. Oriental Insurance Company Limited, with which the offending Max Pick Up Van was stated to have been insured, was arrayed as Opposite Party No. 1 while the owner and driver of the said Van were shown as Opposite Parties No. 2 and 3. By judgment dated 23.02.2018, the MACT held that the vehicle in question was duly insured with M/s. Oriental Insurance Company Limited by its owner, Opposite Party No. 2, and that the driver, Opposite Party No. 3, who possessed a valid Driving License at the relevant time, had caused the accident due to rash and negligent driving.

4. The MACT then considered the issue of compensation in the light of the material placed before it. Apropos the disability suffered by the appellant, the MACT took note of the fact that the Disability Certificate dated 12.07.2017 (Ext.8) quantified her permanent disability at 75% but chose to reduce it to 50%, opining that there was possibility of improvement in her condition. Further, though a sum of ₹13 lakh was claimed for the medical treatment of the appellant, her father could produce bills only for the sum of ₹84,771/-. The MACT, therefore, acted upon the bills so produced. As regards determination of the loss of earnings of the appellant,

the MACT opined that a child could not be equated to a ‘Non-earning person’ in Clause 6 in the Second Schedule to the Motor Vehicles Act, 1988, whose notional income was to be taken as ₹15000/- per annum. In all, the MACT determined that a sum of ₹5,59,771/-, along with interest thereon @ 7.5% per annum from the date of filing of the claim petition till realization, was to be paid by the insurance company. The break-up of the MACT’s quantification reads as under:

No.	Head	Amount (in Rupees)
1.	Pain and suffering already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience and discomfort, etc., and loss of amenities in life on account of permanent disability	4,00,000/-
2.	Discomfort, inconvenience and loss of earning to the parents during the period of hospitalization.	25,000/-
3.	Medical and incidental expenses	84,771/-
4.	Future medical expenses, including physiotherapy, etc.	50,000/-
	TOTAL =	5,59,771/-

5. Dissatisfied with this compensation, the appellant, through her father, filed an appeal in MACApp./539/2018 before the Gauhati High Court. By judgment dated 20.02.2023, a learned Judge of the Gauhati High Court disposed of the said appeal, enhancing the compensation to

₹18,97,371/-. The learned Judge was of the opinion that the appellant's permanent disability, as per Ext.8 disability certificate, ought to have been accepted and accordingly assessed the same as 75%. The learned Judge placed reliance on the decision of this Court in ***Master Ayush vs. Branch Manager, Reliance General Insurance Company Limited and another***[1], which involved determination of compensation payable to a five-year old victim of a road accident, and held that compensation in that regard was to be assessed as per the minimum wages on the assumption that the victim would have been able to earn after attaining adulthood. The learned Judge, accordingly, took note of the minimum wages payable to unskilled labour at the time of the accident, i.e., ₹169 per day, and computed the notional loss of income of the appellant as ₹5,070/- per month. The multiplier was taken as 15 in terms of the age of the appellant and the loss of earnings was worked out as ₹9,12,600/- (₹5070X12x15). In addition thereto, the learned Judge held that a sum of ₹3 lakh was payable for pain, suffering and loss of amenities; and a further sum of ₹3 lakh was payable towards loss of marriage prospects. The learned Judge, however, confirmed that the medical expenses would be as per the bills produced, i.e., ₹84,771/-. In all, the learned Judge determined the compensation payable to the appellant

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[1] (2022) 7 SCC 738

as ₹18,97,371/-. The interest component was left intact. The break-up of the learned Judge's quantification is as under:

No.	Head	Amount (in Rupees)
1.	Medical and hospitalization expenses	84,771/-
2.	Pain, suffering and loss of amenities	3,00,000/-
3.	Loss of marriage prospects	3,00,000/-
4.	Future medical treatment	3,00,000/-
5.	Loss of future earnings (Income x Multiplier) (₹5,070x12x15)	9,12,600/-
	TOTAL =	18,97,371/-

The learned Judge directed that a sum of ₹5,59,771/- should be immediately released to the appellant's father and the rest of the amount should be invested in one or more fixed deposit(s) so as to attract the maximum rate of interest.

6. Claiming that the compensation determined by the learned Judge was still on the lower side, the appellant chose to file the present appeal through her father. She quantified her total claim under various heads at ₹71,80,000/-. M/s. Oriental Insurance Company Limited, respondent No. 1 before us, is represented by learned counsel. The owner of the vehicle, respondent No. 2, did not choose to appear despite service of notice. The

driver of the vehicle, respondent No. 3, stood deleted from the array of parties at the risk of the appellant, *vide* order dated 20.03.2024.

7. On 13.09.2024, upon hearing the learned counsel for the parties, this Court directed them to submit their respective computations of the damages/compensation. Both parties accordingly filed their computation statements. The insurance company, while asserting that the compensation determined by the High Court was just and proper, stated that token compensation, between ₹4 lakh to ₹5 lakh, may be awarded towards attendant charges. The appellant, however, filed a statement computing her total claim, aggregating to ₹48,68,000/- under various heads.

8. At this stage, we may note that this Court had occasion to consider a similar case involving a twelve-year-old child in ***Kajal v. Jagdish Chand and others***[2]. In that case, the child had suffered 90% permanent disability due to the accident. The argument before this Court was that as the child was just twelve years of age, notional income of ₹15,000/- per annum should be adopted. However, this Court rejected this argument and adopted the minimum wages payable to a skilled workman for quantifying the notional loss of earnings of the child. In the case on hand, the High Court adopted the minimum wages payable to unskilled labour, i.e., ₹169 per day, but there is no justification for the same as the appellant was a

[2] (2020) 4 SCC 413

school-going child at the time of her accident. The minimum wages payable to a skilled workman, as per the Notification dated 01.03.2013 of the Government of Assam, stood at ₹175 per day, which is more acceptable. On that basis, the notional loss of income of the appellant would work out to ₹5,250/- per month and the multiplier applicable would be 15, considering her age at the time of the accident. In effect, the notional loss of earnings would work out to ₹9,45,000/- (₹5250X12x15). The High Court failed to consider the loss of future prospects @ 40% of the monthly salary, in terms of the law laid down by this Court in ***Kajal*** (*supra*). Therefore, a further sum of ₹3,78,000/- (₹2100X12x15) would be payable to the appellant under that head. The sum of ₹3 lakh computed by the High Court for pain, suffering and loss of amenities is just and warrants no interference. Similarly, the compensation of ₹3 lakh for loss of marriage prospects is sufficient. However, though the High Court calculated compensation for future medical treatment as ₹3 lakh, we are of the opinion that the same would be deficient, given the nature of the permanent disability suffered by the appellant. She would be entitled to ₹5 lakh under this head, as claimed by her in her computation statement. Further, attendant charges would also have to be considered as the appellant would be helpless without assistance. In ***Kajal*** (*supra*), this Court opined that the

multiplier method would be the most realistic and reasonable method for this purpose. The monthly expense for one attendant was quantified as ₹5,000/-. Adopting the same, the appellant would be entitled to ₹9 lakh under this head. Though, the claim for ₹13 lakh towards the expenses incurred for treatment and hospitalization is reiterated, the fact remains that the appellant's father could produce bills only for ₹84,771/-. We are, therefore, not inclined to accept this claim without proof. In effect, the appellant is held entitled to the following compensation:

No.	Head	Amount (in Rupees)
1.	Loss of earnings (Income x Multiplier) (₹5,250x12x15)	9,45,000/-
2.	Loss of future prospects (40% of ₹5,250/-) (₹2,100x12x15)	3,78,000/-
3.	Attendant charges for lifetime (₹5,000x12x15)	9,00,000/-
4.	Pain, suffering and loss of amenities	3,00,000/-
5.	Loss of marriage prospects	3,00,000/-
6.	Future medical treatment	5,00,000/-
7.	Medical and hospitalization expenses	84,771/-
	TOTAL =	34,07,771/-

9. The insurance company shall also pay interest @ 7.5% on the balance amount payable, as determined by us above, from the date of institution of the claim petition till the date of deposit by it before the Motor

Accident Claims Tribunal No. 3, Kamrup (Metro), Guwahati. The said amount shall be placed in one or more fixed deposit(s) in nationalized bank(s) for terms which would earn the maximum interest. Such interest shall be disbursed to the appellant or her father on monthly basis. It would, however, be open to the appellant or her father to approach the said Tribunal for release of a larger sum of money, if any requirement arises and the same is demonstrated to the satisfaction of the Tribunal. Such application, if filed, shall be considered by the Tribunal on the facts obtaining and in accordance with law.

The appeal is allowed to the extent indicated above.

Parties shall bear their own costs.

..……………………..,J
(SANJIV KHANNA)

……………………..,J
(SANJAY KUMAR)

November 5, 2024;
New Delhi.