

(2013) 08 SC CK 0109

In the Supreme Court Of India

Case No : Civil Appeal No. 7139 of 2013 (Arising out of S.L.P. (Civil) No. 1676 of 2012)

Master Mallikarjun

APPELLANT

Vs

Divisional Manager, The National Insurance Company Limited
and Another

RESPONDENT

Date of Decision : 26-08-2013

Acts Referred:

Citation : (2014) 1 ABR 170 : (2013) 3 ACC 924 : (2013) ACJ 2445 : AIR 2014 SC 736 : (2014) 1 AJR 818 : (2013) 101 ALR 271 : (2013) 2 AnWR 814 : (2013) 6 AWC 5740 : (2013) 6 BomCR 69 : (2013) 4 CDR 1137 : (2013) 4 JLJR 96 : (2013) 13 JT 465 : (2013) 3 KLJ 815 : (201

Hon'ble Judges : Kurian Joseph, J;Gyan Sudha Misra, J

Bench : Division Bench

Advocate : V.N. Raghupathy, for the Appellant; S.L. Gupta, Ram Ashray, Shyam Sunder Gupta, Shalu Sharma, Rajesh Mahale and Krutin R. Joshi, for the Respondent

Final Decision : Allowed

Judgement

Kurian Joseph, J.—Leave granted.

2. What is the just and fair compensation to be awarded to a child, who suffered disability in a motor accident, is the main point arising for consideration in this case.

THE UNDISPUTED FACTS

3. Appellant at the age of 12 years was hit by a motorcycle on 05.06.2006. He suffered the following injuries:

- a. (Right) lower 1/3 leg deformity, movements restricted diagnosis of fracture.
- b. Two abrasions over left elbow posteriorly over olecrenon both measuring 4x1 cms.

c. Abrasion over dorsal aspect right hand at the basis of index finger.

4. Negligence of the rider was proved. The child was treated as inpatient from 05.06.2006 to 01.08.2006, for 58 days. He was operated on 24.06.2006. Six months after the discharge, he was seen by the doctor on 15.02.2007 for follow up. It is in evidence that the patient had the following discomforts/disabilities, i.e.:

i. Patient walks with limp on to the right side.

ii. Puckered scar on and aspect of middle 1/3 of (Right) leg with operated scar on either side.

iii. Shortening of right lower limb by 1.5 cms.

iv. Limitation of right knee movements by 30 %.

v. Muscle power around right knee Gr. IV against Gr. V.

vi. Limitation of right ankle movement by 20%.

vii. Muscle power around (right) ankle is Gr. IV against Gr. V.

viii. Check X ray No. 3791 dated 15.02.2007 shows disunited fracture of right tibia with plate and screw fixation in situ. Mal union fracture of right tibia.

5. The surgeon had assessed the disability to the extent of 34% of right lower limb and 18% to the whole body.

6. The Motor Accidents Claims Tribunal in a petition filed claiming compensation to the tune of Rs. 4,00,000/-, awarded compensation to the tune of Rs. 63,500/- under the following heads:

7. On approaching the High Court, the compensation was enhanced to Rs. 1,09,500/-. The enhancement was mainly under the head "Loss of future amenities" wherein the Appellant was awarded Rs. 50,000/-. Appellant still not satisfied, filed this Special Leave Petition.

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 Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, , 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.

9. Sapna Vs. United India Insurance Co. Ltd. and Another, is the case of a 12 year old girl who suffered 90% disability in her left leg. This Court granted a lump sum amount of Rs. 2,00,000/- on these heads.

10. In Iranna Vs. Mohammadali Khadarsab Mulla and Another, , a Division Bench of the Karnataka High Court granted an amount of Rs. 4,00,000/- on these heads to the child who suffered 80% permanent disability.

11. In Kum. Michael Vs. Regl. Manager Oriental Ins. Co. Ltd. and Another, , this Court considered the case of an eight year old child suffering a fracture on both legs with total disability only to the tune of 16%. It was held that the child should be entitled to an amount of Rs. 3,80,000/- on these counts.

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. The Appellant, hence, would be entitled to get the compensation as follows:

13. The impugned judgment of the High Court in M.F.A. No. 1146 of 2008 is accordingly modified. The claimant will be entitled to a total compensation of Rs. 3,75,000/- along with interest @ 6% per annum from the date of the petition. First Respondent - Insurance Company is directed to deposit the enhanced compensation with interest as above within two months from today. On such

deposit, it will be open to the Appellant to approach the Tribunal for appropriate orders on withdrawal. The appeal is allowed as above.

14. There is no order as to costs.