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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
B.R. GAVAI; J., C.T. RAVIKUMAR; J.
October 18, 2022
Civil Appeal No. 7605 of 2022 (@ Special Leave Petition (C) No.25303 of 2019)
Divya *versus* **The National Insurance Co. Ltd. & Anr.**

Motor Accident Compensation Claims - Multiplier of victims upto the age group of 15 years should be taken as '15' - When there is clear prohibition under Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 for engagement of children and the definition of "child" therein takes in children who have not completed their fourteenth year of age within its fold, there is certainly justification for selecting a lower multiplier of '15' in the case of victims belonging to the age group upto 15 years. *(Para 10.1.4)*

For Appellant(s) Mr. T. Harish Kumar, AOR

For Respondent(s) Mr. Sudhir Naagar, AOR

J U D G M E N T

C.T. RAVIKUMAR, J.

1. Leave Granted.

2. Little was known to the little girl when she was taken in an autorickshaw by her parents about the jinx that she had to face and the consequences which would be lifelong and haunting, both mentally and physically. On 08.08.1998, when the appellant/claimant was a suckling, to be precise aged two years, her parents took her in an autorickshaw bearing registration No. TN-29-0958. When they were travelling from near Vaishnav College, from west to east, a car bearing registration No. TMQ-2266 driven rashly and negligently came from the opposite direction, that too through its off side, dashed against the autorickshaw. She sustained very serious injuries. Taking into account the injuries sustained and its serious consequences, after assessing the compensation at Rs. 60 lakhs, the claimant filed an application for compensation under Section 166 of the Motor Vehicles Act, 1988 (for short 'MV Act') limiting the claim of compensation at Rs. 30 lakhs. The Tribunal, on consideration of the evidence on record, held that the driver of the car was responsible for the accident, but dismissed the claim petition on technical grounds. It was found by the Tribunal that the vehicle was sold on 21.05.1998 viz., prior to the accident and the claimant had not taken steps to implead the actual owner of the car and, therefore, could not claim compensation from the second respondent herein, the erstwhile owner of the car as also from the insurance company. Aggrieved by the dismissal of the claim petition the claimant preferred appeal before the High Court of Judicature at Madras as CMA No. 991/2018. Upon finding that the claim petition ought not to have been dismissed for the aforesaid technical reason pending the appeal the High Court referred the claimant before a Medical Board for examination and assessment of permanent disability. The Medical Board assessed her locomotive disability as 75% and the neuro-physical disability as 40%. In fact, the Medical Board conducted such examination on 19.05.2018 viz., almost two decades since the date of accident. The Medical Board opined that the disability caused to the appellant is almost 100%. The High Court, based on the opinion given under the certificate issued by the Medical Board, considered the claim of the appellant. Obviously, the High Court found that the Tribunal was at fault in dismissing the claim petition assigning the aforesaid reason in view of Section 157 of the MV Act,

1988. In fact, after considering the position with respect to the aforesaid provision and also the fact that the insurance coverage of the offending vehicle was valid even on the date of the accident, the High Court came to the conclusion that the appellant is entitled to be compensated. Consequently, the award of the Tribunal was set aside.

3. After setting aside the award of the Tribunal, the High Court took note of the fact that about two decades have lapsed since the date of the accident to decline remand of the matter to the Tribunal. Obviously, in the interest of the justice, the High Court went on to determine the quantum of compensation. Taking note of the permanent disability incurred by the appellant in the light of the certificate issued by the Medical Board and taking into account the various heads under which compensation is grantable in the case of such serious injuries assessed the compensation as under:

Award towards	Amount
Permanent Disability	Rs. 2,00,000/-
Pecuniary loss/ loss of earning	Rs. 5,04,000/-
Pain and Sufferings	Rs. 1,50,000/-
Medical expenses	Rs. 10,000/-
Loss of amenities	Rs. 1,50,000/-
Transportation	Rs. 10,000/-
Extra nourishment	Rs. 10,000/-
Mental agony	Rs. 1,00,000/-
Future Medical Expenses	Rs. 1,00,000/-.
Attender Charges	Rs. 1,00,000/-
Total	Rs. 13,34,000/-

As per the impugned judgment, the High Court directed the first respondent – Insurance Company, to pay the said quantified compensation of Rs. 13,34,000/- with interest at the rate of 7.5 percent per annum from the date of the petition (18.12.1998) till the date of the payment. Appropriate directions for disbursement and deposit were also issued thereunder. It is dissatisfied with the quantum of compensation granted thereunder that the captioned appeal has been preferred seeking enhancement of the quantum compensation.

4. Heard Mr. T. Harish Kumar, Advocate, the learned counsel for the appellant and Mr. Abhishek Gola, Advocate, the learned counsel for the respondent.

5. The first and second respondents filed counter affidavits separately. They did not dispute the certification of the permanent disability by the Medical Board constituted pursuant to the direction of the High Court. True that in the counter affidavit the second respondent took up the stand that 'just compensation' was awarded by the High Court in the appeal and the appellant herein is, therefore, not entitled to get further enhancement of the quantum of compensation. Virtually, the first respondent -Insurance Company, also adopted the same stand in its affidavit. It was further contended therein that the claimant had failed to provide any documentary evidence regarding the proof of income. We may hasten to state here that it is nothing but mispleading due to misreading as the High Court had only notionally fixed the income for calculation purpose taking into account the fact that the appellant was aged only two years at the time of the accident. The learned counsel for the appellant would contend that there is no merit in the objections raised by the respondents as in terms of Section 168 of the MV Act, the appellant is entitled to 'just compensation' and she was deprived of the same in the instant case. It was contended that going by the opinion of the Medical Board the appellant had incurred permanent disability almost of 100%. At the time of the accident the claimant was a minor aged about

two years and its serious consequences and impact are reflected in the medical certificate issued pursuant to the examination conducted on 19.05.2018 viz., after about 20 years of the accident. It was further contended by the learned counsel that the notional income fixed by the High Court for calculation purpose viz., Rs. 2000/- is too meagre. The calculation of compensation for loss of earning and for permanent disability are on the lower side. Further, it was contended that the amount of compensation granted under the heads "Pain and suffering", "Medical expenses", Loss of amenities", "Extra nourishment", "Mental agony", "Future medical expenses" and "Attender charges" are all on the lower side. In such circumstances, compensation granted under such heads require enhancement for the purpose of granting 'just compensation'. We may also take note of the fact that despite being saddled with liability to pay compensation the respondents have not chosen to assail the judgment of the High Court.

6. The evidence on record would undoubtedly show that theappellant had sustained very serious injuries in a motor accident involving the two vehicles mentioned hereinbefore and the same virtually doomed her future. Besides the undisputed details regarding the disability certified by the Medical Board the appellant had produced photographs in this appeal revealing her pathetic plight. No doubt, the trauma and the throe which she had experienced and experiencing are inexplicable and cannot be expiated appropriately as the situation is indisputable that regaining self-reliance much less recuperation is totally, now an unpossibility. Obviously, the corporeal independence is lost forever. The state of her lower limbs, as revealed from the photographs supporting the certification of the opinion of the Medical Board, would suggest that she could never be cursorial or even, stretch her legs. In troth, she could not stand sans support. Needless to say, she lost all her amenities and marriage prospects. The question is how would you assess the 'just compensation' in such a case when Section 168 of the MV Act, provides for 'just compensation'?

7. In the contextual situation revealing the fact that it is an impossibility to bring back the appellant to her original position it is only appropriate to refer to the decision in ***Philipps v. London & South Western Railway Co.***[1] quoted with the agreement by the two-Judge Bench of this Court in ***Kajal v. Jagdish Chand & Ors.***[2]*,* it reads thus:

"…You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always recollect that this is the only occasion on which compensation can be given. The plaintiff can never sue again for it. You have, therefore, now to give him compensation once and for all. He has done no wrong, he has suffered a wrong at the hands of the defendants and you must take care to give him full fair compensation for that which he has suffered."

8. In **Kajal's** case (supra) this Court also referred to an early decision in ***Raj Kumar v. Ajay Kumar***[3]. Para 6 of judgment in **Rajkumar**' case (supra) is worthy to be noticed for awarding compensation for personal injuries. It reads thus:

"6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

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[1] (1879) LR 5 QBD 78 (CA)

[2] (2020) 4 SCC 413

[3] (2011) 1 SCC 343

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising: *(a)* Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expense.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).*(vi)* Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads *(i), (ii)(a)* and *(iv)*. It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads *(ii)(b), (iii), (iv)* and *(vi)* relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

9. Bearing in mind the aforesaid decisions carrying salutary principles for the purpose of computing compensation in cases where serious injuries having lifelong disabilities occurred and also the fact that to bring back the appellant to a stage where she would be able to attend her quotidian needs, on her own, is also an impossibility, we will proceed to consider the question whether compensation granted by the High Court require enhancement/grant of compensation is warranted on any ground.

10. The learned counsel for the appellant placed reliance on the decision in **Kajal**'s case (supra) to claim enhancement/grant, of compensation under different heads. On careful scrutiny of the heads of compensation, bearing in mind the aforesaid decision, we find that the appellant is entitled to enhancement/grant, of compensation on certain grounds.

(1) Attender Charges :- towards 'attender charges' the High Court has granted a lumpsum amount of Rs. 1 Lakh. In the decision in **Kajal's** case this Court held that when compensation is awarded in lumpsum, various factors had to be taken into consideration and usually for ordering grant of lumpsum amount this Court always followed a multiplier system. It was further held that various factors such as inflation rate, rate of interest payable on the lumpsum award, the longevity of the claimant and other issues such as the uncertainties of life are factors to be taken into account while following the said system. Furthermore, it is held therein that adoption of multiplier method would ensure justice between parties and thus results in award of "just compensation" within the meaning of MV Act. The notional income fixed by the High Court in the instant case requires no interference. The grievance raised in relation to its fixation merits no consideration reckoning the age when she met with the accident.

10.1.1 An incongruity appears to exist in the matter of selection of multiplier in the case of persons belonging to the age group up to 15 years. In the decision in Kajal's case in respect of the appellant/claimant belonging to the said age group the two-Judge Bench took the multiplier as 18. This was followed by another two-Judge Bench in ***Abhimanyu Pratap Singh Vs. Namita Sekhon & Anr.***[4]. However, in the case on hand the multiplier as relates the appellant/claimant belonging to the self-same age group (at the time of the accident) was taken as 15. In this context it is relevant to refer to the Constitutional Bench

[4] (2022) 8 SCC 489

decision of this Court in ***National Insurance Company Ltd. vs. Pranay Sethi*** [5]. The Constitutional Bench after taking into account the decisions in ***Sarla Verma (Smt) & Ors. vs. Delhi Transport Corporation & Anr.*** [6] case, ***Reshma Kumari & Ors. V. Madan Mohan & Anr.*** [7] case and ***Rajesh v. Rajbir Singh*** [8] case observed that the formula relating to multiplier has been clearly stated in Sarla Verma's case and it has been approved in Reshma Kumari's case. Thereafter, it was held in Pranay Sethi's case thus, the selection of multiplier shall be as indicated in the table in Sarla Verma's case read with paragraph 42 of that judgment. The two-Judge Bench in ***Abhimanyu Pratap Singh's*** case (supra) found that in column No. 4 of the table referred to in paragraph 42 of Sarla Verma's case virtually no multiplier has been shown. This is certainly true as in the table the figure '15' is shown only in column No. 5 which is the multiplier specified in second column in the table in II, Schedule-II, MV Act. In fact, in column No. 4 of the table in Sarla Verma's case the highest multiplier is '18' and it is shown applicable to two age groups; firstly, to the age group of 15 to 20 years and secondly, to the age group of 21 to 25 years. It is in the said circumstances, that as relates the age group up to 15 years the multiplier was selected as '18'.

10.1.2 As noticed herein the Constitutional Bench in Pranay Sethi's case at paragraph 57 observed that the formula relating to multiplier has been clearly stated in Sarla Verma's case (supra) and it has been approved in Reshma Kumari's case (supra). It is also relevant to note that as per conclusion No. 2 in paragraph 1 of Pranay Sethi's case the Constitutional Bench declared thus:

"As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent."

10.1.3 In the said circumstances, in the light of the aforesaid observation and conclusion and also taking note of the fact that Reshma Kumari is a three-Judge Bench decision we will have to refer to the relevant recitals in the said decision. In Reshma Kumari's case the conclusion in paragraph 43.2 reads thus:

"43.2. In cases where the age of the deceased is upto 15 years, irrespective of 166 or 163A under which the claim for compensation has been made, the multiplier of 15 and the assessment as indicated in the second schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma should be followed."

It is also relevant to note that after referring to paragraph 42 in Sarla Verma's case dealing with the multiplier the three-Judge Bench in Reshma Kumari's case approved the same stating thus:

"It is high time that we move to a standard method of selection of multiplier, income for future prospects and deduction for personal and living expenses. The courts in some of the overseas jurisdictions have made this advance. It is for these reasons, we think we must approve the Table in Sarla Verma for the selection of multiplier in claim applications made Under Section 166 in the cases of death. We do accordingly. If for the selection of multiplier, Column (4) of the Table in Sarla Verma is followed, there is no likelihood for the claimants who have chosen to apply under Section 166 being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply under Section 163-A. As regards the cases where the age of the victim happens to be up to 15 years, we are of the considered opinion that in such cases irrespective of Section 163-A or Section 166 under which the claim for compensation has

[5] (2017) 16 SCC 680

[6] (2009) 6 SCC 121

[7] (2013) 9 SCC 65

[8] (2013) 9 SCC 54

been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in Sarla Verma should be followed. This is to ensure that the claimants in such cases are not awarded lesser amount when the application is made under Section 166 of the 1988 Act. In all other cases of death where the application has been made under Section 166, the multiplier as indicated in Column (4) of the Table in Sarla Verma should be followed.

(emphasis added)

10.1.4 We are of the considered view that the selection of multiplier '15' for the age group upto 15 years by the three-Judge Bench in Reshma Kumari's case is having a sound basis. It is common knowledge that the age group of 21 to 25 years is regarded as the commencement of normal productive years as referred specifically by the two-Judge Bench in Sarla Verma's case at paragraph 39. True that in Sarla Verma's case the same multiplier viz., '18' is selected for the age group 15 to 20 years. In this context, it is relevant to refer to the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, which is an enactment to prohibit the engagement of children in all occupation and to prohibit the engagement of adolescence in hazardous occupations and process and matters connected therewith and incidental thereto. In the said Act the term "child" has been defined in Section 2(ii) as hereunder:

"S.2…

(i)…

(ii) "child" means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009), whichever is more"

In the said circumstances, when there is clear prohibition under an enactment for engagement of children and the definition of "child" under the said enactment takes in children who have not completed their fourteenth year of age within its fold, there is certainly justification for selecting a lower multiplier of '15' in the case of victims belonging to the age group upto 15 years. Since the Constitutional Bench in Pranay Sethi's case held Rajesh's case (supra) as not a binding precedent for not taking note of decision in Reshma Kumari's case, held that the formula relating to multiplier has been approved in Reshma Kumari's case after extracting the afore-extracted paragraph No. 43.1 and 43.2 in Reshma Kumari's case and that the three-Judge Bench in Reshma Kumari held that as regards the cases where the age of the victim happens to be upto 15 years the multiplier should be '15' we are bound to take the multiplier of victims upto the age group of 15 years as '15'. Hence, according to us, the High Court has rightly identified the multiplier by looking into the table in **Sarla Verma's** case as 15. The physical condition of the appellant would, undoubtedly, reveal that she would require lifelong services of two attendants. Following the decision in **Kajal's** case we thought that in that regard Rs. 10,000/- per month can be granted and at that rate the annual amount would come to Rs. 1,20,000/-. Applying the multiplier of 15 the amount payable under the said head would be Rs. 18 lakh (1,20,000 x 15). After deducting the amount already granted by the High Court under that head viz., Rs. 1 lakh, the amount would be Rs. 17 lakhs.

(2) Pain and Sufferings and Loss of Amenities: - Under the head of 'Pain and Sufferings" and "Loss of Amenities" a total of Rs. 3 lakh (1,50,000 each) was granted by the High Court. In **Kajal**'s case this Court referred to with agreement the decision in ***Mallikarjun v. Divisional Manager, National Insurance Company Limited & Anr.***[9] whereunder, while

[9] (2014) 14 SCC 396)

dealing with the issue of award under this head, it was held that it should be at least Rs. 6 lakhs if the disability is more than 90%. Since the disability in this case was already assessed as more than 90% in the light of the aforesaid decision, we are inclined to grant an amount of Rs. 3 lakhs additionally to the appellant *idest* after deducting Rs. 3 lakhs from Rs. 6 lakhs.

(3) Marriage Prospects: - No amount whatsoever was granted by the High Court for loss of marriage prospects. Obviously, in **Kajal's** case (supra) this Court declined to interfere with fixation of Rs. 3 lakhs under that head by the Tribunal concerned. We find no reason to deny such an amount viz., Rs. 3 lakhs to the appellant for the loss of marriage prospects, taking into account her physical condition.

(4) Future Medical Treatment: - The appellant was awarded only an amount of Rs. 1 lakh under that head by the High Court. Considering the nature of the injuries and the present physical condition of the appellant we are of the view that in future she will have to face a lot of medical problems keeping in view of her young age and taking into account the life expectancy of an average Indian. We are inclined to grant an amount of Rs. 1 lakh more to the appellant.

Besides the aforesaid heads we think it appropriate to grant some additional amount for special diet. The appellant was awarded an amount of Rs. 10,000/- towards Extra Nourishment. It is common knowledge that consumption of normal food by a person who is practically bedridden is not advisable and what is advisable is to have a special dietary to avoid putting on weight. It needs no expertise to know that if such a person without any kind of regular exercise takes food with following dietary besides putting weight would become prone to several diseases. In such circumstances, we are of the view that she may have to spend amount for keeping her body fit, as far as possible, to adapt to the situation. We are inclined to grant Rs. 90,000/- more in addition to the amount of Rs. 10,000/- granted under the head 'Extra Nourishment'.

11. In view of the enhancement/grant, of compensation the award granted by the High Court under the impugned judgment would stand modified by granting and enhancement amount of Rs. 24,90,000/- in addition to amount already awarded by the High Court to its compensation as hereunder:

Sr. No.	Award towards	Amount
1.	Attender Charges	Rs. 17,00,000/-
2.	Pain and Sufferings and Loss of Amenities	Rs. 3,00,000/-
3.	Marriage Prospects	Rs. 3,00,000/-
4.	Future medical treatment	Rs. 1,00,000/-
5.	Grant of additional amount for special diet	Rs. 90,000/-
	Total	Rs. 24,90,000/-

12. The insurance company shall be liable to deposit the said enhanced amount with interest at the rate of 7.5% per annum with effect from 29.08.2018 till the date of deposit. True that the appellant is now a major but at the same time taking note of her physical condition we thought it just and proper to issue some direction in regard to its investment in the best interest of the appellant.

13. In **Kajal's** case the guidelines laid down by this Court in ***Kerala SRTC v. Susamma Thomas***[10] have been reproduced. The following guidelines are relevant for the instant case:

[10] (1994) 2 SCC 176

"(vi) In personal injury cases if further treatment is necessary the Claims Tribunal on being satisfied about the same, which shall be recorded in writing, permit withdrawal of such amount as is necessary for incurring the expenses for such treatment;

(vii) In all cases in which investment in long term fixed deposits is made it should be on condition that the Bank will not permit any loan or advance on the fixed deposit and interest on the amount invested is paid monthly directly to the claimant or his guardian, as the case may be;

(viii) In all cases Tribunal should grant to the claimants liberty to apply for withdrawal in case of an emergency. To meet with such a contingency, if the amount awarded is substantial, the Claims Tribunal may invest it in more than one fixed deposit so that if need be one such FDR can be liquidated."

14. After referring to those guidelines laid down in **Sussama's** case (supra) this court in **Kajal's** case observed thus:-

"These guidelines protect the rights of the minors, the claimants who are under some disability and also widows and illiterate persons who may be deprived of the compensation paid to them in lump sum by unscrupulous elements. These victims may not be able to invest their monies properly and in such cases MACT as well the High Courts must ensure that investments are made in nationalised banks to get a high rate of interest. The interest in most cases is sufficient to cover the monthly expenses. In special cases, for reasons to be given in writing, MACT or the trial court may release such amount as is required. We reiterate these guidelines and direct that they should be followed by all the Tribunals and High Courts to ensure that the money of the victims is not frittered away."

15. In the said circumstances, while keeping intact the directions issued by the High Court regarding the investment of the amount awarded by it as per the impugned judgment, we think it proper to issue further directions, in regard to the investment of the additional amount of compensation granted as per this judgment. Since we have granted compensation in excess of what is claimed and the appellant had remitted court fee for the claim of Rs. 30 lakhs the appellant is liable to pay the balance court fee for the amount granted in excess of Rs. 30 lakhs. Therefore, the insurance company shall draw a cheque covering the balance court fee for the amount in excess of Rs. 30 lakhs awarded under this judgment and produce it before the MACT. In other words, the balance amount need be deposited to comply with the judgment before the MACT by way of two cheques, in which one should be for an amount of Rs. 15 lakhs. MACT shall keep the said amount of Rs. 15 lakhs in a fixed deposit in a nationalized bank, for a period of 5 years. The bank concerned shall not permit any loan or advance on the fixed deposit and the interest payable on this amount shall be released on quarterly basis and for the care of the appellant alone. After the period of 5 years the MACT shall keep renewing the said amount on such terms as it deems just and proper, for a further term of 5 years. The amount covered by the other cheque shall be released to the appellant, in accordance with the procedures as by now, the family must have incurred huge amount for the treatment of the appellant. The insurance company shall deposit the enhanced amount as above, within a period of 3 months from today.

16. This appeal stands disposed of as above. There will be no order as to cost. Pending application(s), if any, shall stand(s) dismissed.