



MFA No. 25028 of 2010

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

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DATED THIS THE 28TH DAY OF JUNE, 2022

BEFORE

THE HON'BLE MR JUSTICE P.KRISHNA BHAT

MFA NO. 25028 OF 2010 (MV-I)

BETWEEN:

MISS. PRIYANKA PRADEEP GAVADE
AGE: 12 YEARS, OCC: STUDENT. NOW. Nil.
SINCE MINOR REP. BY HER
NEXT FRIEND NATURAL GUARDIAN MOTHER
SMT. PRAGATI PRADEEP GAVADE,
AGE: 30 YEARS, OCC: HOUSEWIFE,
R/O: 1113/B, KULKARNI GALLI, BELGAUM.

... APPELLANT

(BY SRI. VITTHAL S.TELI, ADVOCATE)

AND:

THE DIVISIONAL MANAGER
THE NEW INDIA ASSURANCE CO., LTD.,
MUDALAGI BUILDING, CLUB ROAD,
BELGAUM.

... RESPONDENT

(BY SRI. M. Y. KATAGI, ADV. FOR R1;
PROPOSED R2-NOTICE DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF THE
MOTOR VEHICLE ACT, AGAINST THE JUDGMENT AND ORDER
DATED 16.09.2010 PASSED IN MVC NO.161/2007, ON THE
FILE OF THE II ADDL. SENIOR CIVIL JUDGE AND ADDL. MACT,
BELGAUM AT BELGAUM, PARTLY ALLOWING THE CLAIM
PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT
OF COMPENSATION.

THIS APPEAL COMING ON FOR *FINAL HEARING* THIS
DAY. THE COURT DELIVERED THE FOLLOWING.



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JUDGMENT

This appeal is at the instance of the claimant seeking enhancement of compensation awarded by the learned II Additional Senior Civil Judge and Additional M.A.C.T., Belgaum (for short "the Tribunal") by its judgment and award dated 16.09.2010 in MVC No.161/2007.

2. The brief facts are that on 24.10.2006 at about 4.45 p.m., while minor claimant, aged about 7 years, was proceeding by the side of the road of Kudal to Peth, a goods vehicle bearing registration No.MH-07/5577 being driven by its driver in rash and negligent manner and in high speed, came and dashed against the minor claimant and dragged her for a distance of about 20 feet causing her grievous injuries.

3. On the claim petition being filed, the respondent No.1-owner of the vehicle remained *ex-parte*. The Insurance Company resisted the claim petition by filing its statement of objections.



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4. During Trial, the mother of the claimant was examined as PW1 and a specialist doctor was examined as PW2. Exs.P1 to P.14 were marked. The respondents did not examine any witnesses but the policy of insurance was marked as Ex.R1.

5. Learned Tribunal, after hearing the learned counsel on both sides and on perusing the records, allowed the petition in part and awarded a compensation of Rs.4,41,250/- with interest thereon at 6% per annum from the date of petition till the date of payment with liability to pay the compensation fastened on the Insurance Company.

6. Learned counsel for the appellant-minor claimant strenuously contended before me that the compensation awarded is on the lower side and same is required to be enhanced. In this behalf he took me through the wound certificate at Ex.P7, disability certificate at Ex.P9 and discharge summary at Ex.P10. He also invited my attention to the photographs of the minor claimant at Ex.P14, which show the enormous damage



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caused to her on account of the accident. He, therefore, submitted that by following the decision of the Hon'ble Supreme Court in ***Kajal v. Jagdish Chand and others***¹ and ***Master Ayush v. Branch Manager, Reliance General Insurance Co. Ltd., and another***² the compensation awarded by the Tribunal is required to be enhanced.

7. The learned counsel for the Insurance Company, per contra, contended that the learned Tribunal, after evaluating the entire evidence placed before it, has awarded just and fair compensation and therefore, no case is made out for enhancing the compensation and the appeal is liable to be dismissed.

8. I have given anxious consideration to the submissions made on both sides and I have carefully perused the records.

9. Under the head of pain and sufferings, the learned Tribunal has awarded a sum of Rs.1,00,000/-

¹ (2020) 4 SCC 413

² 2022 SCC online SC 375



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and I am satisfied that the said compensation is fair and reasonable and accordingly, it is maintained.

10. The learned Tribunal has come to the conclusion that the guardian of the minor claimant had spent Rs.80,173/- towards hospital bills and accordingly, the sum of Rs.80,173/- awarded by the learned Tribunal under the head of medical expenses is maintained.

11. The learned Counsel submits that the claimant was inpatient for two months. This claim is supported by evidence. Since the claimant was aged hardly 7 years, a full time attendant's presence would have been necessary to take care of her in the hospital. Therefore, under the head of conveyance charges and attendant expenses, a sum of Rs.25,000/- is awarded. Under the head of nourishing food, a sum of Rs.15,000/- is awarded.

12. I have perused the photographs produced under Ex.P14 and it shows the deformity suffered by the claimant. Claimant is a female child. The disability and



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disfigurement suffered by her affects her marriage prospects adversely. Hence, Rs.3,00,000/- is awarded towards loss of marriage prospects.

13. Now important question is, what is the amount of compensation to be awarded under the head of loss of earning capacity. Ex.P10 which is discharge summary reads as follows:

*"Name: PRIYANKA PRADIP GAWADE WARD:G+4
Ward
AGE: 7YEARS UNIT: Private Patient
SEX: Female child RELIGION: Hindu
MARRIAGE STATUS:Unmarried L.P.No.: 204922
ADDRESS: Madychi wadi-Kudal, Clinic No.:
Tal:sindhudurg
DATE OF ADMISSION: 25/10/2006
DATE OF DISCHARGE: 21/12/2006
DIAGNOSIS: Alleged accidental crush injury right lower limb and left upper limb.
COMPLAINTS & HISTORY: H/o. RTA-24/10/2006 at about 4:30pm. Initially treated by local doctor, and transferred to this hospital for further management.
EXAMINATION: O/E: General condition poor, disoriented, Pulse:100
1. Left arm crush injury ulna bone exposed middle 1/3rd Median nerve, brachial artery cut.
2. Deep Abrasions over left side of posterior trunk extending up to gluteal region.
3. Right lower limb: All vasti muscle exposed, gastrocnemius exposed. Temperature reduced, peripheral pulse-doubtful(absent).
PROCEDURES(IF ANY):*



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- 25/10/2006: Debridement & STSG for right lower limb & anterior abdomino thoracic flap and left upper limb.
- 30/10/2006: Dressing under GA
- 13/11/2006: Abdomen thoracic flap delay and dressing
- 17/11/2006: Flap division with inset
- 27/11/2006: Debrodement and STSG

RESULT IMPROVED - Right knee local swelling no movements possible - Left arm - elbow stiffness above elbow movement restricted.

NEXT FOLLOW UP In Plastic Surgery CPD No.32"

14. Ex.P9 is the disability certificate issued by PW2. Further, the evidence of PW2 reads as follows:

"1. I am practicing Orthopedic and Arthroscopic Surgeon since last 12 years. I have examined Kumari Priyanka Pradeep Gavade aged 10 years on 6/02/2009 for assessment of permanent physical disability who had met with road traffic accident on 24/10/2006. I am competent to issue disability certificate.

2. The patient was admitted in at KLE Dr. Prabhakar Kore Hospital & MRC on 25/10/2006 and got discharged on 21/12/2006. She had sustained the following injuries at the time of accident 1) left arm crush injury, ulna bone exposed, middle and third knee, median nerve and brachial artery cut, 2) Deep abrasions over left side of posterior trunk extending upto gluteal region. 3) Right lower limb : all vasti muscle exposed, gastronemius exposed, temperature reduced, peripheral pulse-doubtful (absent).



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3. She was treated as follows on 25/10/2006 debridement and STSG for back and anterior abdominal thoracic flap for left upper limb. On 30/10/2006 dressing done under GA, on 13/11/2006 Abdominal thoracic flap delay and dressing, on 17/11/2006 Flap division with inset, on 27/11/2006 debridement and STSG.

4. The patient at present complaints of a) Inability to walk without support, b) Inability to move left hand fingers and left elbow, c) Inability to squat and run, d) inability to do daily routine activities of life, 3) Inability to move right knee.

5. On my clinical examination the patient is having

Left upper limb

- a) Muscle flap upper third left forearm and lower third left arm
- b) Restriction of left elbow by 60'
- c) Flexion and extension of left wrist weak
- d) Loss of flexion of all the five fingers suggestive of median nerve injury.
- e) Disability to grasp, hold and pinch with left hand.

Right Lower limb

- a) STSG done from middle third right thigh middle third right leg.
- b) Fixed flexion deformity of 45 at right knee.
- c) Fixed equines of right foot, dorsiflexion totally restricted.

STSG done over the lower part of back.



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6. **X-ray Report** of left elbow with forearm AP and lateral shows : olecranon process of ulna shows gross deformity epicondyle of humerus show gross deformity. Articular surfaces of left elbow show gross deformity. Joint space shows apparently increase.

Right Knee AP and Lateral view shows: Lower femoral condylar epiphysis show deformity. Upper tibial and fibular epiphysis shows deformity Lateral compartment of knee joint reduced.

(as reported by Dr.D.B.Udhoshi on 01/10/2008)

After my clinical and radiological examination with reference to WHO and ALIMCO manual I conclude the patient has **50%** permanent physical disability in relation to whole body.

I have issued disability certificate"

15. During the cross-examination, it was elicited from him that due to shrinking skin of the leg, she cannot straighten her right leg. It was further elicited that she cannot do daily routine activities of life. It is also seen from the cross-examination of this medical witness that the minor claimant cannot use her left hand as it has lost power in the same. The medical expert has stated that she has suffered 50% physical disability for the whole body. But the picture one gets from the evidence of the medical expert and perusal of the medical records is very



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bleak about the future prospects of this minor claimant. Human body cannot be treated like an assemblage of its constituent parts. In other words, if the medical evidence is clinching on the aspect that a person who is a minor child cannot straighten her one of the lower limbs and one of the upper limbs has lost its power for use, it is as good as the human body becoming useless so far as the person's ability to work and earn livelihood is concerned. In the said larger sense, the minor claimant in this case has become functionally 100% disabled. Why am I saying so?

16. An illuminating observation made by Field, J., *In Phillips v. London & South Western Railway Co.*³, is very instructive. Says he:-

"... 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

³ (1879) LR 5 QBD 78 (CA) quoted at para 8 of **Kajal** case.



of the defendants and you must take care to give him full fair compensation for that which he has suffered."

Besides, the Tribunals should always remember that the measures of damages in all these cases "should be such as to enable even a tortfeasor to say that he had amply atoned for his misadventure".

17. The following observations of Lord Morris in his speech in *H. West & Son Ltd. v. Shephard*⁴, are very pertinent : (AC p. 346)

"... Money may be awarded so that something tangible may be procured to replace something else of the like nature which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that Judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards."

In the same case, Lord Devlin observed (at p. 357) that the proper approach to the problem was to adopt a test as to what contemporary society would deem to be a fair sum, such as would allow the wrongdoer to "hold up his head among his neighbours and say with their approval that he

⁴ 1964 AC 326 : (1963) 2 WLR 1359 (HL) quoted from para 10 of **Kajal** Case



has done the fair thing?”, which should be kept in mind by the court in determining compensation in personal injury cases.

18. Lord Denning while speaking for the Court of Appeal in *Ward v. James*⁵, laid down the following three basic principles to be followed in such like cases : (QB pp. 299-300)

“First, assessability : In cases of grave injury, where the body is wrecked or the brain destroyed, it is very difficult to assess a fair compensation in money, so difficult that the award must basically be a conventional figure, derived from experience or from awards in comparable cases. Secondly, uniformity : There should be some measure of uniformity in awards so that similar decisions are given in similar cases; otherwise there will be great dissatisfaction in the community, and much criticism of the administration of justice. Thirdly, predictability : Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceably and not brought to court, a thing very much to the public good.”

(emphasis in original)

19. Learned counsel Sri. M. Y. Katagi appearing for the Insurance Company vehemently contended that since in ***Kajal (supra)*** considered by the Hon’ble Supreme Court, the minor child was completely reduced

⁵ (1966) 1 QB 273 : (1965) 2 WLR 455 quoted from para 11 of ***Kajal*** Case



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to vegetable stage and the present claimant is not in such physically debilitated condition, it would be unjust and inappropriate to fix the functional disability at 100%. In my considered opinion accepting such contention would reduce the approach of viewing a human-being to that of a machine. If the claimant, as the evidence shows, cannot use one of the lower limbs, as a human requires to use it, and one of the upper limbs has completely become non-functional, it is harsh and inhuman to hold that he/she is functional to some extent and in terms of his earning capacity in the labour market he would have some demand. Unfortunately, human life is not mathematics. It is something more complex. Stark reality is that for such a person who has lost the proper use of some of the essential limbs in terms of their utility for earning purpose, it is over simplistic to say that he/she can earn some income by resorting to limb-wise arithmetic. Accordingly, the contention of the learned counsel for the Insurance Company is unacceptable besides being unreasonable.



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20. Since the claimant is a minor female child of 7 years at the time of the accident, it is rather difficult to anticipate how much she would have earned once she attained the age of earning. This depends on various imponderables like her education, enterprise, attitude and general approach to life. Therefore, it is safe to follow the observation of the Hon'ble Apex Court at paragraph 20 in ***Kajal (supra)***, which reads as under:

"20. Both the courts below have held that since the girl was a young child of 12 years only notional income of Rs.15,000/- per annum can be taken into consideration. We do not think this is a proper way of assessing the future loss of income. This young girl after studying could have worked and would have earned much more than Rs.15,000/- per annum. Each case has to be decided on its own evidence but taking notional income to be Rs.15,000/- per annum is not at all justified. The appellant has placed before us material to show that the minimum wages payable to a skilled workman is Rs.4846/- per month. In our opinion this would be the minimum amount which she would have earned on becoming a major. Adding 40% for the future prospects, it works to be Rs.6784.40/- per month, i.e., 81,412.80 per annum. Applying the multiplier of 18 it works out to Rs.14,65,430.40, which is rounded off to Rs.14,66,000/-"



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21. Accordingly, under the head of loss of earning capacity a sum of Rs.14,66,000/- is awarded in the present case also.

22. Similarly, for loss of amenities and enjoyment of life a sum of Rs.2,00,000/- is awarded to the minor claimant. Thus, in all the claimant is entitled to compensation which is as follows:

HEAD	AMOUNT (in Rs.)
Towards pain and sufferings	1,00,000/-
Towards Medical expenses	80,173/-
conveyance charges and attendant expenses	25,000/-
Nutritious food etc.	15,000/-
Loss of future earning capacity due to permanent disability	14,66,000/-
Loss of amenities and future happiness	2,00,000/-
Loss of marriage prospects	3,00,000/-
Total	21,86,173/-



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23. Thus, in all the claimant is entitled to the recomputed compensation of Rs.21,86,173/- as against Rs.4,41,250/- awarded by the Tribunal.

24. Accordingly, the appeal is allowed in part and the compensation amount is enhanced by Rs.17,44,923/- (rounded off to Rs.17,45,000/-), which shall carry interest at the rate of 6% per annum from the date of petition till the date of payment.

25. The Insurance Company shall deposit the differential amount with interest thereon before the learned Tribunal within a period of eight weeks from today.

26. Registry to send back the records forthwith.

27. In view of disposal of the appeal, pending interlocutory applications, if any, do not survive for consideration and are disposed of accordingly.

**Sd/-
JUDGE**

YAN