

**The Managing Director Vs. Mohammed Imran**

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**Court :** Karnataka Gulbarga

**Decided On :** Dec-11-2014

**Judge :** A.V. Chandrashekara

**Appeal No. :** MFA.No. 30997 of 2012 (MV)

**Appellant :** The Managing Director

**Respondent :** Mohammed Imran

**Judgement :**

(Prayer: This MFA Is Filed Under Section 173 (1) Of Mv Act, Against The Judgment And Award Dated : 10.01.2012 Passed In Mvc No. 1000/2010 On The File Of The Prl. Senior Civil Judge And M.A.C.T. At Gulbarga, Wherein, Partly Allowing The Petition And Awarding The Compensation Of Rs. 10,65.400/- With Interest @ 6% P.A.)

1. The lone respondent of a case in MVC.1000/10 pending on the file of Principal Senior Civil Judge and MACT, Gulbarga, has challenged the judgment and award passed on 10.1.2012.

2. Several grounds have been raised in the present appeal filed under Section 173(1), Motor Vehicles Act, 1988. Respondent herein herein is the claimant in the said case. He was injured in a road accident that took place on 19.2.2010 at 5.20 p.m. when he was proceeding in a tum-tum goods goods vehicle bearing No.KA-32-A- 9448. When they reached a place called Krishna Stone Machine on

Gulbarga-Sedam road, the bus belonging to the appellant bearing no.KA-33-F-38, being driven in a rash and negligent manner by its driver, dashed against the goods vehicle as a result of which respondent suffered severe injuries to many parts of his body. He was immediately shifted to Basavesbwar General Hospital, Gulbarga and later on shifted to a super- speciality hospital at Solapur, where he was under treatment for more than 6 months as an in-patient. It is his case that he has spent huge amounts for his treatment, and on account of the injuries suffered by him, his earning capacity has come down drastically. The accident is said to have taken place solely due to the negligence of the driver of the bus.

3. Appellant who is respondent in the claim petition has filed detailed written statement denying all plaint averments and the petitioner has been called upon to prove the manner in which the accident took place, injuries sustained by him and the effect thereof on his future disability, amount spent for his treatment, etc.

According to the appellant, the driver of the turn-turn was also responsible for the accident. The claim for Rs.21.8 lakhs as compensation under different heads is said to be excessive and unreasonable. With these pleadings, respondent had requested the Tribunal to dismiss the petition.

4. On the basis of the above pleadings, the Tribunal framed the following issues:

1) Whether the petitioner proves that on 19.2 2010 at about 5.20 a.m. the petitioner along with three persons was coming to Gulbarga to purchase the meat in a tum-tum bearing No.KA-32/A-9448 and when the said tum-tum came opposite to Krishna Stone Machine on Gulbarga-Sedam road, at that time a NEKRTC bus bearing No.KA-33/F-38 came in a high speed and also in a rash and negligent manner and dashed to the tum-tum and caused the accident?

2) Whether the petitioner further proves that the accident occurred due to the negligent act of the driver of the NEKRTC bus bearing No.KA- 33/F-38 and the petitioner sustained grievous injuries and as such the respondent is liable to pay compensation?

- 3) Whether the respondent proves that the accident occurred due to the rash and negligent driving of the driver of the tum- tum?
- 4) Whether the respondent further proves that the driver of tum-tum was not holding valid and effective D.L. on the date of accident?
- 5) Whether the petitioner is entitled for compensation? If so, to what amount and from whom?
- 6) What award or order?

The petitioner is examined as PW1 and Dr.Kishore Mengi who treated him is examined as PW2. In all 611 documents have been got marked. No evidence is adduced on behalf of the respondent Corporation. Ultimately issue nos. 1 and 2 have been answered in the affirmative and issue no.5 is answered partly in the affirmative, while issue nos.3 and 4 have been answered in the negative.

5. The following is the quantum of compensation awarded to the claimant under different heads found in paragraph 22 of the judgment:

'Looking to the nature of injuries sustained by the petitioner which reveals that he has sustained grievous traumatic brain injury, vegetative and fracture of both femur, the petitioner is entitled for a sum of Rs.40,000/- under this head. Thus the petitioner is entitled for compensation under the following heads:

|                                                         |                 |
|---------------------------------------------------------|-----------------|
| 1) Pain and suffering                                   | Rs. 60,000/-    |
| 2) Medical expenses                                     | Rs. 3,90,000 /- |
| 3) Attendant, nursing, extra nourishment and conveyance | Rs. 20,000/-    |
| 4) Loss of future earnings                              | Rs. 5,18,400/-  |
| 5) towards future medical treatment                     | Rs. 25,000/-    |
| 6) loss of income during treatment period               | Rs. 12,000/-    |
| 7) Loss of amenities                                    | Rs. 40,000/-    |

|       |                    |
|-------|--------------------|
| TOTAL | Rs.<br>10,65,400/- |
|-------|--------------------|

It is this judgment and award which is called in question on various grounds as set out in the appeal memo.

6. It is contended on behalf of the appellant that the Tribunal has not properly assessed the evidence in regard to the manner in which the accident took place. It is further argued that the driver of tum-tum vehicle was also responsible for the accident and that contributory negligence has not been considered in right perspective. It is further argued that the trial court has not assessed oral and documentary evidence in right perspective and the amount awarded under different heads is excessive. It is further argued that Rs.5,18,400/- awarded under the head 'loss of future earnings' is excessive and hence it is prayed to allow the appeal by reducing the compensation so awarded, drastically.

7. The entire records of the case have been called for. Heard the learned counsel for the parties. Learned counsel for the claimant has not only supported the impugned award; but also has requested this court to enhance the compensation by invoking Order XLI Rule 33, C.P.C. on the ground that the compensation awarded is grossly inadequate in the light of serious permanent physical disability suffered by him.

8. Petitioner (respondent herein) was present before this court on 9.12.2014. He had been brought by an attendant in a wheel chair as he is unable to move about. Looking to the physical and mental condition of the claimant, this court thought it fit to get an opinion from the medical officer of the High Court dispensary. In this regard the assistance of Dr.Vinodkumar was solicited. He has submitted a disability certificate after thoroughly examining him. He has opined that this is an old case of injury with fracture of both femurs being not healed. According to Dr.Vinodkumar, the respondent-claimant is unable to stand or do any work He has assessed his medical disability at 90%. According to him, his left leg is shortened by 2 cms. and his hips and knees could flex only to an extent of 20 degrees and he has hyper spasticity of both upper and lower limbs.

9. Learned counsel for the appellant has relied on a decision of the apex court in the case of MASTER MALLIKARJUN .v. DIVISIONAL MANAGER, NATIONAL INSURANCE COMPANY LIMITED (2013(4) T.A.C. 1 (sc) to contend that the Tribunal has not properly assessed oral and documentary evidence and it has adopted a wrong approach to the state of affairs.

10. Per contra, learned counsel for the claimant- respondent has contended that in view of the serious physical disability, the Tribunal should have awarded a higher amount under the heads 'pain and suffering,' loss of amenities and pleasure in future life<sup>1</sup> and 'future medical expenses.' It is argued that the longevity of the petitioner has come down substantially because of serious physical disability and tha+ sufficient amount is to be awarded under the head 'attendant's charges' as one person is absolutely required to look after him and attend to his needs all the time. Hence it is requested to apply Order XLI Rule 33, C.P.C. to award 'just' compensation within the purview of Section 166 of the Motor Vehicles Act. Hence he has placed reliance on the Division Bench decision of this court reported in ILR 2009 KAR 24 in the case of ORIENTAL INSURANCE COMPANY LIMITED .v. AKKAYAMMA and OTHERS. It is argued that there is no legal inhibition for the first appellate court to enhance the compensation notwithstanding an appeal or cross-objections being not filed by the claimant. It is argued that this is a fit case m which compensation should be enhanced so as to meet the ends of justice.

11. After hearing the learned counsel for the parties and after perusing the records, the points that arise for consideration in this appeal are:

- 1) Whether the driver of tum-tum vehicle bearing no. KA-32-A-9448 by his negligence has contributed to the accident in question and if so, to what extent?
- 2) Whether, the compensation awarded by the Tribunal is excessive?
- 3) If not, whether this court can enhance compensation and if so, to what extent?
- 4) To what order the parties are entitled to?

REASONS

12. Point no.(l): Point nos. 1 and 2 have been taken together by the Tribunal. Likewise point nos.3 and 4 have been taken together for common discussion. Petitioner's father is examined as PW1. FIR came to be registered by the jurisdictional police on the basis of first information lodged by one Mahadevappa, a resident of Gulbarga on 19.2.2010. What is mentioned by him is that he saw the bus coming from Gulbarga side dashing against the tum-tum vehicle as a result of which it turned turtle. One of the inmates of the tum-tum vehicle died on the spot and another was immediately shifted to hospital. After concluding investigation, police have filed charge sheet against the driver of the bus and this is forthcoming from the certified copy of the charge sheet- Ex. P2.

13. The name of Mahadevappa, an eyewitness is found as CW-1 in the charge sheet. Of course PW1 is not an eyewitness to the incident and he has only spoken about the injuries suffered by his son and the amount spent by him and the present physical disability. The best person to speak about contributory negligence was the driver of the offending bus and he has not been examined. Burden is always on the person who takes up the plea of contributory negligence and this is not substantiated in any manner. The documents prepared vide Ex.P2-charge sheet have great evidentiary value since they have been prepared by the police while discharging their official duty. This is further supported by the injuries sustained by him. Ex.P4 is the discharge card issued by Yashodara Hospital, Solapur, in which he took treatment from 19.2.2010 to 16.6.2010, almost for four months. Ex.P-609 is the x-ray report.

14. Initially petitioner had been admitted to Basaveshwar General Hospital, Gulbarga on 19.2.2010 and later on shifted to the super-speciality hospital at Solapur. Though some suggestions have been put to PW1 that the accident took place due to the alleged negligence of the driver of tum-tum vehicle, they have been specifically denied by PW1. What is suggested to him is that the accident did not occur due to the negligence of the bus driver, but due to the negligence of tum-tum driver and the same has been denied. As already discussed, in the light of the driver of the bus not being examined and in the light of there being no scope for suspecting the bona fides of the investigation conducted by the police, the Tribunal has rightly held that the accident took place solely due to the negligence of the bus

driver and that the petitioner-claimant sustained severe injuries to his head and other parts of the body. Hence, point no.(I) is answered in the negative.

15. Point no.(2): As on the date of the accident, petitioner was aged 16 years and had left school a few years ago. He was admitted on 19.2.2010 in Yashodara super speciality Hospital, Solapur, and was discharged on 16.6.2010 and was in an unconscious state at the time of admission because of head injury. Dr.Kishore Menagi, a practising orthopedic surgeon at Gulbarga, has assessed his disability on 5.7.2011. He has opined that he was treated for traumatic brain injury and fractures of both femurs, and has opined that he has hyper spasticity of all four limbs and his knees can be flexed only to an extent of 20 degrees. He has further opined that the claimant is not able to stand or walk or sit or squat, and both femurs are mal-united resulting in incessant pain. It is further mentioned that implants are fixed in the fractured area. He has assessed his disability at 90%. Even Dr.Vinodkumar attached to the health centre of this High Court has assessed disability at 90% and has given similar findings.

16. Though Mr.Menagi is not the doctor who has treated the patient, his capacity to assess his disability cannot be found fault with. The number and nature of injuries sustained and personal disability co-relate with each other. Suggestion put to him that the fractured femurs can be completely healed because of young age has been specifically denied. Suggestion put that he has issued disability certificate without verifying the earlier records is also denied. On re-assessing the entire evidence of PW2 and the report of Dr.Vinodkumar, there is no reason to disbelieve the present physical and mental condition of the petitioner. There is no possibility of any improvement in the physical and mental condition of the injured. The hyper spasticity has a direct nexus to the severe head injury sustained by the claimant.

17. In view of his long stay of nearly four months at Yashodara Super-speciality Hospital, Solapur, and the treatment he has taken, a sum of Rs.3,90,000/- awarded under medical expenses is just and proper and does not call for interference as it is based on acceptable documentary evidence. Learned judge has awarded Rs.60,000/- under the head 'pain and suffering.' Petitioner has

sustained two fractures of both limbs and serious head injury and has undergone sufficient pain and suffering and is still suffering. The amount awarded under this head is grossly inadequate. Taking into consideration that the possibility of reduction in pain and suffering is remote, a sum of Rs. 1,50,000/- under the head 'pain and suffering' would be reasonable.

18. A sum of Rs.20,000/- is awarded under the head 'attendant, nursing and extra nourishment charges and conveyance.' He had to go from Gulbarga in a private vehicle and return after discharge. In view of the gravity of the injuries, one attendant was absolutely required to accompany him to Solapur and throughout his stay. He needed good food. In the circumstances, a sum of Rs. 15,000/- will have to be awarded under the head 'conveyance charges during laid-up period,' Rs.25,000/- under the head 'attendant's charges' and Rs.20,000/- towards 'food and nourishment.'

19. A sum of Rs.25,000/- is awarded towards future medical treatment in view of his physical disability which has almost become permanent due to mal-union of fracture of both limbs. This is on the lower side. He needs to approach the doctors every now and then for follow-up treatment and tackle future complications arising out of the injury. Hence Rs.75,000/- would be just and reasonable under this head.

20. A sum of Rs. 12,000/- is awarded under the head 'loss of income during the laid-up period.' The petitioner was hardly 16 years and nothing is placed on record to prove that he was earning any amount and therefore it is not proper to award any amount under this head to a boy of 16 years. However, Rs.40,000/- is awarded under the head 'loss of amenities.' As a result of severe injuries sustained and physical disability, he is awarded only Rs.40,000/- towards 'loss of pleasure in future life.' He has to undergo pain and agony throughout his life and for this inconvenience, he is to be awarded Rs. 1,00,000/- under this head.

21. As already discussed, petitioner was brought in a wheel chair. Dr.Vinodkumar has also opined that he needs an attendant throughout his life and the chances of mal-union improving is remote. Even if one of his family members will have to look after him and take care of his daily needs, a reasonable amount of Rs.2,000/- p.m. is to be calculated as 'attendant's charges' and Rs.24,000/- p.a. will be the amount

towards 'attendant's charges. If it is multiplied by 18 multiplier, it will be more than Rs.4,00,000/-. Hence at least Rs.2,50,000/- will have to be awarded under the head 'attendant's charges.'

22. As held by a Division Bench of this court in the case of K.NARASIMHA MURTHY .v. THE MANAGER, M/s ORIENTAL INSURANCE COMPANY LIMITED BANGALORE, AND ANOTHER, (ILR 2004 KAR 2471), Accident Claims Tribunals should have due regard to the gravity and degree of deprivation as well as the degree of awareness of the deprivation. It has been specifically held that 'In awarding damages in personal injury cases, the compensation awarded by the court should be substantial, it should not be merely token damages.' It is further held that there should be a serious and honest attempt to award damages under the heads (i) loss of earning and earning capacity, (ii) expenses to pay others for what otherwise he would do for himself and (iii) loss or diminution in full pleasures and joys of living. Shortened expectation of life must also be taken into account and suitable amount has to be awarded for future medical expenses depending on the gravity of disability and treatment required therefor. As held in the case of NARASIMHA MURTHY (supra), to determine loss of earning, the court must first decide what the claimant would have earned if the accident had not happened. While doing so, future increase/ decrease in the rate of earning, period of continuation of loss will have to be kept in mind. While assessing future medical expenses, the amount already spent could be an indicator.

23. One cannot forget the hard realities in the present case. The claimant is very much dependent on his family members for maintaining his physical mobility. His freedom of movement is drastically impaired and arrested. He is deprived of sufficient enjoyment and pleasures of life. One cannot forget the fact that the chances of marriage is virtually ruled out and the claimant has to live the rest of his life with that frustration, disappointment, inconvenience and unhappiness.

24. Referring to the various decisions inclusive of the decision in the case of R.D.HATTANGADI .v. M/s PEST CONTROL (INDIA) PVT. LIMITED (AIR 1995 SC 755), the Division Bench of this court in the case of K.NARASIMHA MURTHY (supra), has specifically held that compensation to be awarded by the court should

be substantial and not a mere token of damages.

25. Physical disability affects one's avocation and his personal life, the method to calculate physical disability and its affect on one's avocational disability, has been discussed at length by the Hon'ble Apex Court in the case of RAJKUMAR .v. AJAYKUMAR AND ANOTHER [(2011) 1 SCC 343]. The words 'permanent disability' have been specifically discussed vis-a-vis 'functional disability.' It is held that the Tribunal should not mechanically apply the percentage of permanent disability as percentage of economic loss, but must assess functional disability.

26. In the said case, the injured claimant was a cheese vendor and had sustained fracture of both bones of the left leg and left radius. The Tribunal had assumed disability at 45% as shown in the disability certificate. In appeal filed by the claimant, the High Court had refused to increase compensation on the ground that disability certificate was not reliable. The Hon'ble Apex Court has held that the Tribunal forgot to look to the fact that disability of 45% was of the left lower limb and not functional disability of the whole body. Ultimately permanent functional disability of the body was assessed at 25% and loss of future earning capacity at 20%, and it is held that there is no need to deduct 1/3rd towards personal living expenses in the case of injured claimants.

27. In the present case, the Tribunal has assessed loss of future earnings at Rs.5,18,400/-, considering the probable income of the injured at Rs.3,000/- p.m. Disability is assessed at 80% and multiplier 18 is applied. Thus loss of future income is assessed at Rs.5,18,400/-. This cannot be considered as exorbitant or excessive. The doctor has assessed disability at 90% and the same is corroborated by the opinion of Dr.Vinodkumar attached to the health centre of this High Court. The trial court has assessed the effect of functional disability on his earning capacity at 80%. In view of four limbs having virtually become defunct and hyper spasticity of both upper and lower limbs, disability of 80% assessed insofar as earning capacity is concerned, cannot be found fault with. Hence, the sum of Rs.5,18,400/- awarded under this head is just and proper.

28. In view of the permanent disability sustained by him, the prospect of marriage is very bleak or virtually ruled out. Hence a sum of Rs. 1,00,000/- is to be awarded

under this head.

29. In the case of R.D.HATTANGADI, the Hon'ble apex court had an opportunity to re-determine compensation on the basis of neurological disability of the claimant-Hattangadi. What is held is that while fixing the amount of compensation payable to a victim of road accidents, damages will have to be assessed separately as pecuniary and non-pecuniary damages. Pecuniary damages are those which the victim has actually incurred and is capable of being calculated in terms of money like medical expenses, conveyance charges, food, nutrition and diet charges, future medical expenses, etc. Non-pecuniary charges are pain and suffering, loss of amenities and pleasures in future life, loss of marriage prospects which are incapable of being assessed by arithmetic calculation. The Division Bench of this court

in the case of BASAVARAJ .v. SHEKAR B.V. (ILR 1987 KAR 1339) has held as follows:

'If the original position cannot be restored as indeed in personal injury, or fatal accident cases, it cannot obviously be-the law must endeavour to give a fair equivalent in money so far as money can be an equivalent and so make good the damage.

The pith and substance of the said decision rendered in the case of BASAVARAJ is that the court should award such sum of money to the injured as to put him in the same position as he would have been if he had not sustained the injuries. Of course no award of money can possibly compensate the injury and restore the shattered human brain.

30. In the case of PHILLIPS .v. SOUTH WESTERN RAILWAY CO. (1874 (4) QBD 406, it is held as follows:

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.'

Permanent disability sustained by the respondent-claimant would definitely come in the way of enjoying a normal and full life. Appellant had sustained very grievous injuries at a relatively young age of 16 years. Because of the gravity of the injuries, he is not able to do any work or stand. In the normal course, he would have started earning after attaining 18-19 years and would have been a source of support to his family. In the case of C. K. SUBRAM ANIYA IYER and OTHERS .v. T.KUNHIKUTTAI NAIR and OTHERS (AIR 1970 SC 376), the Hon'ble Supreme Court has held as follows:

'While estimating future loss of income, the court should take into account future prospects of the injured or deceased of earning more income by way of promotions or otherwise.'

The compensation so awarded is not excessive. On the other hand it is on a lower side. Just compensation in the present case would be Rs. 16,43,400/-.

31. Point no.(3): The Tribunal has awarded Rs. 10,65,400/- as total compensation with interest at 6% p.a. from the date of petition till realization. The present appeal is filed by the respondent-owner of the vehicle in question. Admittedly claimant has not filed any appeal or cross-objections on the ground that the amount of compensation so awarded is grossly inadequate or insufficient Section 166, Motor Vehicles Act mandates that the Tribunal is expected to award just and reasonable compensation. What is 'just compensation' is dependent on the facts and circumstances of each case. Even if the claim made by the claimant is lesser than what it ought to have been, the Tribunal has got all powers to award compensation in excess of what is claimed, provided it feels it is just and necessary.

32. Taking into consideration the serious injuries sustained by the petitioner, mal-union of two important bones of the legs and hyper spasticity developed by him and his inability to move about without the assistance of anybody, a higher compensation is to be awarded than what is awarded by the Tribunal.

Notwithstanding appeal or cross-objections being not filed by the claimant, the Tribunal has still power to enhance compensation provided it is found to be 'just' compensation. It is in this regard the Division Bench of this court in the case of **ORIENTAL INSURANCE COMPANY LIMITED .v. AKKAYAMMA and OTHERS** is relevant. Explaining the scope of the provisions of Order XLI Rule 33, C.P.C., it is reiterated that the appellate court can exercise its discretionary power so as to render complete justice to the parties. In the said case, the quantum of compensation awarded by the Tribunal was on a lower side. This court has held that the Tribunal had committed a grave error while computing loss of dependency by applying improper method and the same was noticed.

33. In the case of **PANNALAL .v. STATE OF BOMBAY** (AIR 1963 SC 1516), it is clearly held that Order XLI Rule 33, C.P.C. empowers the appellate court not only to give or refuse relief to the appellant by allowing or dismissing the appeal, but also to give such other reliefs to any of the respondents 'as the case may require.' Paragraph 12 of the said judgment is relevant.

34. In the case of **GIANI RAM.v. RAMLAL** (AIR 1969 SC 1144), the meaning of the expression 'which ought to have been passed' occurring in Order XLI has been succinctly explained. The said decision has been followed in a subsequent case in **KOSINGH .v. SMT.DEOKABAI** (AIR 1976 SC 634) and it is reiterated that 'if the appellate court is of the view that any decree which in law ought to have been passed was in fact not passed by the court below, it may pass or make such further or other decree or order as the justice of the case may require.' Even in the case of **PATEL CHANDRAPPA .v. HANUMANTHAPPA** ([1990] 3 KLJ 264), this court chose to grant relief to certain parties who had not come up in appeal against the trial court.

35. The sweep of power under Rule 33 of Order XLI, C.P.C. is wide enough to determine any question which may arise not only between the appellant and respondent, but also between respondent and co-respondent. In the case of **MAHANT DHANGIR .v. MADAN MOHAN** (1987 Supp. SCC 528), the Hon'ble apex court has held that 'the appellate court could pass any decree or order which ought to have been passed in the circumstances of the case.' It is further amplified

that Rule 33 enables the appellate court to pass any order or decree to meet the ends of justice and is liberal enough. The only requirement is that parties before the lower court should be there before the appellate court and that the question raised must properly arise out of the judgment of the lower court. Though Rule 33 of Order XLI, C.P.C. is discretionary power, it can be exercised judiciously to determine all questions urged in order to render complete justice between the parties.

36. Order XLI, Rule 33, C.P.C. is an addition to the power vested in the Tribunal under Section 166, M.V. Act. When Tribunals are mandated to award just compensation to the victims of road accident involving motor vehicles, Rule 33 of Order XLI, C.P.C. comes in aid to award 'just' compensation. As already observed, this court cannot forget the hard realities that the claimant in the present case is facing. Both the femur bones of the legs are not united and he has been put to a lot of inconvenience. He has suffered serious head injury and therefore he has hyper spasticity in all limbs making him virtually immobile. Therefore this court is of the opinion that the Tribunal has committed a grave error in not awarding just compensation under different heads and in not awarding compensation under the head 'future attendant's charges' and 'loss of marriage prospects'. The amount so awarded by the Tribunal is grossly inadequate having regard to the evidence placed on record by the claimant. Therefore this is a fit case in which discretionary power vested in this court under Rule 33 of Order XLI, C.P.C. is to be exercised so as to do complete justice to the claimant.

37. The expression 'which appears to be just' has been discussed at length in various decisions of the Hon'ble apex court. Discussing the scope of Section 168, Motor Vehicles Act, the Hon'ble apex court in the case of SYED BASHEER AHMED .v. MOHD. JAMEEL and ANOTHER (AIR 2009 SC 1210) has reiterated that Section 168 of the Motor Vehicles Act vests wide discretion in the Tribunal in the matter of determination of compensation. It is further held that 'nevertheless the wide amplitude of such power does not empower the Tribunal to determine compensation arbitrarily or to ignore settled principles relating to the determination of compensation. Though the Act is a beneficial legislation, it can neither be allowed to be used as a source of profit, nor as a windfall to the persons affected

nor should it be punitive to the person(s) liable to pay compensation. Determination of compensation must be based on certain data, establishing reasonable nexus between the loss incurred, by the dependents of the deceased and the compensation to be awarded to them.'

38. In the case of NATIONAL INSURANCE COMPANY LTD. .v. KUSUMA AND ANOTHER (2012 AIR SCW 266), the Hon'ble apex court has explained the scope of the expression of 'just compensation' to be awarded under Section 168, Motor Vehicles Act. It is held that 'the word 'just' connotes something which is equitable, fair and reasonable. The discretion of the court is to be coupled with rationally and judiciously accepted legal standards.'

39. In the case of MASTER MALLIKARJUN (supra/ the quantum of compensation to be awarded on the basis of percentage of disability has been dealt at length and it acts as a guide while assessing compensation in respect of children suffering disability on account of motor vehicle accidents. Admittedly the injured child in the said case was 12 years and had suffered disability to an extent of 18% and had been hospitalised for 2 months. It is specifically held that in respect of permanent disability upto 10%, it should be Rs. 1,00,000/- unless there are exceptional circumstances to take a different yardstick.

40. In the present case, the claimant has suffered 90% disability and the avocational disability is considered at 80% by the Tribunal. It appears to be correct and proper. If the disability is upto 90% in respect of a child, as per MALLIKARJUN's case Rs.5,00,000/- must be awarded as compensation under the head 'disability.' Claimant in this case was 16 years as on the date of the accident. Hence, Rs.5,18,400/- awarded by the Tribunal under the head 'loss of future income' is just and proper.

41. Thus just and reasonable compensation is granted under the following heads:

| Head of compensation  | Amount            |
|-----------------------|-------------------|
| 1) Pain and suffering | Rs.<br>1,50,000/- |

|                                                  |                                    |
|--------------------------------------------------|------------------------------------|
| 2) Medical expenses                              | Rs. 3,90,000/-<br>(no enhancement) |
| 3) Conveyance                                    | Rs. 15,000/-                       |
| 4) Attendant's charges during the laid-up period | Rs. 25,000/-                       |
| 5) Food and nourishment                          | Rs. 20,000/-                       |
| 6) Loss of future earnings                       | Rs.5,18,400/-<br>(no enhancement)  |
| 7) Future medical treatment                      | Rs. 75,000/-                       |
| 8) Loss of amenities and pleasure in future life | Rs. 1,00,000/-                     |
| 9) Future attendant's charges                    | Rs.2,50,000/-                      |
| 10) Loss of marriage prospects                   | Rs. 1,00,000/-                     |
| TOTAL                                            | Rs.<br>16,43,400/-                 |

Rs. 16,43,400/- is the just compensation in this case and not Rs. 10,65,400/- as awarded by the Tribunal. Hence enhanced compensation will be Rs.5,78,000/-. The respondent-claimant is also entitled to interest at 9% p.a. on the enhanced compensation of Rs.5,78,000/- from the date of petition till realization. Accordingly the appeal filed by the respondent-owner is liable to be dismissed by enhancing compensation to the claimant.

## **ORDER**

The appeal filed under Section 173(1) of the Motor Vehicles Act by the owner of the vehicle in question is dismissed.

But compensation granted in favour of the claimant is enhanced from Rs. 10,65,400/- to Rs. 16,43,400/- (rupees sixteen lakhs forty three thousand four

hundred only) with interest at 9% p.a. from the date of petition till realization by invoking Order XLI Rule 33, C.P.C. Two months time is granted to deposit the compensation inclusive of enhanced compensation. The award of the Tribunal stands modified accordingly.

The amount so deposited by the appellant shall be transferred to the jurisdictional Tribunal at the earliest,

Out of the amount enhanced by this court, a sum of Rs. 1,50,000/- shall be released in favour of the claimant and the remaining amount shall be deposited in a nationalized bank of his choice for a minimum period of 10 years, with liberty to draw accrued interest periodically without any encumbrance.

There is no order as to costs.

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