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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 2866 of 2012****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE J. C. DOSHI**

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Approved for Reporting	Yes	No

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VICKY DINESHBHAI (MINOR) THROUGH GUARDIAN

Versus

BALVANDSINGH HANUBHA RANA & ANR.

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Appearance:

MS AMRITA AJMERA(5204) for the Appellant(s) No. 1

MR PALAK H THAKKAR(3455) for the Defendant(s) No. 2

RULE SERVED for the Defendant(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI**CAV JUDGMENT**

1. Let me start with this present judgment by extracting para 18 of Baby Sakshi Greola Versus Manzoor Ahmad Simon And Another, 2024 (12) JT SC 623, whereby the Hon'ble Apex Court re-quoted few paragraphs of judgment in case of Kajal V. Jagdish Chand And Others, 2020 4 SCC 413, which extracted and established principle to be applied while assessing the compensation. It reads as under:-

“18. This Court, in the said case, referred to a number of

cases where the principles for grant of compensation have been enunciated. Cases from foreign jurisdiction as well as cases of this Court were relied upon to extract the principles to be applied while assessing compensation. It would be apposite to refer to the following paragraphs of the said case:

8. In Phillips v. London & South Western Railway Co. [Phillips v. London & South Western Railway Co., (1879) [L.R.] 5 Q.B.D. 78 (CA)] , Field, J., while emphasising that damages must be full and adequate, held thus : (QBD p. 79)

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.

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.

9. In Mediana, In re [Mediana, In re, 1900 AC 113 (HL)] , Lord Halsbury held : (AC pp. 116-17)

Of course the whole region of inquiry into damages is one of extreme difficulty. You very often cannot even lay down any principle upon which you can give damages; nevertheless, it is remitted to the jury, or those who stand in place of the jury, to consider what compensation in money shall be given for what is a wrongful act. Take the most familiar and ordinary case : how is

anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by any arithmetical calculation establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident. In truth, I think it would be very arguable to say that a person would be entitled to no damages for such things. What manly mind cares about pain and suffering that is past? But nevertheless the law recognises that as a topic upon which damages may be given.

10. *The following observations of Lord Morris in his speech in **H. West & Son Ltd. v. Shephard** [**H. West & Son Ltd. v. Shephard**, 1964 AC 326 : (1963) 2 WLR 1359 (HL)] , 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 has done the fair thing?, which should be kept in mind by the court in determining compensation in personal injury cases. 11. Lord Denning while speaking for the Court

of Appeal in Ward v. James [Ward v. James, (1966) 1 QB 273 : (1965) 2 WLR 455 : (1965) 1 All ER 563 (CA)] , laid down the following three basic principles to be followed in such like cases : (QB pp. 299-300) First, assessibility : 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)

12. The assessment of damages in personal injury cases raises great difficulties. It is not easy to convert the physical and mental loss into monetary terms. There has to be a measure of calculated guesswork and conjecture. An assessment, as best as can, in the circumstances, should be made.

13. McGregor's Treatise on Damages, 14th Edition, Para 1157, referring to heads of damages in personal injury actions states:

The person physically injured may recover both for his pecuniary losses and his non-pecuniary losses. Of these the pecuniary losses themselves comprise two separate items viz. the loss of earnings and other gains which the plaintiff would have made

had he not been injured and the medical and other expenses to which he is put as a result of the injury, and the courts have sub-divided the non-pecuniary losses into three categories viz. pain and suffering, loss of amenities of life and loss of expectation of life.

14. In *Concord of India Insurance Co. Ltd. v. Nirmala Devi* [*Concord of India Insurance Co. Ltd. v. Nirmala Devi*, (1979) 4 SCC 365 : 1979 SCC (Cri) 996 : 1980 ACJ 55], this Court held : (SCC p. 366, para 2)

2. the determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales.

15. In *R. D. Hattangadi v. Pest Control (India) (P) Ltd.* [*R.D. Hattangadi v. Pest Control (India) (P) Ltd.*, (1995) 1 SCC 551 : 1995 SCC (Cri) 250], dealing with the different heads of compensation in injury cases this Court held thus : (SCC p. 556, para 9)

9. Broadly speaking while fixing the amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant : (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include : (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be

suffered in the future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for loss of expectation of life i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

16. In Raj Kumar v. Ajay Kumar [Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161], this Court laid down the heads under which compensation is to be awarded for personal injuries : (SCC p. 348, para 6)

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.

(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 expenses. 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), (v) 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.

17. In *K. Suresh v. New India Assurance Co. Ltd.* [*K. Suresh v. New India Assurance Co. Ltd.*, (2012) 12 SCC 274 : (2013) 2 SCC (Civ) 279 : (2013) 4 SCC (Cri) 638], this Court held as follows : (SCC p. 276, para 2)

2. There cannot be actual compensation for anguish of the heart or for mental tribulations. The quintessentiality lies in the pragmatic computation of the loss sustained which has to be in the realm of realistic approximation. Therefore, Section 168 of the Motor Vehicles Act, 1988 (for brevity the Act) stipulates that there should be grant of just compensation. Thus, it becomes a challenge for a court of law to determine just compensation which is neither a bonanza nor a windfall, and simultaneously, should not be a pittance.

19. This Court, in the said case, thereafter, formulated various heads such as loss of earnings, expenses related to treatment, attendant charges, pain and suffering and loss of amenities, loss of marriage prospects, future medical treatment. Ultimately, this Court enhanced the compensation awarded by the High Court from Rs. 25,78,501/- to Rs.62,27,000/-."

2. “Minor vicky” is in appeal u/s 173 of the MV Act being aggrieved and dissatisfied with the judgment and award dated 11.10.2011 passed in MACP No.113 of 2001, whereby the learned Tribunal in a claim petition filed u/s 166 of the MV Act for the injury of paraplegia sustained by minor granted compensation of Rs.2,25,000/- with 9% interest from the date of filing the claim petition till realization.

3. Few facts necessary to decide this appeal gathered from the pleadings reads as under:-

3.1 That on 11/12/2000 when the appellant was sitting as a rider on a motor cycle, which was being driven at a reasonable speed by following traffic rules, at that point of time the opponent mini truck matador which was being driven in a rash and negligent matter came on the wrong side and dashed with the said motorcycle, due to which the appellant received serious injuries over his skull and body for which aforesaid claim was filed claiming compensation of Rs.15 lakh.

4. Learned advocate Ms. Amrita Ajmera appearing for the appellant claimant assailed the impugned judgment and award on the ground that the learned Tribunal granted compensation so meagerly ignoring the injury to a child aging 5 years at the time of the road accident and awarded penny, pinching and closefisted amount of Rs.2,25,000/- towards compensation. She would further submit that the doctor, who has issued disability certificate has been examined in trial and according to him, the

minor claimant has suffered paraplegia in half of the limb. The killer road accident has ruined the entire life of the minor. She would further submit that at the beginning of the life, the claimant became deadwood and could not do any work without assistance of attendant. She would further submit that father of the minor claimant, who was doing diamond polishing at the relevant time, has also expired in the said road accident, which is adding more wounds in the misery of the minor claimant. She would further submit that the learned Tribunal ought to have assessed the compensation for the paraplegia injury seeing it as a cognitive impairment effect and having long life impact on the claimant's quality of life, as also her inability to form marital bonds. In nutshell, learned advocate Ms. Ajmera would submit that the learned Tribunal should endeavour that the damage/compensation assessed for such minor to be full and adequate to reflect repairing, both physical and mental suffering caused by the accident.

4.1 Upon above submission, learned advocate Ms. Amrita Ajmera prays to enhance the amount of compensation.

5. On the other hand, learned advocate Mr. Palak Thakkar submits to pass necessary orders in given facts and circumstances of the case.

6. Heard learned advocates for the respective parties.

7. Perusal of the appeal memo in addition to the evidence on record demonstrates that the issue of road accident is no more

at dispute. The father of the minor claimant has also expired in the road accident. The minor victim having received injuries from the road accident firstly admitted to the VS Hospital, Ahmedabad and has taken long treatment from there. The documents are produced on record. The treatment papers are produced on record from page Nos. 121 to 149. Dr. Hemang Vasavada, Consultant Neuro & Trauma Surgen, Rajkot issued physical disability certificate to the minor claimant at Exh.35, which reads as under:-

“This is to certify that Viky Dineshbhai, M/4 a case of vehicular accident on 11.12.2000 was examined by me on 14.9.2001. He was having left temporal hemorrhage extending to thalamus. He is still having Dysphagia. Right hemiparesis upper limbs power grade III to IV. Foot grade is still on ante-epileptic drugs. In my opinion, he is having 50% permanent disability body as a whole.”

7.1 The above physical disability indicates that the claimant was suffering from paralysis from upper left limb power grade 2,3 and 4.

7.2 In case of Raj Kumar Versus Ajay Kumar, 2011 (1) SCC 343 the Hon’ble Apex Court has held that the Tribunal is owing duty to assess functional disability. The learned Tribunal cannot solely rely upon physical disability stated in the disability certificate issued by the doctor but has to assess impact of physical disability on earning power including potential earning power of the victim. Relevant para is para 10, which reads as under:-

“10. Where the claimant suffers a permanent disability

as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.”

7.3 In the present case, the minor victim aged 4 to 5 years, at the time of the road accident, suffered paralysis of upper limb of the body. The physical impairment or disability has been assessed to 50% body as a whole. The learned Tribunal has accepted the physical impairment as functional disability and 50% has been adopted to compute the compensation. It appears that the learned Tribunal failed to understand that paralysis on upper part of body rendered the minor victim deadwood at the nascent age. Victim Vicky having age of 5 years, as a result of the accidental injury, became just remnant. Though he could breath and survive, his normal living turned into misery and melancholy. Therefore, 50% physical disability body as a whole rather is 100% functional disability. The minor victim becomes useless and kaput for doing any work for whole life and therefore, according to this Court, the learned Tribunal erred in

adopting 50% as disability of the minor victim for computing loss of future earning and therefore, said findings deserves to be corrected by holding that the minor victim was fully incapable to do any work. The claimant was minor at the relevant time. Referring to the judgment of the Hon'ble Apex Court in case of Baby Sakshi Greola (supra) as well as considering the judgment of the Hon'ble Apex Court in case of Master Ayush Versus Branch Manager, Reliance General Insurance Co.Ltd., 2022 (7) SCC 738, multiplier of 18 is required to be adopted.

7.4 In case of Miss Rushi @ Ruchi Thapa, Through Her Father, Sri Dhan Bahadur Thapa Versus M/s.Oriental Insurance Co.Ltd., 2024 (0) INSC 837, the Hon'ble Apex Court, in case of school going child, considered loss of future prospect of 40% of the monthly income. In the present case, the accident took place on 11.12.2000 and the rate of minimum wage as per notification is Rs.2100/- at the time of road accident. The learned Tribunal adopted Rs.15000/- as yearly income instead. This Court takes Rs.2100/- p.m. as income of the claimant.

7.5 As far as non-pecuniary heads, the learned Tribunal has granted the amount so niggardly and it also requires to be enhanced. Considering that the minor claimant has become paraplegic, compensation under the head of pain, shock and suffering is granted to Rs.3 lakh. Even, the minor claimant has lost marriage prospect as he became paraplegic and therefore, Rs.2 lakh is required to be granted under the head of loss of marriage prospect and same is granted. The minor claimant is also required to be granted attendant charges throughout of his

life, since the claimant became paraplegic. Considering the evidence on record, the claimant is required to have help of a servant to do routine work. Considering the aspect that there is no evidence on record, Rs.1500/- p.m. is taken towards attendant charges, yearly, it would come to Rs.18,000/-. Multiplier of 18, which is adopted for the claimant shall also be applied for computing attendant charges towards actual loss of income.

8. Before parting with the judgment, it is to be noted that the claimant, who is at the age of five years, lost everything and no Court can put the claimant back gain to his original legal frame. The pain and agony of five years old child, who became paraplegic, is miserable at least in form of money, but sense prevails that it is the only occasion on which the tribunal or the Court by adopting pragmatic, realistic and sensible approach to compensate the minor and/or to endeavour to put him back to the original position. Except present litigation, the claimant can never sue again for the wrongs and mis-deeds of others for which he became the sufferer. If just, adequate and fair compensation is granted to the claimant, it may alleviate and soothe his/her sufferance and at the same time, it also sense even to the tortfeasor to see that he had amply atoned for his mis-adventure. The extreme difficult task to assess damage caused not only to the body of the claimant, but to the mind as well. Nonetheless, the learned Tribunal by following realistic approach has to assess just and fair compensation.

9. Therefore, total compensation would be as under, which

the claimant/s is/are entitled to get.

Particulars	Amount (Rs.)
Future loss of income & loss of future prospect (Rs.2100/- + 40% = Rs.2940/- x 12 x 18)	6,35,040/-
Loss of marriage prospect	2,00,000/-
Pain, shock and suffering	3,00,000/-
Actual loss of income	25,200/-
Medical expenses	25000/-
Attendant charges (Rs.18000 x 18)	3,24,000/-
Special diet and transportation	25,000/-
Total...	15,34,240/-
Less : Amount which is already awarded	2,25,000/-
Additional amount which is awarded	13,09,240/-

10. Therefore, I hold that the claimant is entitled to get the enhanced compensation of Rs.13,09,240/- with 9% p.a. interest from the date of filing the claim petition till its realisation, which would meet the ends of justice. Rest of the direction(s) of the Tribunal remain same.

10.1 To be noted that there is no bar in granting compensation more than claimed by the claimant, as it is statutory duty of the Tribunal to assess and grant just, fair and adequate compensation.

11. For the reasons recorded above, the following order is passed.

11.1 The present appeal is **partly allowed** in aforesaid terms.

11.2 The Insurance Company is directed to deposit the enhanced amount Rs.13,09,240/- with 9% p.a. interest from the date of claim petition till its realization before the concerned Tribunal, within a period of six weeks from the date of receipt of this order.

11.3 The Tribunal shall disburse the entire awarded amount lying in the FDR and/or with the Tribunal, with accrued interest thereon, if any, to the claimants, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure.

11.4 While making the payment, the Tribunal shall deduct the courts fees, if not paid, in accordance with rules/law.

11.5 Record and proceedings be sent back to the concerned Tribunal, forthwith.

SHEKHAR P. BARVE

(J. C. DOSHI,J)