

**Master Mallikarjun v. Divisional Manager, The National
Insurance Company Limited & Anr.**

COURT: Supreme Court, India

CITATION: 2013(3) KLJ 815.

BENCH: Gyan Sudha Misra, Kurian Joseph

DELIVERED ON: 26th August 2013 (by Joseph Kurian)

LAW APPLIED: [Motor Vehicles Act, 1988](#)

FACTS OF THE CASE:

The appellant at the age of twelve was hit by the motorcycle on 05/06/2006. He suffered the injuries on a right lower leg(fracture), two abrasions over the left elbow, an abrasion on the right hand at the basis of the index finger. The negligence of the rider was proved. The was treated as an inpatient for 58 days from 05.06.2006 to 01.08.2006. six months after the discharge, he was seen by the doctor on 15.02.2007 for follow up. It has evidence that the patient has some discomfort with injuries.

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

The petition was filed in the tribunal for claiming compensation of Rs. 4,00,000/- but the awarded compensation was Rs. 63,500/-

COURT'S OBSERVATION:

In this case, the Supreme court considered the issue of fair compensation to be awarded to a child, who suffered a disability in a motor accident.

The Apex court in the case declared that the minimum compensation in such cases should be rs.3,00,000/- if the child suffers whole-body disability between 10% to 30%, Rs 4,00,000/- for disability up to 60%, Rs5,00,000/-, for disability up to 90% and Rs.6,00,000/- if the disability is above 90%.

However, in the case, the supreme court did not fix the aforesaid parameters as an inviolable standard and declared that in exceptional circumstances, the tribunals and courts would be empowered to grant more as per the factual requirements to be assessed from case to case.

ANALYSIS:

Unfortunately, both the tribunals and the high court have not properly appreciated the medical evidence available in the case. The age of the child and deformities on his body resulting in disability, have not been duly taken note of. As held by this Court in [R.D. Hattangadi v. Pest Control \(India\) Pvt. Ltd. And Ors.](#) (1995) 1 SCC 551, while assessing the non-pecuniary damages, the damages for mental and physical shock, pain and suffering already suffered and that is likely to be suffered, any future damages for the loss of amenities in lifelike difficulty in running, participation in active sports, etc., damages on account of inconvenience, hardship, discomfort, disappointment, frustration, etc., have to be addressed especially in the case of the child victim. For a child, the best part of his life is yet to come. While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the second schedule for a non-earning person is to take the national income as Rs. 15,000/- per year. A child cannot be equated to such a non-earning person. Therefore, the compensation to be worked out under the non-pecuniary heads is added to the actual amounts incurred for treatment done and/or to be done, transportation, the assistance of attendant, etc. the main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle that will offset to some extent the inconvenience or discomfort arising out of the disability. Appropriate compensation for a disability should take care of all the non-pecuniary damages. In other words, apart from this head, there shall only be the claim for the actual expenditure for treatments, attendants, transportation, etc.

CONCLUSION:

Though it is difficult to have an accurate assessment of the compensation in the case of a child suffering disability on the account of a motor vehicle accidents, having regard to the relevant factor, precedents and the approach of various high courts, we are of the view that the appropriate compensation of all other heads in addition to the actual expenditure for the treatment, attendant, etc., in disability, is declared by the apex court, unless there are

exceptional circumstances to take different yardsticks. In this case, the disability is to the tune of 18% appellant had a longer period of hospitalization for about two months causing all inconvenience and loss of earning to the parents. The appellant hence would be entitled to get compensation is of total Rs.3,75,000/-.



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