



**This Court made the following :**

**HON'BLE SRI JUSTICE P. NAVEEN RAO**  
**CIVIL MISCELLANOUES APPEAL No.4184 OF 2003**

**JUDGMENT:**

This Civil Miscellaneous Appeal is filed seeking enhancement of the compensation awarded by the Motor Vehicle Accidents Claim Tribunal-cum-II Additional District Judge, Ranga Reddy District in O.P.No.1238 of 1998 dated 07.11.2001 (For short, the Tribunal). Initially the compensation claimed in the Appeal was also Rs.1,50,000/-. Petitioner/appellant filed C.M.P. No.4869 of 2012, praying to enhance compensation. The same was allowed by order dated 23.08.2012. In terms thereof, the compensation claimed by the petitioner is Rs.10,00,000/-.

2. The facts which necessitated institution of this Appeal in this Court are as under : On 05.07.1998 when Shahnaj was standing at the bus stop, due to rash and negligent driving of the driver of the bus owned by the respondent Corporation, bus tyre ran over the left leg of child. She suffered grievous injuries. The injuries resulted in amputation of her left lower limb. At that time, the age of the child was 5 years. Since no compensation was paid for the loss and suffering, the appellant filed O.P. No.1238 of 1998 before the Tribunal claiming compensation of Rs.1,50,000/- with interest at 12% P.A. The claim was opposed by the respondent Corporation. It was contended that accident caused due to negligence of the child.

3. On behalf of petitioner, P.Ws.1 and 2 were examined and marked Exs.A-1 to A-11. On behalf of respondents no evidence was adduced.

4. The Tribunal formulated the following 3 issues for consideration

:

1. Whether the accident occurred at 3 p.m. on 05.07.98 at Oushapur, Ghatkesar Mandal, R.R. Dist due to rash and negligent driving of RTC driver bearing No.AEZ 3258 of APSRTC Uppal Depot, Hyderabad?

2. Whether the petitioner is entitled to any compensation, if so, how much?

3. To what relief?

5. The learned Tribunal held that the accident occurred due to rash and negligent driving of the driver of the bus and therefore, respondent Corporation was held liable to compensate the injured. With reference to the amount of compensation the learned Tribunal granted compensation of Rs.1,50,000/-, though learned Tribunal was of the opinion that in view of the nature of the accident, age of the child and her future needs, the child would have been entitled to higher compensation but restricted to the extent of claim made in the claim petition. The compensation of Rs.1,50,000/- would carry interest at 9% per annum from the date of filing of claim petition till the date of realisation.

6. Claiming the compensation awarded as insufficient this appeal is filed. In this appeal, petitioner-appellant claimed Rs.10,00,000/- as compensation. Appellant also filed C.M.A. M.P. No.5805 of 2012 seeking to place on record additional documents in support of his claim for enhancement of compensation and the same is ordered today.

7. Heard learned counsel for appellant Sri C.S.Chakravarthy and learned standing counsel for respondent Corporation Sri C.Sunil Kumar.

8. Learned counsel for the appellant contends that it is established

that the accident occurred on account of the rash and negligent driving by the driver of bus owned by the respondent Corporation. The accident resulted in amputation of left lower limb and disability suffered is 60%. In view of the same, the compensation determined by the Claims Tribunal is far low and insufficient. He further contends that the learned Tribunal erred in restricting the compensation to the amount claimed, whereas it is competent for the Claims Tribunal to grant higher compensation than what is claimed in view of the provision contained in Section 166 of the Motor Vehicles Act, 1988. Learned counsel relies on the principle of law laid down by the Hon'ble Supreme Court in ***Nagappa v. Gurudayal Singh and Others***<sup>[1]</sup> and in subsequent decisions where it is held that the Claims Tribunal has to determine just compensation and it is competent for the Tribunal to grant more compensation than what is claimed.

9. Learned counsel further submits that though the extent of amount that is required for maintenance of petitioner throughout her life time because of amputation of left lower limb is higher and since her father did not receive appropriate advice, meagre compensation was claimed. Soon after the attainment of majority by the petitioner, it is realised that the compensation claimed and determined by the Claims Tribunal is not adequate and accordingly the petitioner filed C.M.A. M.P. No.4870 of 2012 seeking to prosecute the Appeal by the petitioner, discharging her guardian. This Court on 23.08.2012 ordered the said C.M.A. M.P. The learned counsel further submits that in support of the claim for higher compensation, petitioner/appellant relies on the disability certificate issued to her on 26.07.2010 and the estimation made for the purpose of replacement of artificial leg. Learned counsel submits that the artificial leg requires replacement at periodical intervals. Learned counsel further submits that she needs higher compensation on account of loss of amenities in life, loss of marriage alliance and loss of future earnings and therefore the

petitioner-appellant is justified in asking for higher compensation. Learned counsel further submits that even in the absence of claim for higher compensation in view of the provision contained in Section 166 of the M.V. Act and the principles laid down in **Nagappa's** case, it is permissible for the Court to grant more compensation than what is claimed, as long as compensation claimed is just and equitable but not fanciful.

10. Learned counsel further submits that on account of the amputation of left lower limb at a very young age, the petitioner-appellant is subjected to lot of humiliation and suffering and has undergone lot of trauma; her marriage prospects are also reduced and loss of earning capacity has affected gravely. Learned counsel therefore contends that the compensation determined by the Claims Tribunal is insufficient and prays to grant higher compensation.

11. The learned counsel for the respondent Corporation opposes the appeal primarily on the ground that the compensation sought for was granted by the learned Tribunal and it is not open to the claimant to seek enhancement of compensation by seeking higher compensation in this Appeal. He further contends that the matter relates to the year 1996. The O.P. was disposed of on 07.11.2001 and the appeal was filed in the year 2003. Therefore, consideration of enhancement at this stage, is not just and equitable. Learned counsel further contends that grant of compensation is to the extent of loss and suffering on account of the rash and negligent driving by the Corporation, but it cannot be an undue enrichment or wind fall. What is claimed by the appellant is nothing but a wind fall. The appellant was not vigilant when the claim petition was first instituted nor when the Appeal is preferred. Thus, the claim for enhancement of compensation now set up is not *bonafide*. Learned Standing Counsel further submits that the prayer to enhance compensation is made at the appellate stage and as no such claim was made in the original claim petition and

no opportunity was offered to the respondent Corporation to contradict the claim and to test the veracity of the documents sought to be presented in the application, he opposes for consideration of additional documents. He supported the award passed by the learned Tribunal and opposes for enhancement of compensation.

12. Record discloses that due to rash and negligent driving of bus owned by respondent Corporation accident occurred resulting in amputation of lower limb of appellant. The Claims Tribunal having held that accident occurred due to negligence of employee of respondent Corporation restricted the compensation to the extent of claim made.

13. Now the question for consideration is whether the claim for enhancement of compensation by the petitioner-appellant is justified in the facts of this case?

14. In **Nagappa's** case, the Hon'ble Supreme Court held as under :

"16. From the aforesaid observations it cannot be held that there is a bar for the Claims Tribunal to award the compensation in excess of what is claimed, particularly when the evidence which is brought on record is sufficient to pass such award. In cases where there is no evidence on record, the Court may permit such amendment and allow to raise additional issue and give an opportunity to the parties to produce relevant evidence.

21. For the reasons discussed above, in our view, under the M.V. Act, there is no restriction that Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award 'Just' compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-section (4) to Section 166, even report submitted to the Claims Tribunal under sub-section (6) of Section 158 can be treated as an application for compensation under the M.V. Act. If required, in appropriate cases, Court may permit

amendment to the Claim Petition.

(Emphasis supplied)

15. The Hon'ble Supreme Court in the case of **Govind Yadav v.**

**New India Insurance Company Limited**<sup>[2]</sup>, held as under :

“12. A very large number of people involved in motor accidents are pedestrians, children, women and illiterate persons. Majority of them cannot, due to sheer ignorance, poverty and other disabilities, engage competent lawyers for proving negligence of the wrongdoer in adequate measure. The insurance companies with whom the vehicles involved in the accident are insured usually have a battery of lawyers on their panel. They contest the claim petitions by raising all possible technical objections for ensuring that their clients are either completely absolved or their liabilities minimised. This results in prolonging the proceedings before the Tribunal. Sometimes the delay and litigation expenses make the award passed by the Tribunal and even by the High Court (in appeal) meaningless. ....”

14. In **Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka** {(2009) 6 SCC 1} the Hon'ble Supreme Court held as under :

“88. We must emphasise that the court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the court must not be chary of awarding adequate compensation. The 'adequate compensation' that we speak of, must to some extent, be a rule of thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned.

\* \* \*

90. At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and

*acceptance, and in time, compels the family to move on. **The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution ensures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity.***

*(Emphasis supplied)*

16. **Nizam Institute** was a case arising under Consumer Protection Act, 1986. In **Govind Yadav's** case, the Hon'ble Supreme Court held that same principles would appropriately apply to claims arising under Section 166 of the M.V. Act.

17. The Hon'ble Supreme Court in the case of **Govind Yadav's** case, further held as under :

“16. In **Arvind Kumar Mishra v. New India Assurance Company Limited** {(2010) 10 SCC 254} the Court considered the plea for enhancement of compensation made by the appellant, who was a student of final year of engineering and had suffered 70% disablement in a motor accident. After noticing the factual matrix of the case, the Court observed : (SCC p. 256, para 9)

“9. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. *The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for what he had suffered.*”



(Emphasis supplied)

17. In **Raj Kumar v. Ajay Kumar** {(2011) 1 SCC 343} the Court considered some of the precedents and held : (SCC pp. 347-48, paras 5-6)

*“5. The provision of the Motor Vehicles Act, 1988 (‘the Act’, for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. **A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. ....***

(Emphasis supplied)

18. In our view, the principles laid down in **Arvind Kumar Mishra v. New India Assurance Company Limited** {(2010) 10 SCC 254} and **Raj Kumar v. Ajay Kumar** {(2011) 1 SCC 343} must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earnings and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for he disability caused due to the accident.

25. The compensation awarded by the Tribunal for pain,

suffering and trauma caused due to the amputation of leg was meagre. It is not in dispute that the appellant had remained in the hospital for a period of over three months. *It is not possible for the Tribunals and the Courts to make a precise assessment of the pain and trauma suffered by a person whose limb is amputated as a result of accident. Even if the victim of accident gets artificial limb, he will suffer from different kinds of handicaps and social stigma throughout his life. Therefore, in all such cases, the Tribunals and the Courts should make a broad guess for the purpose of fixing the amount of compensation.*

26. Admittedly, at the time of accident, the appellant was a young man of 24 years. For the remaining life, he will suffer the trauma of not being able to do his normal work. Therefore, we feel that ends of justice will be met by awarding him a sum of Rs.1,50,000/- in lieu of pain, suffering and trauma caused due to the amputation of leg.

27. The compensation awarded by the Tribunal for the loss of amenities was also meagre. It can only be a matter of imagination as to how the appellant will have to live for the rest of his life with one artificial leg. The appellant can be expected to live for at least 50 years. During this period he will not be able to live like a normal human being and will not be able to enjoy life. The prospects of his marriage have considerably reduced. Therefore, it would be just and reasonable to award him a sum of Rs.1,50,000/- for the loss of amenities and enjoyment of life."

(Emphasis  
supplied)

18. The analysis of the precedents referred to above would show that while determining the compensation, it is necessary for the Courts to keep in mind that the victim had done no wrong, she has suffered at the hands of wrong doer and she needs to be compensated for her inability to lead a full life; her inability to enjoy those normal amenities which she would have enjoyed but for the injuries and her inability to earn as much as she used to earn, as held by the Hon'ble Supreme Court in **Raj Kumar** case.

19. As observed by the Hon'ble Supreme Court in **K. Suresh v.**

**New India Assurance Company Limited**<sup>[3]</sup>, indeed it is a challenge to determine just compensation which is neither a bonanza nor a windfall and should not be a pittance. Challenge is all the more stiff in this case. To recapitulate the facts, petitioner-appellant was aged 5 years when, due to accident, she lost her left lower limb. Initial claim was Rs.1,50,000/-; though Claims Tribunal opined that petitioner was entitled to more compensation, granted only Rs.1,50,000/- i.e. to the extent of claim made. In the appeal also initially claim was restricted to Rs.1,50,000/- but by way of amendment claim is enhanced to Rs.10,00,000/-. Respondent-Corporation vehemently opposes enhancement as belated, fanciful and unrealistic.

20. In the case of **K. Suresh**, as with reference to compensation payable to a person injured, the Hon'ble Supreme Court held as under :

“10. It is noteworthy to state that an adjudicating authority, while determining the quantum of compensation, has to keep in view the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. Hence, while computing compensation the approach of the Tribunal or a Court has to be broad based. Needless to say, it would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the fundamental criterion of “just compensation” should be inhere.”

(Emphasis supplied)

21 With lot of motivation and spirit at her command, the petitioner-appellant has completed her intermediate course of study with Commerce, Economics and Civics as specialisations. She needs proper equipment to adjust to her growing age and physic which would require lot of money in the present context. Modernised equipment

would help her in alleviating her suffering. While prosecuting her higher studies, she also requires more money towards extra nourishment as held by Hon'ble Supreme Court in **Govind Yadav's** case. There is multifold increase in cost of artificial limb and she has to incur expenses regularly and there should be periodical replacement of limbs. These factors have to be taken note of while determining the compensation. In support of the claim for higher compensation, petitioner-appellant, filed an additional document containing estimation dated 23.07.2012 given by the company which supplies instruments, which shows an artificial leg would cost approximately Rs.3,00,000/-. This document is sought to be brought on record in support of her claim for enhancement of compensation. In **Govind Yadav's** case, the Hon'ble Supreme Court granted an amount of Rs.2,00,000/- for future treatment, Rs.1,50,000/- towards pain and suffering and trauma and Rs.1,50,000/- towards loss of amenities respectively. In the present case, medical certificate dated 26.07.2010 disclose that her left lower limb is amputated and replacement of the artificial lower limb would cost approximately Rs.3,00,000/- as per estimation made in July, 2012. Following the parameters set out by the Hon'ble Supreme Court in the precedents referred to *supra*, and considering the age of the petitioner-appellant and the age at which the accident occurred, being a girl child, I am of the opinion that claim for enhancement of compensation under the heading of pain and suffering, loss of amenities in life, loss of future earnings and marriage alliance and for artificial limb, is justified.

22. Having given my anxious consideration to claim for enhancement of compensation, I am of the considered opinion that petitioner-appellant is entitled to compensation as under :

i) Towards pain and suffering and trauma = Rs.1,00,000/-

;

ii) Towards loss of amenities =

[illegible]

23. No amount is granted towards enhancement of medicines and damages to clothes.

24. On the enhanced compensation, petitioner is entitled to interest at the rate of 6% p.a. from the date of filing C.M.A. M.P. No.4869 of 2012 till the date of realisation. Thus, petitioner-appellant is entitled to additional compensation of Rs.5,20,000/-, in addition to Rs.1,50,000/- as awarded by Claims Tribunal. From out of Rs.5,20,000/- additional compensation now granted, Rs.2,50,000/- shall be kept in a fixed deposit account of the petitioner-appellant, in any nationalized bank for a period of three (3) years and petitioner-appellant is entitled to draw interest accrued thereon at quarterly intervals.

Accordingly, the Civil Miscellaneous Appeal is disposed of. In consequence, the Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. No order as to costs.

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**P. NAVEEN RAO, J**

Date: 30-08-2013.  
TVK/DSH

Note:L.R. Copy to be marked.

**HON'BLE SRI JUSTICE P. NAVEEN RAO**



**CIVIL MISCELLANEOUS APPEAL No.4184 OF 2003**

Date.30-08-2013.

TVK/DSH

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- [\[1\]](#) 2003 ACJ 12  
[\[2\]](#) (2011) 10 SCC 683  
[\[3\]](#) (2012) 12 SCC 274