REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.4576/2021
(Arising out of SLP (C) No.16077/2020)

HDFC ERGO GENERAL INSURANCE CO. LTD. Appellant(s)

VERSUS

MUKESH KUMAR & ORS. Respondent(s)

WITH

CIVIL APPEAL No.4577/2021
(Arising out of SLP (C) No.2646/2021)

O R D E R

SANJAY KISHAN KAUL, J.

CIVIL APPEAL No.4576/2021

Leave granted.

The sole question which arises for determination in this appeal filed by the Insurance Company is whether directions can be passed by the Court while determining compensation under the Motor Vehicle Act, 1988 (hereinafter referred to as "the said Act") in the manner of a direction in perpetuity for continued maintenance of a prosthetic limb for the injured claimant.

The respondent No.1 viz. Mukesh Kumar, was 19 years of age when he met with an accident on 25.8.2017 which resulted in permanent disability of his right lower limb, which was treated as

a 100% disability. An amputation had to take place below the knee of that limb. In the assessment made by the Motor Accident Claims Tribunal (MACT), an amount of Rs.2 Lakhs was quantified towards loss of amenities, life and disfigurement which would include the expenses towards his prosthetic limb. On examination in appeal, the learned judge of the High Court by the impugned order dated 04.11.2020 has passed directions in the following terms:

> **"7. With consent, the impugned award dated 22.01.2020 passed by the learned MACT in Petition No.129/2018, is modified to the extent that the claimant/R-1 shall be supplied a prosthetic limb of good quality which is suitable and comfortable to him. It shall carry a lifetime warranty. Should it be required to be replaced/ repaired at any stage, the insurance company will do so. The insurer will enquire from the victim, at least twice a year, as to the working condition of the prosthetic limb, through his e-mail address and telephone number, as well as through his counsel's e-mail address and telephone number. The details are as under:-**

Claimant's / R1's Mobile No.	Claimant's/ R1's email address	Counsel's Mobile No.	Counsel's E-mail address
……	…….	…….	…….

> **8. In case of any difficulty apropos the prosthetic limb, the claimant may intimate the insurer through e-mail addresses and/ or telephone numbers of three officers of the insurer, as supplied to him. These details shall be provided to the claimant within 2 weeks from today.**
>
> **9. It will be open to the claimant to communicate the quotation or estimate for a suitable prosthetic limb to the insurance company at the e-mail addresses and telephone numbers provided by the learned counsel for the insurer. The impugned order is modified to this extent."**
>
> **(details redacted)**

Learned counsel for the appellant submitted that the consent which was given was for modification of the impugned award and not

for the prosthetic limb to carry a lifetime warranty, as there is no such thing as a lifetime warranty for a prosthetic limb. Not only that, the impugned directions require that if any, repair or replacement has to be done, the same should be done by the Insurance Company and the insurer was required to inquire from the victim at least twice a year as to the working condition of the prosthetic limb with an email address and telephone number specified. Thus, what has been directed by the High Court is a continuing maintenance of the prosthetic limb to be monitored by the Insurance Company. We may note that the aforesaid is the only issue which is called upon by us to be examined.

We had stayed the operation of the aforesaid paragraphs by the interim directions issued vide order dated 15.2.2021.

We are of the view, that the aspect discussed in the aforesaid paragraphs could be made only a part of compensation, and not in the nature of continuing directions. In this behalf, we have noticed a view taken by this Court vide order dated 06.8.2020 in SLP(C) No.8631/2020 where the same learned judge has taken a similar view and that aspect of the order was deleted at the motion stage without notice by the Bench and thus we considered it appropriate to issue notice to other side.

Learned counsel for the appellant has referred two judgments of this Court before us in *Nagappa v. Gurudayal Singh & Others, (2003) 2 SCC 274* and Sapna V. *United India Insurance Co. Ltd. &*

Anr. (2008) 7 SCC 613 **opining that while determining compensation under the said Act there is no provision providing for passing of a further award once the final award is passed. The future eventualities are to be taken into consideration at that time. It was observed that:**

> **"23…. Future medical expenses required to be incurred can be determined only on the basis of fair guesswork after taking into account increase in the cost of medical treatment."**

In our view, the process of determination of such compensation cannot be by a continuing mandamus, in a colloquial sense, and the determination must take place at one go.

The aforesaid principle is not even disagreed to or contested by the respondents but what is submitted is that there must be a provision made fixing a lump sum amount for maintenance/ replacement of the prosthetic limb, if necessary. We agree with the submission and in a larger canvas consider it appropriate to direct that in such kind of cases of providing facility of prosthetic limb, appropriate amount may be quantified towards such maintenance.

We, thus, allow the appeal to the extent aforesaid and set aside the paragraph Nos.7,8 & 9 to be substituted by the determination for maintenance/replacement of the prosthetic limb while a quantification of the amount for compensation is being made.

The question which remains is whether we should remit this case to the High Court to determine the amount afresh having laid down the principles, or we should determine it ourselves. In the given facts of the case, we do not consider it appropriate to remit the case for fresh determination and instead take on the burden ourselves to do complete justice.

In order to facilitate determination of the lump sum amount, we call upon the learned counsel for respondent No.1 to file an affidavit setting forth the cost of the prosthetic limb purchased by him along with supporting documents. He should also file supporting documents of the company from which he purchased the prosthetic limb, to show what kind of maintenance/replacement would be required. On these documents being filed, we would determine the amount.

On the other aspects the appeal stands disposed of.

Let the affidavit be filed within four weeks, as prayed for. Reply to the same be filed within two weeks, thereafter.

List after six weeks.

CIVIL APPEAL No.4577/2021

Leave granted.

The grievance of the Insurance Company arises from the directions passed in the impugned order, more specifically in paragraph Nos.8 to 10, opining that assistance of two semi-skilled workers on the basis of minimum wages is to be provided to the

respondent from the date of the accident for the rest of the appellant's life. In order to sub-serve the said direction, *inter alia*, sum of Rs.60 Lakhs is required to be kept by the Insurance Company in an interest bearing deposit, from which about Rs.50,000/- per month would be generated as interest to meet the expenses of the assistants. The directions are contained in the following terms:

> **8. Presently, the appellant may have the benefit of his caring parents but they cannot be expected to be present with him at all times, as they may be engaged in other activities and/or be employed to make provisions for the family's needs. In the circumstances, the appellant shall be paid compensation towards the procurement of the assistance of two semi-skilled worker on the basis of minimum wages, from the date of the accident and for the rest of the appellant's life.**
>
> **9. The arrears towards the same shall be paid by the insurer, on the basis of notified minimum wage rates applicable to a semi-skilled worker. The arrears shall be deposited directly into the bank account of the appellant, jointly operated by his parents, in a month's time, along with interest accrued thereon @ 9% p.a. Payments apropos 'attendant charges' in the future shall also be ensured by the insurer. The current minimum wage rate of a semi-skilled workman is approximately Rs.18,000/-. Accordingly, Rs.36,000/- per month would be required to be paid to the appellant. These rates are revised twice a year. Therefore, prudently provision should be made for automatic crediting of the current and future wages into the appellant's bank account. Logically, the insurance company should assure about Rs.50,000/- per month as DFR interest. According to the current FDR rates, a deposit Rs.60 lakhs is likely to fetch about Rs.50,000/- per month as interest. Let Rs.60 lakhs be kept in an interest bearing FDR by the insurer in its own bank. The interest earned therefrom, shall be credited into the appellants' account by the 10th day of each Gregorian calendar month, on the basis of notified minimum wages for two attendants.**
>
> **10. Should the minimum wages be subsequently enhanced to a quantum which does not meet the interest generated from the FDR, the insurer shall augment the deposit to meet the shortfall. The insurer shall have a lien on the deposit, which it shall encash on the demise of the claimant.**

We have heard learned counsel for the parties and are of the view that these directions are unsustainable.

The reason for the same is that they are contrary to the judicial view adopted by this court in *Nagappa v. Gurudayal Singh & Ors.*- (2003) 2 SCC 274, Sapna v. United India Insurance Company Ltd. & Anr. (2008) 7 SCC 613 & The Oriental Insurance Co. Ltd. v. Zakir Hussain & Ors. [SLP (C) No.12210/2020 dated 13.10.2020]. In these cases, this Court has opined that while determining the compensation under the said Act there is no provision for providing for passing of further award once the final award is made. The future eventualities are to be taken into consideration at that time it has been observed that;

> **"However, it is to be clearly understood that the MV Act does not provide for passing of further award after the final award is passed. Therefore, in a case where injury to a victim requires periodical medical expenses, fresh award cannot be passed or previous award cannot be reviewed when the medical expenses are incurred after finalisation of the compensation proceedings. Hence, the only alternative is that at the time of passing of final award, the Tribunal/court should consider such eventuality and fix compensation accordingly. No one can suggest that it is improper to take into account expenditure genuinely and reasonably required to be incurred for future medical expenses. Future medical expenses required to be incurred can be determined only on the basis of fair guesswork after taking into account increase in the cost of medical treatment."**

The aforesaid aspect has been considered by us today in another appeal filed by the same Insurance Company in SLP (C) No.16077/2020 dealing with the aspects of provisions for prosthetic limb. The principles which we have appreciated in the current case

are slightly different as though it may not be strictly in the nature of a continuing direction; but premised on the basis of a continuing requirement, a lump sum amount has been directed to be deposited the returns from which are to be utilised. We are of the view that this is not the appropriate course to follow.

Learned counsel for the appellant has taken us through various judicial pronouncements which show that the approach which has been adopted by different courts is of giving a lump sum amount. The moot point however remains as to how the lump sum amount is to be calculated.

We find that in case of extreme injuries affecting the mental and physical abilities of a person, a similar approach has been adopted by this Court in *Kajal V. Jagdish Chand* & Ors. (2020) 4 SCC 413.

No doubt the factual matrix in that case painted a very grim picture of young girl who suffered an accident and as result thereof while physically she would age, her mental state would remain under one year of age. In that scenario, a methodology was suggested to apply the multiplier method while determining the attendant charges. We consider it useful to reproduce the observations as under:-

<u>Attendant Charges</u>

> **22. The attendant charges have been awarded by the High Court @Rs.2,500/- per month for 44 years, which works out to Rs.13,20,000/-.Unfortunately, this system is not a proper system. Multiplier system is used to balance out**

various factors. When compensation is awarded in lump sum, various factors are taken into consideration. When compensation is paid in lump sum, this Court has always followed the multiplier system. The multiplier system should be followed not only for determining the compensation on account of loss of income but also for determining the attendant charges etc. This system was recognised by this Court in Gobald Motor Service Ltd. v. R.M.K. Veluswami (AIR 1962 SC 1).The multiplier system factors in the inflation rate, the rate of interest payable on the lump sum award, the longevity of the claimant, and also other issues such as the uncertainties of life. Out of all the various alternative methods, the multiplier method has been recognised as the most realistic and reasonable method. It ensures better justice between the parties and thus results in award of 'just compensation' within the meaning of the Act.

23. It would be apposite at this stage to refer to the observation of Lord Reid in Taylor v. O'Connor (1971 AC 115):

> **"Damages to make good the loss of dependency over a period of years must be awarded as a lump sum and that sum is generally calculated by applying a multiplier to the amount of one year's dependency. That is a perfectly good method in the ordinary case but it conceals the fact that there are two quite separate matters involved, the present value of the series of future payments, and the discounting of that present value to allow for the fact that for one reason or another the person receiving the damages might never have enjoyed the whole of the benefit of the dependency. It is quite unnecessary in the ordinary case to deal with these matters separately. Judges and counsel have a wealth of experience which is an adequate guide to the selection of the multiplier and any expert evidence is rightly discouraged. But in a case where the facts are special, I think, that these matters must have separate consideration if even rough justice is to be done and expert evidence may be valuable or even almost essential. The special factor in the present case is the incidence of Income Tax and, it may be, surtax."**

24. This Court has reaffirmed the multiplier method in various cases like Municipal Corporation of Delhi v. Subhagwati (1966 ACJ 57), U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors. [(1996) 4 SCC 362], Sandeep Khanduja v. Atul Dande and Ors. [(2017) 3 SCC 351]. This Court has also recognised that Schedule II of the Act can be used as a guide for the multiplier to be applied in each case. Keeping the claimant's age in mind, the multiplier in this case should be 18 as opposed to 44 taken by the High Court.

25. Having held so, we are clearly of the view that the basic amount taken for determining attendant charges is very much on the lower side. We must remember that this little girl is severely suffering from incontinence meaning that she does not have control over her bodily functions like passing urine and faeces. As she grows older, she will not be able to handle her periods. She requires an attendant virtually 24 hours a day. She requires an attendant who though may not be medically trained but must be capable of handling a child who is bed ridden. She would require an attendant who would ensure that she does not suffer from bed sores. The claimant has placed before us a notification of the State of Haryana of the year 2010 wherein the wages for skilled labourer is Rs.4846/- per month. We, therefore, assess the cost of one attendant at Rs.5,000/ and she will require two attendants which works out to Rs.10,000/ per month, which comes to Rs.1,20,000/- per annum, and using the multiplier of 18 it works out to Rs.21,60,000/-for attendant charges for her entire life. This takes care of all the pecuniary damages."

Learned counsel for the appellant did seek to persuade us that this is not the only methodology available and it should not be adopted. We are of the view that in cases where the degree of disability is high, there is mental disability, it is a case of a young person etc. without it being possible to anticipate all possibilities, the course followed aforesaid would be the appropriate course. We are not saying that the aforesaid can be the only course, and in a different scenario, lump sum amount can be assessed as has been as done in *Lalan D. @ Lal & Another v. Oriental Insurance Company Limited,* (2020) 9 SCC 805 and *Parminder Singh v. New India Assurance Company Limited & Others,* (2019) 7 SCC 217.

Learned Senior Counsel for the appellant also sought to point out another course followed in *Mallikarjun v. Divisional Manager, National Insurance Company Limited & Another,* (2014) 14 SCC 396,

wherein cases of children suffering disability on account of motor vehicle accident, a broad principle was sought to be laid down in the following terms:-

> **"12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization for about two months causing also inconvenience and loss of earning to the parents."**

The aforesaid only shows that there is more than one option available i.e, there may be a lump sum amount specified on general principles as enunciated aforesaid; or in cases where the factual scenario requires, same multiplier method can be followed as in the case of Kajal (supra).

Now turning to the facts of the present case, the child was 11 years of age when he suffered functional disability which has been assessed at 70% by the medical board and the tribunal, and which the High Court determined as 100% functional disability. It is in these circumstances that the direction has been passed for attendants with a methodology of accessing the minimum wages payable for two skilled workers. In the given factual scenario, we are of the view that the apposite course to follow is set out in Kajal's case (supra).

On having reached that conclusion, the issue would be what would be the lump sum amount to be determined to be paid on those parameters.

We find that in terms of the impugned order dated 08.12.2020, the learned judge has since kept the matter pending by issuing the notice to the GNCTD to examine whether there could be a Government policy in regard to assistance to be provided to permanently disabled adolescents whose parents are not economically well off. We are of the view that in pursuance to this conclusion, it is the High Court which ought to examine as to what would be the appropriate lump sum amount to be determined based on the multiplier basis as set out in Kajal's case (supra).

We, thus, set aside the directions contained in the impugned order in paragraph Nos.8 to 10.

We also find that while seeking to examine the larger issues, the learned judge has ventured into the aspect of Government policy to be framed in that behalf. This really amounts to beyond the jurisdiction over determination of the amount, in the Motor Accident Claim proceeding, but on a larger canvas taking the colour of a Public Interest Litigation. We, thus, consider it appropriate that this aspect ought to be examined by the Bench dealing with the Public Interest Litigation, as a larger canvas would have to be determined rather than something restricted to the case of the respondent before us.

The civil appeal is allowed in the aforesaid terms leaving parties to bear their own costs.

…….J.
[SANJAY KISHAN KAUL]

……J.
[HRISHIKESH ROY]

NEW DELHI;
03rd August, 2021.

ITEM NO.12 Court 7 (Video Conferencing) SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.4576/2021 @ Special Leave Petition (c) No.16077/2020

(Arising out of impugned final judgment and order dated 04-11-2020 in MACAPP No.218/2020 passed by the High Court of Delhi at New Delhi)

HDFC ERGO GENERAL INSURANCE CO. LTD. Petitioner(s)

VERSUS

MUKESH KUMAR & ORS. Respondent(s)

(IA No.136642/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

WITH

Civil Appeal No.4577/2021 @ SLP(C) No. 2646/2021 (XIV)
(IA No.20778/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.20777/2021-EXEMPTION FROM FILING O.T.)

Date : 03-08-2021 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s) Ms. Archana Pathak Dave, AOR
Ms. Vanya Gupta, Adv.
Mr. Kumar Prashant, Adv.

Mr. V. Giri, Sr. Adv.
Mr. Karan Lahiri, Adv.
Mr. Pallav Mongia, AOR
Mr. Shailender Reddy, Adv.
Ms. Ankita Gupta, Adv.

For Respondent(s) Mr. Jayesh K. Unnikrishnan, AOR
Ms. Sasmita Tripathy, Adv.
Mr. Dilawar Singh, Adv.
Ms. Gitanjali Tripathy, Adv.
Ms. Gautami Budhapriya, Adv.
Mr. Vivekanand Singh, Adv.

Mr. Manish Maini, Adv.
Ms. Manjeet Chawla, AOR

Ms. Ritu Rastogi, Adv.
Mr. B. S. Chowdhary, Adv.

Ms. Adira A. Nair, Adv.
Mr. Sanjay Kumar Visen, AOR

Mr. Durga Dut, Adv.
Ms. Samta Pushkarna Mishra, Adv.
Mr. Amar Singh, Adv.
Mr. Neeraj Goswami, Adv.
Mr. R. D. Singh, Adv.
M/S Vibhu Shanker Mishra And Co., AOR

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

These civil appeals are allowed in terms of the signed reportable order.

Pending applications stand disposed of accordingly.

[RASHMI DHYANI]
COURT MASTER

[POONAM VAID]
COURT MASTER

(Signed reportable order is placed on the file)