

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/FIRST APPEAL NO. 3654 of 2021**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MS. JUSTICE GITA GOPI**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

SHAILESHBHAI KANDUBHAI RATHWA  
 Versus  
 GURJAR SHANKARLAL DEVALAL

Appearance:

MR PRADEEP R MISHRA(10206) for the Appellant(s) No. 1  
 DELETED for the Defendant(s) No. 1  
 MR VC THOMAS(5476) for the Defendant(s) No. 3  
 RULE NOT RECD BACK for the Defendant(s) No. 2

**CORAM: HONOURABLE MS. JUSTICE GITA GOPI**

**Date : 02/08/2022**

**ORAL JUDGMENT**

1. The present appeal has been preferred challenging the judgment and award dated 14.03.2019 passed by the Motor Accident Claim Tribunal (Aux.),

Chhotaudepur in M.A.C.P. No.690 of 2017 (Old No. MACP No.422 of 2008).

2. Advocate Mr. R.G. Dwivedi for Mr. Pradeep R.Mishra, learned advocate for the appellant, submits that on 25.12.2007, at around 9 hours, the minor - appellant was crossing the road, at that time, the truck driver dashed him by driving his truck in rash and negligent manner.

3. Mr. Dwivedi submitted that the claimant - minor sustained injury with an amputation of right lower limb above the knee and 80% permanent disability of the right lower limb. He submitted that, 55% permanent partial disability for body as a whole was consented, which the Tribunal was pleased to rely on, and the age of the minor at that relevant time was 11 years, while Mr. V.C. Thomas argued supporting the judgment and award.

4. Mr. Dwivedi submits that the learned Tribunal ought to have considered the case of **Mallikarjun v. Divisional Manager, National Insurance Company Limited**, another reported in **[(2014) 14 SCC 396]**, to

appreciate the fact and to grant the compensation in accordance to the guidelines of the Apex Court.

5. In the case of Mallikarjun (supra) the Hon'ble Apex Court has dealt with the claim by the victim child and had observed that it was unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act for reasons more than one. The main stress in the formula is on pecuniary damages. It was taken into consideration that for children there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs.15,000/- per year. The Hon'ble Apex Court thus stated that the child cannot be equated to such a non-earning person, and therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, 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 which will offset to some extent the inconvenience or discomfort arising out of the disability. The appropriate compensation for disability should take care of all the non-pecuniary damages. The Hon'ble Apex Court thus held that apart from this head, there shall only be the claim for the actual expenditure for treatment, attendant, transportation etc. Therefore considering the view of the judgment as observed it would be 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. Thus the Hon'ble Apex Court in the said decision has held as under:

*“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 up to 30% to the whole body. Rs.3 lakhs; up to 60%, Rs. 4 lakhs; up to 90%, Rs. 5 lakhs and above 90%, it should be Rs. 6 lakhs. For permanent disability up to 10%, it should be*

*Rs.1 lakh, unless there are exceptional circumstances to take a different yardstick.”*

6. It has been submitted by Mr. Dwivedi and as per the observation made in the judgment, 55% permanent disability for body as a whole have been considered on consent, where the Doctor had issued a Certificate of disability assessing it as 80%. Since the injured claimant and the other side has consented for 55% disability, thus, Mr. Dwivedi submits that he does not want to re-agitate the same.

7. Considering the law declared in Mallikarjun v. Divisional Manager, National Insurance Company Limited (supra), 55% disability has been accepted by both the sides and therefore the claimant would be entitled to get Rs.4,00,000/- compensation.

8. Thus, the claimant would be entitled to get Rs.4,00,000/- + Rs.5,500/- (medical expenses) + Rs.10,000/- (conveyance, attendant and food nourishment expenses) = Rs.4,15,500/- as total compensation with the interest rate directed by the Tribunal in the award.

9. In the result, the appeal is partly allowed. The impugned judgment and award dated 14.03.2019 passed by the Motor Accident Claim Tribunal (Aux.), Chhotaudepur in M.A.C.P. No.690 of 2017 (Old No. MACP No.422 of 2008) stands modified to the aforesaid extent. No order as to costs. Record & Proceedings, if any, be sent back to the concerned tribunal.

Pankaj

**(GITA GOPI, J.)**