

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

Dated : 10th November, 2023

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

MAC App. No.04 of 2023

Appellant : Cholamandalam MS General Insurance Co. Ltd.

versus

Respondents : Amrit Kumar Manger and Another

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Mr. Pawan Gurung, Advocate for the Appellant.

Mr. S. S. Hamal, Senior Advocate with Mr. Tashi Wongdi Bhutia, Mr. Mahesh Subba, Mr. Pradeep Sharma and Mr. Anirudh Gupta, Advocates for the Respondents.

JUDGMENT

Meenakshi Madan Rai, J.

1. The three grounds agitated in this Appeal are;

- (i) *That, the rate of interest placed at 9% on the Award, by the Learned Motor Accidents Claims Tribunal, Gangtok (hereinafter, the "Learned Claims Tribunal") is exorbitant and ought to be decreased;*
- (ii) *That, ₹ 13,00,000/- (Rupees thirteen lakhs) only, awarded under the "other heads" has no basis and ought to be reduced; and*
- (iii) *That, the disability certificate of the victim indicates that he suffered a 90% disability but the Learned Claims Tribunal considered it to be 100% disability while computing the compensation. Hence, the compensation awarded to the Claimant/Respondent No.1 is required to be reduced.*

2. Elaborating on the grounds raised hereinabove, Learned Counsel for the Appellant contended that interest @ 9% imposed by the Learned Claims Tribunal on the awarded amount is not in conformity with the interest rates of various Banks prevailing during the period of the accident. While relying on ***Dharampal and Others vs. U.P. State Road Transport Corporation***¹, it was canvassed

¹ (2008) 12 SCC 208

that the Supreme Court has held therein that the interest to be awarded is normally dependent upon the prevailing rate of interest of Banks at the time of granting the Award. That, on the date of Award the rate of bank interest was 6% which therefore ought to be the interest imposed and not 9%. That, the amount of ₹ 13,00,000/- (Rupees thirteen lakhs) only, granted under the 'other heads' is excessive and arbitrary awarded *sans* reasons, which requires reconsideration. That, the Learned Claims Tribunal has also arbitrarily considered the disability of the victim as 100% instead of 90% as actually indicated in his disability certificate Exhibit 10, issued by the office of the Chief Medical Officer (West Sikkim), duly signed by three doctors. Besides, no evidence was adduced with regard to the permanent disability, by the authority issuing the certificate, which has been accepted without proof. Hence, the compensation granted be recomputed in light of the grounds raised above.

3. Learned Senior Counsel for the Respondents *per contra* submitted that the Supreme Court has held in a plethora of cases that not only 90% physical disability but even 50% disability can be considered as 100% disability if the earning capacity of the victim is compromised on account of the accident. That, the rate of interest of 9% is not exorbitant as it is the discretion of the Learned Claims Tribunal to Award the rate of interest and there is no hard and fast rule that provides that the rate of interest ought to be as per the prevailing bank rate. The compensation awarded under the 'other heads' are in terms of the Judgment of the Supreme Court in ***Raj Kumar vs. Ajay Kumar and Another***² and nothing irregular or arbitrary can be said to have been made in the

² (2011) 1 SCC 343

Award. There being no merit in the Appeal, it ought to be dismissed.

4. The Respondent No.1, the victim of the accident, who was the Claimant (hereinafter referred to as "Claimant"), before the Learned Claims Tribunal in MACT Case No.46 of 2019 (*Amrit Kumar Manger vs. Cholamandalam MS General Insurance Company and Others*) was eighteen years of age on the date of the accident, which occurred on 16-05-2018 at around 1645 hours. He was employed as a conductor/helper in the Eicher truck, bearing registration no.SK-02-D-0560 owned by Respondent No.2 herein. When the truck approached "Kaleg" Bridge, Legship, West Sikkim, the driver made way to allow the vehicle behind it to overtake and in the process the truck went off the road to 100 feet below. The driver of the vehicle succumbed to his injuries. The Claimant suffered from 90% disability which fact he sought to fortify by furnishing Exhibit 10 a certificate issued by the office of the Chief Medical Officer (West Sikkim), duly signed by three doctors revealing his physical impairment. It was observed in the document that his condition was not likely to improve, however a reassessment was recommended after a period of one year. The Claimant filed his evidence on affidavit and was his own witness. The owner of the vehicle was examined as witness for himself. The records reveal that the Appellant did not examine any witness although Written Objection was filed contesting the claims put forth by the Claimant in his Claim Petition.

(i) The Learned Claims Tribunal settled six points for determination and decided all in favour of the Claimant. Placing reliance on the ratio of the Supreme Court in *Raj Kumar (supra)* the compensation was computed in terms of the 'heads' laid down in

the said decision. That apart, while considering the physical disability of the victim to be 100% instead of 90% the Learned Claims Tribunal claimed to be guided by the Judgments of the Supreme Court in **Sri Anthony alias Anthony Swamy vs. The Managing Director, KSRTC**³ and **Jithendran vs. New India Assurance Co. Ltd and Another**⁴. The Learned Claims Tribunal accordingly granted the compensation as follows;

"25. *Insofar as the medical expenses incurred by the claimant, he has filed Exhibit 9(coll) which are the original bills and receipts indicating the expenses. These documents could not be controverted by the OPs No.1 & 2 or the OP No.3.*

26. *The total amount above comes to ₹ 50,355.18/-(Rupees Fifty thousand three hundred fifty five and eighteen paise) only which is rounded off to ₹ 50,356/-. This figure has been arrived at on the basis of the clear & legible bills/invoices/receipts above placed forward by the claimant.*

.....

30. *We may as such add the following amounts to the figures of medical expenses arrived at above. ₹ 2,00,000/- towards future medical expenses given the extent of his disablement and his young age; ₹ 2,00,000/- towards pain and sufferings (sic.); ₹ 2,00,000/- towards loss of amenities and enjoyment of life including loss of marital prospects and marital happiness; ₹ 2,00,000/- towards conveyance charges(and cost of attendant); ₹ 2,00,000/- towards food and nourishment. We may further add the amount under the head 'loss of future earnings' and loss of earnings which would be as follows. Since the monthly fixed salary of the claimant was ₹ 10,000/- we may add 40% of the said salary towards future prospects in view of his age in which case the amount would come to ₹ 10,000/- + ₹ 4,000/-(40%) = ₹ 14,000/- per month. As such his annual income would be ₹ 14,000/- x 12 months = ₹ 1,68,000/-. If multiplier of 18 (as applicable here in view of the age of the claimant i.e., 18 years) is applied, the amount would come to ₹ 1,68,000/- x 18 = ₹ 30,24,000/-. In view of 100% permanent physical functional disability the amount under the head 'loss of future income' would be 100% of ₹ 30,24,000/- i.e., the same amount. Finally, in view of the serious nature and disability of the claimant we may add an amount of ₹ 3,00,000/- towards loss of expectation of life. The overall amount would thus come to ₹ 50,356/- + ₹ 2,00,000/- + ₹ 2,00,000/- + ₹ 2,00,000/- + ₹ 2,00,000/- + ₹ 30,24,000/- + ₹*

³ Civil Appeal No.2551 of 2020 arising out of SLP (Civil) No(s).1738 of 2018 of SCI decided on 10-06-2020

⁴ 2021 SCC OnLine SC 983

3,00,000/- = ₹ 43,74,356/- (Rupees Forty three lakhs seventy four thousand three hundred and fifty six only.)
(emphasis supplied)

5. Addressing firstly the issue of the rate of interest which according to the Learned Counsel for the Appellant was high being 9%, apposite reference is made to the decision in **Abati Bezbaruah vs. Dy. Director General, Geological Survey of India and Another**⁵ wherein the Hon'ble Supreme Court opined as follows;

"18. The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering, loss of future income, loss of enjoyment of life etc., into consideration. **No rate of interest is fixed under Section 171 of the Motor Vehicles Act, 1988. Varying rates of interest are being awarded by Tribunals, High Courts and the Supreme Court.** Interest can be granted even if a claimant does not specifically plead for the same as it is consequential in the eye of law. Interest is compensation for forbearance or detention of money and that interest being awarded to a party only for being kept out of the money which ought to have been paid to him. **No principle could be deduced nor can any rate of interest be fixed to have a general application in motor accident claim cases having regard to the nature of provision under Section 171 giving discretion to the Tribunal in such matter.** In other matters, awarding of interest depends upon the statutory provisions, mercantile usage and doctrine of equity. **Neither Section 34 CPC nor Section 4-A(3) of the Workmen's Compensation Act are applicable in the matter of fixing rate of interest in a claim under the Motor Vehicles Act. The courts have awarded the interest at different rates depending upon the facts and circumstances of each case.**"
(emphasis supplied)

(i) Considering the totality of the facts of the case including the fact that the Claimant suffered physical impairment of 90% as certified by Exhibit 10, I am of the considered opinion that the rate of interest placed at 9% on the Award, by the Learned Claims Tribunal requires no interference.

6. The Appellant was also aggrieved by the Learned Claims Tribunal granting ₹ 13,00,000/- (Rupees thirteen lakhs)

⁵ (2003) 3 SCC 148

only, under 'other heads' and by assessing the disability of the Claimant as 100%, instead of 90% which was indicated in his disability certificate.

(i) In *Raj Kumar (supra)* on the aspect of disability and loss of earning capacity the Supreme Court opined as follows;

"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, the 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.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in *Arvind Kumar Mishra v. New India Assurance Co. Ltd.* [(2010) 10 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] and *Yadava Kumar v. National Insurance Co. Ltd.* [(2010) 10 SCC 341 : (2010) 3 SCC (Cri) 1285 : (2010) 8 Scale 567]).

12......

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. **The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The**

second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.”
(emphasis supplied)

(ii) Indubitably the accident led to the Claimant being a Paraplegic. Paraplegia is defined as paralysis of the lower part of the body and limbs, due to numerous causes, e.g. fractured spine and damage to the cord, various tract degenerations in the cord, and polyneuritis [See *Butterworths, Medical Dictionary, Second Edition, Critchley*]. The accident thus sucked out the ability of the Claimant to earn a living and instead has made him dependent on his parents for his day to day activities as emerges from his uncontroverted evidence. On the anvil of the above pronouncement and the facts before this Court, the assessment of the disability of the Claimant placed at 100% by the Learned Claims Tribunal, instead of 90% as indicated in his disability certificate is not erroneous.

(iii) Now while addressing the grievance pertaining to compensation given under ‘**other heads**’, in *Govind Yadav vs. New India Insurance Company Limited*⁶, the Supreme Court opined as follows;

“18. In our view, the principles laid down in *Arvind Kumar Mishra v. New India Assurance Co. Ltd.* [(2010) 10 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 4 SCC (Civ) 153] and *Raj Kumar v. Ajay Kumar* [(2011) 1 SCC 343 : (2011) 1 SCC (Cri) 1161 : (2011) 1 SCC (Civ) 164] **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**

⁶ (2011) 10 SCC 683

loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.”
(emphasis supplied)

(iv) In *K. Suresh vs. New India Assurance Company Limited and Another*⁷, the Supreme Court observed that;

“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 inhaled.”
(emphasis supplied)

(v) In *Jithendran (supra)* the Supreme Court was of the view that when the victim suffered permanent disability it not only impairs his cognitive abilities and his physical facilities but there are multiple other non-quantifiable implications for the victim. It was observed as follows;

“26. Before parting, it needs emphasizing that in cases such as this, the Tribunal and the Courts must be conscious of the fact that the permanent disability suffered by the individual not only impairs his cognitive abilities and his physical facilities but there are multiple other non-quantifiable implications for the victim. The very fact that a healthy person turns into an invalid, being deprived of normal companionship, and incapable of leading a productive life, makes one suffer the loss of self-dignity. Such a Claimant must not be viewed as a modern day Oliver Twist, having to make entreaties as the boy in the orphanage in Charles Dickens's classic, “Please Sir, I want some more”. The efforts must be to substantially ameliorate the misery of the claimant and recognize his actual needs by accounting for the ground realities. The measures should however be in correct proportion. As is aptly said by Justice R.V Raveendran, while speaking for the Division Bench in *Sarla Verma v. Delhi Transport Corporation* [(2009) 6 SCC 121], **just compensation is adequate compensation and the Award must be just that-no less and no more. The plea of the victim suffering from a cruel twist of fate, when asking for some more, is not extravagant but is for seeking appropriate recompense to negotiate with the**

⁷ (2012) 12 SCC 274

unforeseeable and the fortuitous twists is his impaired life. Therefore, while the money awarded by Courts can hardly redress the actual sufferings of the injured victim (who is deprived of the normal amenities of life and suffers the unease of being a burden on others), the courts can make a genuine attempt to help restore the self-dignity of such claimant, by awarding 'just compensation'."

(emphasis supplied)

(vi) Indeed the mental trauma and other intangibles that the victim of an accident suffers and is likely to suffer lifelong cannot be quantified in material terms. As the adage goes, only the wearer knows where the shoe pinches. Thus, the victim of the accident whose life at his age ought to be filled with *joie de vivre*, has instead been the recipient of unpalatable consequences for no fault of his own, due to the vagaries of life. He has to deal with the suffering, both physical and mental. The Supreme Court being alive to such circumstances in ***Parminder Singh vs. New India Assurance Company Limited and Others***⁸ observed as follows;

"5.12. Given the debilitated state of the appellant, no amount of money can compensate him. He has been in this condition since the age of 22 years when the accident took place, and will remain like this throughout his life. The appellant has also been deprived of having a normal married life with a family, and would require medical assistance from time to time. Being completely dependent, he would require the help of an attendant throughout his life. In view of these uncontroverted facts, we deem it fit and appropriate to award a lump sum amount of Rs.10,00,000 to the appellant towards medical expenses and attendant charges."

(vii) In ***Kajal vs. Jagdish Chand and Others***⁹, the Supreme Court was concerned with the permanent disability of a twelve year old girl, who till her accident was a bright child but after the fortuitous accident was medically assessed to have the social age of a 9 month old child. Her disability was assessed at 100%. On this facet the Supreme Court opined that '**attendant charges**' which had been worked out by the High Court @ ₹ 2,500/-(Rupees

⁸ (2019) 7 SCC 217

⁹ (2020) 4 SCC 413

twenty five hundred) only, per month for 44 years to a sum of ₹ 13,20,000/-(Rupees thirteen lakhs and twenty thousand) only, was not a proper system and the multiplier system ought to be used to balance out various factors. The Supreme Court went on to hold as follows;

"Attendant charges

22. The attendant charges have been awarded by the High Court @ Rs 2500 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* [*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* [*Taylor v. O'Connor*, 1971 AC 115 : (1970) 2 WLR 472 (HL)] : (AC p. 128)

"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 *MCD v. Subhagwanti* [*MCD v. Subhagwanti*, AIR 1966 SC 1750 : 1966 ACJ 57], *U.P. SRTC v. Trilok Chandra* [*U.P. SRTC v. Trilok Chandra*, (1996) 4 SCC 362], *Sandeep Khanuja v. Atul Dande* [*Sandeep Khanuja v. Atul Dande*, (2017) 3 SCC 351 : (2017) 2 SCC (Civ) 276 : (2017) 2 SCC (Cri) 178]. 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 the 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 bedridden. She would require an attendant who would ensure that she does not suffer from bedsores. 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 5000 and she will require two attendants which works out to Rs 10,000 per month, which comes to Rs 1,20,000 p.a., and using the multiplier of 18, it works out to Rs 21,60,000 for the attendant charges for her entire life. This takes care of all the pecuniary damages.”
(emphasis supplied)

(viii) The Supreme Court was of the view that the amount for the 'attendant' ought to be arrived at in terms of the discussion extracted above and by use of the multiplier as per the age of the Claimant.

(ix) In the case at hand, a lump sum amount of ₹ 2,00,000/-(Rupees two lakhs) only, was awarded towards “**conveyance/attendant charges**” by the Learned Claims Tribunal without working out the details or assigning reasons for awarding such an amount. In *Kajal* (*supra*), the accident occurred on 18-10-2007 and the Notification of the State of Haryana on wages for skilled labourers for the year 2010, was taken into consideration for assessment under the said head as seen at Paragraph 25 of the

ratio extracted hereinabove. Following the same principle, the daily wages for an "unskilled worker" under the Notification bearing No.29/DL dated 14-09-2022, issued by the Department of Labour, Government of Sikkim, under which the Claimant is covered, being a "Khalasi" is taken into consideration. The nomenclature and wages are detailed at serial no.12, page no.2, of the said Notification. The daily wages mentioned therein are ₹ 500/- (Rupees five hundred) only. Accordingly, the monthly wages of an "unskilled worker" would work out to ₹ 15,000/- (Rupees fifteen thousand) only, which would be ₹ 1,80,000/- (Rupees one lakh and eighty thousand) only, per annum. Considering the age of the Claimant, the multiplier of 18 is adopted, the amount therefore stands computed at ₹ 32,40,000/- (Rupees thirty two lakhs and forty thousand) only. It would thus be appropriate to Award the said amount as '**attendant charges**' for one attendant for the lifetime of the Claimant. The sum of ₹ 2,00,000/- (Rupees two lakhs) only, granted by the Learned Claims Tribunal is set aside.

(x) In *Kajal (ibid)* while considering "**pain, suffering and loss of amenities**", reference was made to the decision in *Mallikarjun vs. Divisional Manager, National Insurance Company Limited and Another*¹⁰. The Supreme Court observed as follows;

"Pain, suffering and loss of amenities

26. Coming to the non-pecuniary damages under the head of pain, suffering, loss of amenities, the High Court has awarded this girl only Rs 3,00,000. **In *Mallikarjun v. National Insurance Co. Ltd. [Mallikarjun v. National Insurance Co. Ltd., (2014) 14 SCC 396 : (2015) 1 SCC (Civ) 335 : (2015) 1 SCC (Cri) 372 : (2013) 10 Scale 668], this Court while dealing with the issue of award under this head held that it should be at least Rs 6,00,000, if the disability is more than 90%. As far as the present case is concerned, in addition to the 100% physical disability, the young girl is suffering from severe incontinence, she is suffering from severe hysteria and above all she is left with a brain of a nine-month-old child. This is a case where***

¹⁰ (2014) 14 SCC 396

departure has to be made from the normal rule and the pain and suffering suffered by this child is such that no amount of compensation can compensate.

27. One factor which must be kept in mind while assessing the compensation in a case like the present one is that the claim can be awarded only once. The claimant cannot come back to court for enhancement of award at a later stage praying that something extra has been spent. Therefore, the courts or the Tribunals assessing the compensation in a case of 100% disability, especially where there is mental disability also, should take a liberal view of the matter when awarding the compensation. While awarding this amount, we are not only taking the physical disability but also the mental disability and various other factors. This child will remain bedridden for life. Her mental age will be that of a nine-month-old child. Effectively, while her body grows, she will remain a small baby. We are dealing with a girl who will physically become a woman but will mentally remain a 9-month-old child. This girl will miss out playing with her friends. She cannot communicate; she cannot enjoy the pleasures of life; she cannot even be amused by watching cartoons or films; she will miss out the fun of childhood, the excitement of youth; the pleasures of a marital life; she cannot have children who she can love, let alone grandchildren. She will have no pleasure. Her's is a vegetable existence. **Therefore, we feel in the peculiar facts and circumstances of the case even after taking a very conservative view of the matter an amount payable for the pain and suffering of this child should be at least Rs 15,00,000."**

(emphasis supplied)

(xi) Considering the peculiar facts and circumstances of the case, the amount payable for the pain and suffering of the child was found to be ₹ 15,00,000/- (Rupees fifteen lakhs) only.

(xii) In *Mallikarjun (supra)*, the Supreme Court held that;

"7. It is unfortunate that both the Tribunal 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) (P) Ltd.* [(1995) 1 SCC 551 : 1995 SCC (Cri) 250] , **while assessing the non-pecuniary damages, the damages for mental and physical shock, pain and suffering already suffered and that are likely to be suffered, any future damages for the loss of amenities in life, like 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 a child victim. For a child, the best part of his life is yet to come."**

(emphasis supplied)

(xiii) Bearing in mind the gamut of the facts and circumstances in the instant case and the observations of the Supreme Court in *Mallikarjun* and *Kajal (supra)*, the Claimant herein with 100% disability on account of paraplegia will obviously be deprived of all the pleasures of life, augmented by his disability to earn a living due to complete paralysis from his waist down. I am of the considered opinion that, instead of ₹ 2,00,000/- (Rupees two lakhs) only, awarded towards pain and suffering and ₹ 2,00,000/- (Rupees two lakhs) only, awarded towards loss of amenities, a total sum of ₹ 6,00,000/- (Rupees six lakhs) only, is appropriate under the consolidated head of **“pain, suffering and loss of amenities”**.

(xiv) For **“loss of marriage prospects”** in *Kajal (supra)* a sum of ₹ 3,00,000/- (Rupees three lakhs) only, was awarded by the Learned Claims Tribunal which was not interfered by the High Court or the Supreme Court. It is noticed that the Learned Claims Tribunal while granting ₹ 2,00,000/- (Rupees two lakhs) only, towards loss of amenities, included loss of **“marital prospects”** and **“marital happiness”** under the same head. Reverting back to the decision of *Kajal (supra)* under the head of loss of marriage prospects, it was held as follows;

“Loss of marriage prospects

28. The Tribunal has awarded Rs 3,00,000 for loss of marriage prospects. We see no reason to interfere with this finding.”

Hence, for loss of marital prospects and marital happiness, I deem it appropriate to Award ₹ 3,00,000/- (Rupees three lakhs) only, instead of the ₹ 2,00,000/- (Rupees two lakhs) only, awarded by the Learned Claims Tribunal which is accordingly set aside.

(xv) The Learned Claims Tribunal granted ₹ 2,00,000/- (Rupees two lakhs) only, as **“Future medical expenses”**. In *Kajal*

(*supra*), it is noticed that the Claimant who also suffered from 100% disability was awarded ₹ 2,00,000/-(Rupees two lakhs) only, by the Learned Claims Tribunal under the head. The Supreme Court disappointed by the amount awarded for the purpose held as follows;

“Future medical treatment

29. The claimant has been awarded only Rs 2,00,000 under this head. This amount is a pittance. Keeping in view the nature of her injuries and the fact that she is bedridden this child is bound to suffer from a lot of medical problems. True it is that there is no evidence in this regard but there can hardly be such evidence. She may require special mattress which will have to be changed frequently. In future as this girl grows, she may face many other medical issues because of the injuries suffered in the accident. Keeping in view her young age and assuming she would live another 50 to 60 years, it would not be unjust to award her Rs 5,00,000 for future medical expenses.”

(xvi) Adhering to the above observation, it would not be unjust to award ₹ 3,00,000/-(Rupees three lakhs) only, for future medical expenses considering that the Claimant in his evidence on affidavit, has stated that on account of the accident, he is bedridden and not able to perform his day to day works for which he has to rely on his parents. In view of this amount being awarded, the sum of ₹ 2,00,000/-(Rupees two lakhs) only, granted by the Learned Claims Tribunal towards food and nourishment is set aside.

(xvii) There is no reason to interfere with the ₹ 3,00,000/- (Rupees three lakhs) only, granted by the Learned Claims Tribunal towards loss of expectation of life.

7. Hence, the compensation worked out by the Learned Claims Tribunal and this Court under the “**other heads**” are juxtaposed below for clarity:-

Learned Claims Tribunal		High Court	
1. Actual medical expenses	₹ 50,356/-	1. Actual medical expenses	₹ 50,356/-
2. Future medical expenses	₹ 2,00,000/-	2. Future medical expenses	₹ 3,00,000/-
3. Pain and suffering	₹ 2,00,000/-	3. Pain, suffering, and loss of amenities	₹ 6,00,000/-
4. Loss of amenities and enjoyment of life including loss of marital prospects and marital happiness	₹ 2,00,000/-	4. Loss of marriage prospects	₹ 3,00,000/-
5. Conveyance/attendant charges	₹ 2,00,000/-	5. Attendant charges	₹ 32,40,000/-
6. Food and nourishment	₹ 2,00,000/-	6. Loss of expectation of life	₹ 3,00,000/-
7. Loss of expectation of life	₹ 3,00,000/-		
Total	₹ 13,50,356/-	Total	₹ 47,90,356/-

8. The total compensation would be as detailed hereinbelow;

(i) The "loss of earnings" and "future prospects", i.e., ₹ 30,24,000/- (Rupees thirty lakhs and twenty four thousand) only, and "actual medical expenses", i.e., ₹ 50,356/- (Rupees fifty thousand, three hundred and fifty six) only, awarded by the Learned Claims Tribunal are not in dispute thereby the amount remains the same i.e., ₹ 30,74,356/- (Rupees thirty lakhs, seventy four thousand, three hundred and fifty six) only.

(ii) Under the "other heads", the amounts are computed and modified as follows;

Add Future medical expenses [In terms of the Judgment in Kajal (<i>supra</i>)]	(+)	₹ 3,00,000.00
Add Pain, suffering and loss of amenities [In terms of the Judgment in Kajal (<i>supra</i>)]	(+)	₹ 6,00,000.00
Add Loss of marriage prospects [In terms of the Judgment in Kajal (<i>supra</i>)]	(+)	₹ 3,00,000.00
Add Attendant charges [For one attendant in terms of the Judgment in Kajal (<i>supra</i>)]	(+)	₹ 32,40,000.00
Add Loss of expectation of life	(+)	₹ 3,00,000.00
	Total	= ₹ 47,40,000.00

(Rupees forty seven lakhs and forty thousand) only.

(iii) Adding ₹ 30,74,356/- (*supra*) and the amounts computed under the "other heads" i.e., ₹ 47,40,000/-, the amount totals to ₹ 78,14,356/- (Rupees seventy eight lakhs, fourteen thousand, three hundred and fifty six) only.

9. Section 168 of the Motor Vehicles Act, 1988, provides as follows;

“168. Award of the Claims Tribunal.—(1) On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 163 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

.....” (emphasis supplied)

(i) The Learned Claims Tribunal in terms of the above Section is clothed with the responsibility of granting “just compensation”. The concept of just compensation has been succinctly explained by the Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and Others**¹¹ as follows;

“55. The conception of “just compensation” has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, “just compensation”. The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in *Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002]* and it has been approved in *Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826]* . The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. **It is a well-accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach.** There has to be a balance between the two extremes, that is, a windfall

¹¹ (2017) 16 SCC 680

and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the courts is difficult and hence, an endeavour has been made by this Court for standardisation which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardisation keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardisation" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age." (emphasis supplied)

(ii) In *Pappu Deo Yadav vs. Naresh Kumar and Others*¹², the Supreme Court observed that;

"8."just compensation" should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face their lives."

(iii) In *Kajal (supra)*, the Supreme Court held as follows;

"33. We are aware that the amount awarded by us is more than the amount claimed. However, it is well settled law that in the motor accident claim petitions, the Court must award the just compensation and, in case, the just compensation is more than the amount claimed, that must be awarded especially where the claimant is a minor."

(iv) It thus concludes that the endeavour of the Court should be to appropriately and justly compensate the Claimant ensuring at the same time that it is neither a windfall nor a pittance. It ought to place the victim in as near a position as she or he was before the occurrence of the accident.

10. From the facts of the case at hand, it emanates that the Claimant was a mere boy of eighteen years when he met with the unfortunate accident. It is trite that following the accident, he cannot lead a normal life being a Paraplegic and the observation in Exhibit 10 certificate for "Persons with Disabilities" records that his

¹² (2022) 13 SCC 790

condition is not likely to improve. He has also been shorn of his capacity to earn a living for the rest of his life and has now become a fully dependant person on account of his debilitated physical condition. The contents of the Exhibit 10 the disability certificate have not been disputed nor demolished under cross-examination by any of the opposing parties before the Learned Claims Tribunal.

11. Consequently, it is ordered that the Insurance Company-Appellant shall deposit the enhanced compensation amount computed at ₹ 78,14,356/-(Rupees seventy eight lakhs, fourteen thousand, three hundred and fifty six) only, as detailed above to the Claimant, within a period of one month from today, with interest @ 9% per annum, failing which the Insurance Company-Appellant shall pay interest @ 12% per annum, from the date of filing of the Claim Petition i.e., 14-10-2019, till full realization, duly deducting the amounts, if any, already paid by the Insurance Company-Appellant to the Claimant.

12. Appeal is disposed of in the aforesaid terms.

13. No orders as to costs.

14. Pending applications, if any, also stand disposed of accordingly.

15. Copy of this Judgment be forwarded to the Learned Claims Tribunal for information, along with its records.

(Meenakshi Madan Rai)
Judge
10-11-2023

Approved for reporting :**Yes**