

# THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 20<sup>th</sup> February, 2025

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

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MAC App. No.04 of 2024

**Appellant** : The Branch Manager,  
Shriram General Insurance Company Limited

**versus**

**Respondents** : Dil Maya Rai and Others

Appeal under Section 173 of the Motor Vehicles Act, 1988

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**Appearance**

Mr. Rahul Rathi, Advocate for the Appellant.

Mr. Sushant Subba, Advocate for the Respondents No.1 and 2.

Mr. Mahesh Subba, Advocate for the Respondent No.3.

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## JUDGMENT (ORAL)

Meenakshi Madan Rai, J.

**1.** The Respondent No.1, who was the Claimant No.1 before the Learned Motor Accidents Claims Tribunal (hereinafter, "MACT") is a 51 year old lady, injured victim of a vehicular accident, which occurred on 23-10-2020. On that day, she was working by the roadside, when a Mahindra Bolero vehicle, driven by the Respondent No.3 hit her, on account of which she lost vision in both her eyes. A Certificate of Disability was issued by the Department of Ophthalmology, HC, HS & FW Department, District Hospital Gyalshing, Government of Sikkim, dated 24-01-2022, certifying that she has sustained 90% permanent physical impairment due to the above circumstance. The Respondent No.2 is the Power of Attorney holder for the Respondent No.1. The Learned MACT granted a total compensation of ₹ 32,46,000/- (Rupees thirty two lakhs and forty six thousand) only, to the Respondent No.1.

**2.** Aggrieved by the computation of compensation and assailing it, Learned Counsel for the Appellant urges that the computation is erroneous for the reason that, although the loss of earnings has been calculated @ ₹ 300/- (Rupees three hundred) only, per day, for the period October, 2020, to June, 2022, however her daily wages were placed at and calculated @ ₹ 500/- (Rupees five hundred) only, for the period July, 2022, to October, 2023, without the Respondent No.1 having made any claims in her averments. While doing so the MACT relied upon a Notification of the Labour Department, Government of Sikkim, dated 11-07-2022, *sans* pleadings, disregarding the fact that the accident had occurred prior in time to the issuance of the Notification thereby causing serious prejudice to the Appellant-Insurance Company and an error in computation.

**(i)** Further, while calculating the compensation, the "total annual income" has been computed as ₹ 4,29,000/- (Rupees four lakhs and twenty nine thousand) only, by calculating ₹ 300/- (Rupees three hundred) only, per day, for "twenty-one months" and @ ₹ 500/- (Rupees five hundred) only, per day, for "sixteen months", resulting in a clear error in calculating the loss of income "per annum". The compensation is accordingly required to be modified. Learned Counsel for the Appellant however had no argument with the sum of ₹ 1,00,000/- (Rupees one lakh) only, granted by the Learned MACT towards "Pain and Suffering" nor were any other grounds pressed in Appeal.

**3.** Learned Counsel for the Respondents No.1 and 2, while admitting that there has been an error with regard to the net annual income projected by the Learned MACT as ₹ 4,29,000/-

(Rupees four lakhs and twenty nine thousand) only, which is in fact not the annual income, however apart from that, there is no reason for the Appellant to assail the invocation of the Notification dated 11-07-2022 *supra* by the Learned MACT for calculating loss of income @ ₹ 500/- (Rupees five hundred) only, per day. The award may be modified only to the extent of setting aside the calculation with regard to the annual income.

**4.** Learned Counsel for the Respondent No.3 had no specific submissions to advance.

**5.** Having heard the opposing parties at length and considered the submissions, it is apposite to notice as pointed out by Learned Counsel for both parties that, indubitably there is an error in the computation of compensation as the net annual income for both phases reflected above would not be ₹ 4,29,000/- (Rupees four lakhs and twenty nine thousand) only, the computation having been erroneously added for twenty-one months @ ₹ 300/- (Rupees three hundred) only, per day and sixteen months @ ₹ 500/- (Rupees five hundred) only, per day.

**(i)** That having been said, considering that at the time of the accident she was actually earning ₹ 300/- (Rupees three hundred) only, per day, it would be in the fairness of things to compute her income @ ₹ 9,000/- per month. Hence, compensation for loss of income would be as follows;

$$\text{₹ } 9000/- \times 12 \text{ months} = \text{₹ } 1,08,000/- \text{ per annum}$$

$$\text{₹ } 1,08,000/- \times 11$$

$$= \text{₹ } 11,88,000/-$$

[Multiplier of '11' adopted - in terms of Paragraph 42 of the Judgment of Sarla Verma (Smt) and Others vs. Delhi Transport Corporation and Another : (2009) 6 SCC 121]

**(ii)** 10% addition, i.e., ₹ 1,18,800/- (₹ 11,88,000/- x 10%) is made towards future prospects in terms of the decision in

**National Insurance Company Limited vs. Pranay Sethi and Others**<sup>1</sup>

wherein it was *inter alia* held that;

“59. In view of the aforesaid analysis, we proceed to record our conclusions:

**59.1.** .....

**59.2.** .....

**59.3.** .....

**59.4.** In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years **and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation.** The established income means the income minus the tax component.

**59.5.** .....

**59.6.** .....

**59.7.** .....

**59.8.** .....”

[emphasis supplied]

(iii) Resultant, loss of earnings and future prospects add upto ₹ 13,06,800/- [₹ 11,88,000/- + ₹ 1,18,800/-].

6. While considering compensation under the head of “Pain and Suffering”, reference is made to the observation of the Supreme Court in **Kajal vs. Jagdish Chand and Others**<sup>2</sup> which held 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.* [(2014) 14 SCC 396], 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 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.”

<sup>1</sup> (2017) 16 SCC 680

<sup>2</sup> (2020) 4 SCC 413

The Supreme Court having analysed thus, thereafter went on to award ₹ 15,00,000/- (Rupees fifteen lakhs) only, under the head of "pain and suffering". Bearing in mind the facts and circumstances of this case and the age of the Respondent No.1 unarguably being 51, I am of the considered view that ₹ 6,00,000/- (Rupees six lakhs) only, would suffice to compensate her for "Pain and Suffering". I hasten to add that this Court is not oblivious of the fact that no amount of monetary compensation can recoup the physical loss and mental trauma experienced by her while having to live and cope with the blindness, depriving her of her normal life, however keeping in mind a myriad of circumstances, the amount will at least augment her day to day expenses. The Learned MACT had granted ₹ 1,00,000/- (Rupees one lakhs) only, for Pain and Suffering, in light of the foregoing discussions the amount now stands escalated to ₹ 6,00,000/- (Rupees six lakhs) only.

**7.** It is worthwhile noticing that although the Respondent No.1 suffered 90% injuries, no compensation was granted by the Learned MACT to her, under the head of "Attendant charges" as done in *Kajal* (*supra*). The Supreme Court while considering compensation under such head had held 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* [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."

**(i)** In light of the afore-extracted observation of the Supreme Court and that at Paragraphs 23, 24 and 25 of *Kajal (ibid)*, the Respondent No.1 being 51 years at the time of accident, it would be appropriate to place attendant charges at ₹ 7,56,000/- (Rupees seven lakhs and fifty-six thousand) only, @ ₹ 9,000/- per month, for a period of seven years, till she attains the age of 58.

**8.** I am also of the considered view that a sum of ₹ 4,00,000/- (Rupees four lakhs) only, ought to be awarded for "future medical treatment" in light of the observation made in *Kajal (ibid)* at Paragraph 29.

**(i)** ₹ 3,11,933/- (Rupees three lakhs, eleven thousand, nine hundred and thirty three) only, has admittedly already been paid by Respondent No.3, the owner of the vehicle to the Respondent No.1 towards medical expenses and thereby requires no further discussions as no party has made any further submission on this aspect.

**9.** Consequently, the compensation granted by the Learned MACT is set aside and the amount which is found to be "just compensation" is computed as follows;

Loss of Earnings and Future Prospects	₹	13,06,800.00
<b>Add</b> Pain, Suffering and Loss of Amenities [in terms of the Judgment of <i>Kajal (supra)</i> ]	<b>(+)</b> ₹	6,00,000.00
<b>Add</b> Future Medical Expenses [in terms of the Judgment of <i>Kajal (supra)</i> ]	<b>(+)</b> ₹	4,00,000.00
<b>Add</b> Attendant Charges [in terms of the Judgment of <i>Kajal (supra)</i> ]	<b>(+)</b> ₹	<u>7,56,000.00</u>
<b>Total</b>	<b>= ₹</b>	<b><u>30,62,800.00</u></b>

**(Rupees thirty lakhs, sixty two thousand and eight hundred) only.**

**10.** This Court has in all matters of motor accident cases uniformly awarded interest rate @ 9%. Consequently, interest of 7% imposed by the Learned MACT is set aside and in its stead 9% interest is imposed on the award, which shall be effective from the date of filing of the Claim Petition before the Learned MACT, i.e., 30-05-2022, till full realisation of the compensation amount.

**11.** The Appellant-Insurance Company is directed to pay the above compensation with interest as ordered, to the Respondent No.1, within one month from today, failing which, it shall pay simple interest @ 12% per annum, from the date of filing of the Claim Petition, till full realisation.

**12.** Amounts, if any, already paid by the Appellant-Insurance Company to the Respondent No.1, shall be duly deducted from the awarded compensation. This does not include the medical expenses of Respondent No.1 paid by the Respondent No.3.

**13.** Appeal allowed and disposed of with the above modifications.

**14.** No order as to costs.

**15.** Copy of this Judgment be sent forthwith to the Learned MACT for information along with its records.

**( Meenakshi Madan Rai )**  
**Judge**  
20-02-2025

Approved for reporting : **Yes**