

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision : 30<sup>th</sup> September, 2011

**+ FAO.No.408/2002**

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SUNIL KUMAR

...Appellant

Through : Mr. S.N. Parashar, Adv.

versus

INDER SINGH & ORS.

...Respondents

Through : Mr. D.K. Sharma, Adv.  
for R-3.

Ms. Manjusha Wadhwa,  
amicus curiae.

**+ FAO.No.350/1998**

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BAJRANG LAL

...Appellant

Through : Mr. Dinesh Kapoor, Adv.

versus

SEHDEV & ORS.

...Respondents

Through : Mr. K.L. Nandwani, Adv. for  
R-3.

**CORAM :-**

**THE HON'BLE MR. JUSTICE J.R. MIDHA**

- |    |                                                                       |            |
|----|-----------------------------------------------------------------------|------------|
| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | <b>YES</b> |
| 2. | To be referred to the Reporter or not?                                | <b>YES</b> |
| 3. | Whether the judgment should be reported in the Digest?                | <b>YES</b> |

## **JUDGMENT**

**J.R. MIDHA, J.**

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**FAO No.408/2002**

1. The appellant has challenged the award of the learned Tribunal whereby compensation of ₹1,10,642/- has been awarded to the appellant. The appellant seeks enhancement of the award amount.
2. On 21<sup>st</sup> January, 1993 at about 3:30 PM, the appellant was travelling as a pillion rider on a two wheeler scooter bearing No.DL-2SC-8258 when the said scooter was hit from behind by a truck No.DDL-6696. The appellant fell down and sustained serious/grievous injuries including fracture of right leg. The bone of his right leg entered in the stomach and both the testicles as well as the penis were damaged.
3. The Claims Tribunal has awarded a sum of ₹4,000/- towards medical expenditure, ₹6,642/- towards loss of earning for six months and ₹1,00,000 for disability for reproduction, mental torture and pain to the appellant. The total compensation awarded is ₹1,10,642/-.

4. Learned counsel for the appellant urged the following grounds at the time of the hearing of this appeal:-

- (i) The compensation for loss of earning capacity due to permanent disability be awarded.
- (ii) The compensation for loss of income during the period of treatment be enhanced.
- (iii) The compensation for medical expenses be enhanced.
- (iv) The compensation for conveyance and special diet be awarded.
- (v) The compensation for loss of reproduction, mental torture and pain be enhanced.
- (vi) The compensation for loss of marital life be awarded.
- (vii) The compensation for loss of enjoyment of life be awarded.

5. The appellant examined two witnesses before the Claims Tribunal. The appellant himself appeared in the witness box as PW-1 and deposed that his right leg came under the tyre of the truck and the truck dragged his scooter to a distance of

5/10 paces. The appellant was first taken to ESI Hospital and was thereafter shifted to Dr. Ram Manohar Lohia Hospital where he remained admitted for about three months. The appellant's right leg and thigh bone were fractured, bone of his leg entered into his stomach and both his testicles were damaged due to the accident. The appellant's penis was completely damaged in the accident. The appellant further stated that a major operation was conducted on his stomach to thighs at Dr. Ram Manohar Lohia Hospital. He remained in the oxygen room for 11 days as his condition was very serious and thereafter, he was shifted to the ward where he remained for about three months. Another operation was conducted on his right leg for insertion of steel rod, which was removed after three months. Thereafter, he was treated by a private doctor at Verma Clinic at Mangol Puri. The appellant deposed that he would require treatment throughout his life. The appellant claimed to have spent a sum of ₹1,00,000/-. The appellant proved the medical bills as Ex.PW1/1 to Ex.PW1/53 and the M.L.C. as Ex.PW1/54. At the time of the accident, the appellant was in the service of M/s Tag Garments, Mansarovar

Park earning ₹2,500/- p.m. but he has not been able to carry out his job after the accident. The appellant could not lift weight and do work with his hands due to stomach injuries. He could not run due to leg injuries and could not sit properly. The appellant was married at the time of the accident and was unable to perform his marital relations with his wife due to the damaged testicles. In his cross-examination, the appellant stated that his treatment at Dr. Ram Manohar Lohia hospital was free of charge, but he had to purchase medicines from outside. He got himself treated from private doctors for about one year and used to spend ₹100/- per visit. The appellant did not do any work after the accident and his wife was maintaining him. The appellant suffered 100% permanent disability due to injuries suffered by him.

6. PW-2, S. Mehta, Record Clerk, Dr. Ram Manohar Lohia Hospital, Delhi deposed that Sunil Kumar was admitted to Dr. Ram Manohar Lohia Hospital on 21<sup>st</sup> January, 1993 and was discharged on 10<sup>th</sup> March, 1993. PW-2 proved the case sheet, Ex.PW2/1. The disability certificate issued by Dr. Ram Manohar

Lohia Hospital was proved as Ex.PW2/2. The discharge summary was proved as Ex.PW2/3.

7. The condition of the appellant is described in the disability certificate, Ex.PW2/2 dated 30<sup>th</sup> January, 1996 issued by Dr. Ram Manohar Lohia Hospital, New Delhi which is reproduced as under:-

“Certified that Shri Sunil Kumar, aged 30 years, male, S/o Shri Pyare Lal, R/o K-969, Mongolpuri, New Delhi, has been medically examined on 11.01.96.

**He is a case of bilateral loss of testes because of trauma, patient cannot produce now. His disability for reproduction is 100% (HUNDRED PERCENT). Psychological problem because of loss of testes causing mental anguish 10% (TEN PERCENT) extra should be added.**

(DR. BISWAL)  
S.R SURGEON  
MEMBER

(DR. S.P. BAJAJ)  
CONS.BURSN. &  
PLASTIC SURGERY  
MEMBER

(DR. V.L. KOCHHAR)  
CONS.&HOD.ORTHO.)  
CHAIRMAN

CONTR. SIGN BY CIVIL SURGEON”

8. The appellant was examined by this Court on 6<sup>th</sup> May, 2011 when he stated that he was unable to do any work due to the permanent disability suffered in the accident.

9. Vide order dated 22<sup>nd</sup> March, 2010, this Court appointed Ms. Manjusha Wadhwa, Advocate as an Amicus Curiae to assist this Court. The learned Amicus Curiae has done extensive

research work and has submitted that the Guidelines of the Government of India published on 13<sup>th</sup> January, 2001 for evaluating permanent disabilities under Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, defines five categories of disablement, namely, visual impairment, locomotor/orthopedic disability, speech and hearing disability, mental retardation and multiple disabilities. The said guidelines did not define disability arising out the loss of sexual organs. The loss of sexual organs has also not been described in Schedule I to the Workmen's Compensation Act, 1923. The learned Amicus Curiae has submitted that according to the Medical Journals, the loss of testes result in loss of reproduction and side effect of breast enlargement, hot flashes, infertility, loss of sexual interest, osteoporosis, loss of muscle mass and weight gain, which materially affect the functional disability. It is submitted that in various countries, such as Australia and USA, loss of sexual organs is described as a disability and the percentage of disability has been given for assessing the compensation. In Illinois, fifth most populous state of USA, the Illinois Workers'

Compensation Commission provides for compensation equal to 162 weeks of the worker's income as compensation in case of loss of both testicles. Workers' Compensation Act, 1951 of Australian Capital Territory stipulates the disability arising out of loss of penis or both testicles as 47%. Workers Rehabilitation and Compensation Act, 1986 of South Australia provides for minimum compensation for loss of genital organs as US\$ 1,40,320. The Accident Compensation Act, 1985 of Victoria in Australia provides for compensation of US\$ 1,18,570 for loss of penis or both testicles. The Workers' Compensation and Rehabilitation Act, 2003 of Queensland in Australia defines the disability to be 50% for loss of genital organs and compensation of US\$ 1,00,000 for the same. In New South Wales in Australia, the permanent disability for the loss of penis or both testicles is taken to be 47% and the compensation of US\$ 47,000 is provided for the same. The JSB Guidelines for assessment of general damages in personal injury cases in UK provides for compensation up to £96,000/- for total loss of anal function and dependence on colostomy and £96,000 for loss of function and control of urinary bladder.

The learned Amicus Curiae has also referred to the following two South African cases:

9.1 In ***AA Mutual Insurance Association Ltd v Van Jaarsveldt 1974 (4) SA 729***, the plaintiff, aged 34 years, sustained a dislocation of the cervical spine at C 4/5 level with an incomplete tetraplegia, a large segmental fracture of the left femur which also separated the greater trochanter, a fracture of the superior and inferior pubis on the right side of the pelvis, a fracture of the left 5<sup>th</sup> rib, and a fracture of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> transverse processes. His treatment consisted of skull traction for a couple of months which was very painful. He was in hospital for six months, whereafter he was discharged walking with only a stick. The fractured femur was reduced and an intramedullary nail inserted. A catheter was inserted too and a vascular tube passed. He was completely paralysed for a period of 3½ months, whereafter he was able to walk on crutches before being able to walk with a stick. He had urinary tract infection and inflammation of the bladder. His sexual potency was also affected. The claimant was left with very serious disabilities. He had a slight spastic paraplegia

involving his dominant side and his right arm and hand were so badly affected that they could be described as a nuisance. His right leg was also affected by the same spastic haemaplegia. He walked with a tendency to drag the foot which, together with a clawing of the toes, caused his foot to catch occasionally while walking and resulted in his stumbling and falling. He could not walk more than 200 yards at a stretch. It was difficult for him to sit on a chair for too long. He had severe recurring cramps in both legs, particularly at night. The court awarded him ₹8,66,000/- for the permanent disability.

9.2 In **Swanepoel v Road Accident Fund (1271/2004) [2008] ZANCHC 34**, the claimant, Johannes Frederick Theron Swanepoel, instituted action against the defendant, the Road Accident Fund (“RAF”), for damages suffered by him in the roads. The claimant could not control his bladder and bowels and sometimes soiled himself. The claimant also became impotent. The High Court observed that due to sexual impotence, the claimant was unable to enjoy normal sexual relations with his wife. Inevitably, this had caused serious

strains in their once happy and blissful marriage. The claimant also had to wear nappies for the rest of his life. Due to the claimant's incontinence which was the result of the accident, the claimant often soiled himself. The High Court awarded the general damages of ₹8,00,000/- to the claimant.

**FAO No.350/1998**

10. The appellant has challenged the award of the learned Tribunal whereby compensation of ₹1,47,000/- has been awarded to him. The appellant seeks enhancement of the award amount.

11. The accident dated 10<sup>th</sup> May, 1999 resulted in grievous injuries to the appellant. The appellant was travelling on his two-wheeler scooter bearing No.DBF 1033 near Old Yamuna Bridge while going from Yamuna Bazar to Shahdara when he was crushed under the front left wheel of bus No.DBP 243 resulting in grievous injuries including fracture of pelvis bone of the appellant. The left testicle, rectum and urinary bladder were crushed. The appellant also suffered grievous injuries on the joint of left thigh and testicles. The appellant underwent six surgeries due to the injuries suffered in the accident.

12. The learned Tribunal has awarded a sum of ₹18,600/- towards loss of earnings, ₹7,700/- towards loss on account of brother's leave, ₹70,386/- towards expenditure on treatment, special diet and conveyance, ₹20,000/- towards loss of amenities of life and ₹30,000/- towards general damages to the appellant. The total compensation awarded is ₹1,47,000/-.

13. The learned counsel for the appellant has urged the following grounds at the time of hearing of this appeal:-

- (i) The compensation for loss of earning capacity due to permanent disability be awarded.
- (ii) The compensation for loss of income during the period of treatment of three and a half years be awarded.
- (iii) The compensation for future treatment be awarded.
- (iv) The compensation for pain and suffering be awarded.
- (v) The compensation for loss of amenities of life be enhanced.
- (vi) The compensation for impotency and loss of matrimonial prospects be awarded.

14. The appellant was hospitalized on seven occasions for treatment of the injuries suffered in the accident. The brief summary of the hospitalization of the appellant is as under:-

(i) 10<sup>th</sup> May, 1989 to 26<sup>th</sup> June, 1989 - After the accident, the appellant was taken to LNJP Hospital, where he remained till 26<sup>th</sup> June, 1989 for fracture of pelvis bone and crushing of the left testicle, laceration of anal canal and rupture of urethra. The medical record in this regard is Ex.PW1/3.

(ii) 6<sup>th</sup> August, 1989 to 11<sup>th</sup> August, 1989 - The appellant was again admitted in LNJP Hospital for colostomy, a surgical procedure for connecting the colon on to the anterior abdominal wall, leaving the patient with an opening of the colon in abdomen called "stoma". The discharge slip of LNJP Hospital is Ex.PW1/34.

(iii) 21<sup>st</sup> August, 1989 to 23<sup>rd</sup> August, 1989 - The appellant was again admitted in LNJP Hospital for distal colonogram, a procedure in which water soluble contrast is instilled into a defunctioned colon via a stoma. A small balloon catheter is inserted into the distal stoma, the balloon inflated, and contrast injected by hand to adequately distend the

defunctioned loop and in the case of anorectal atresia to demonstrate any fistula. The distal colonogram was done on 22<sup>nd</sup> August, 1989. The discharge summary of LNJP Hospital is Ex.PW1/35.

(iv) 10<sup>th</sup> February, 1990 to 27<sup>th</sup> February, 1990 - The appellant was again admitted in LNJP Hospital for Urethroplasty (an operation for repair of an injury or defect in the walls of the urethra which is end to end anastamosis). The discharge slip of LNJP Hospital is Ex.PW1/31.

(v) 12<sup>th</sup> March, 1990 to 17<sup>th</sup> March, 1990 - The appellant was again admitted in LNJP Hospital for MCU (Micturating Cysto-Urethrogram). The discharge slip of LNJP Hospital has been placed on record.

(vi) 13<sup>th</sup> June, 1990 to 7<sup>th</sup> July, 1990 - The appellant was admitted in LNJP Hospital for colostomy closure. The discharge slip of LNJP Hospital is Ex.PW1/32.

(vii) 13<sup>th</sup> September, 1991 to 18<sup>th</sup> December, 1991 - The appellant was again admitted in LNJP Hospital for incisional hernia. The discharge slip of LNJP Hospital is Ex.PW1/33.

15. The urinary bladder of the appellant was completely

damaged due to the injuries suffered in the accident, due to which the appellant was unable to pass the urine through penis and a catheter was inserted in the urinary bladder every 7<sup>th</sup>/10<sup>th</sup> day for more than 1½ years after the accident. The appellant's urinary system has not healed with the treatment and he passes urine with difficulty.

16. The colostomy tube was inserted for passing of the stool every 10/15 days for more than 1½ years after the accident. The appellant had to pass the stool six to eight times a day. The appellant cannot hold the stool and urine and, therefore, could not remain outside his house for more than two hours at a stretch.

17. The appellant has become impotent due to the accident and, therefore, he could not marry. The appellant has to undergo urethral dilatation every six months. The skin inside the penis grows after every one/two months and the excess skin is removed by a minor operation and this may continue lifelong.

18. The appellant appeared in the witness box before the learned Trial Court as PW1 and proved the medical record, the

treatment taken by him as well as the expenditure on the treatments. The appellant deposed that he was earning ₹2,500/- per month at the time of the accident, but did not do any work for three/four years after the accident and thereafter, he was earning ₹800/- to ₹900/- per month. The appellant became impotent due to the accident. The appellant was unmarried at the time of the accident. The appellant proved the medical record and the expenses on the treatment as Ex.PW1/3 to PW1/345.

19. The appellant also examined Dr. Kapil Kumar from LNJP Hospital, who proved that the appellant had become permanently impotent. The PW3 proved Ex.PW1/1, which is a Certificate issued by Maulana Azad Medical College. The condition of the appellant after undergoing seven surgeries is described in the Certificate dated 12<sup>th</sup> August, 1994 by Maulana Azad Medical College in Ex.PW1/1 reproduced as under:-

“DEPARTMENT OF SURGERY  
Maulana Azad Medical College  
Bahadur Shah Zafar Marg, New Delhi-110002

Dated : 12.8.94

### CERTIFICATE

This is to certify that Bajranglal 26 year male had undergone multiple surgical procedures as a consequence of a Road side accident in 1989. He has undergone the following procedures.

- 1. Debridement & Toileting along with colostomy at the time of injury.**
- 2. Incisional Hernia repair.**
- 3. Urethroplasty.**
- 4. Internal urethrotomies.**
- 5. Urethrol dilatation.**

**As a consequence of this accident he has lost his potency.** This has also been investigated. The treatment for this condition is still underway.

(DR. R.C.M. KAZA)  
ASSOCIATE PROFESSOR  
L.N.J.P.N. Hospital  
New Delhi."

20. Vide order dated 14<sup>th</sup> January, 2010, this Court directed the Medical Superintendent of LNJP Hospital to constitute a Board to examine the appellant and to issue a certificate with respect to the disability suffered by him in the accident in pursuance to which a Board was constituted and the appellant was examined. The appellant was called upon to undergo a combined papaverine injection and penile doppler test which involved certain risks and, therefore, the appellant did not

undergo the said test. The appellant was examined by the Board and a report dated 15<sup>th</sup>/16<sup>th</sup> March, 2010 was submitted before this Court which is reproduced hereunder:-

“Sub : Regarding Assessment of the Disability by Medical Board in Lok Nayak Hospital, New Delhi, as per the Hon’ble High Court order dated 14.01.2010.

As per directions of the Hon’ble High Court Delhi vide order dated 14/01/2010 issued to the Medical Superintendent, Lok Nayak Hospital, New Delhi, to constitute a Medical Board for the medical examination/assessment of exact physical disability percentage of the petitioner, the candidate Sh.Bajrang Lal has been examined in detail and reviewed in the medical board dt. 28/1/10, 11/2/10 and 11/3/10 with investigations done. In this regard, the findings of the Medical Board are submitted as under:-

1. That the impotency could not be assessed because of non consent for Injection Papaverine and Penile Doppler evaluation, **however previous records mention presence of impotence as a consequence of trauma, which if occurs, is permanent in nature.**

**2. That there is anal incontinence leading to major disability and disturbance of social and personal life.**

**3. That there is left testicular atrophy.**

4. That there is no urinary system abnormality.

5. That there is no bony disability.

Items no.1, 2, 3 are significant deficits but they do not fit into the classification of Disability as published in the Gazette notification of India.”

21. The Board constituted by the LNJP Hospital has opined that there is anal incontinence leading to major disability of social and personal life as well as left testicular atrophy. However, since the said disability does not fall in the classification of disability as published by the Gazette notification, the Board has not determined the percentage of disability.

22. Vide order dated 6<sup>th</sup> August, 2010, this Court permitted the appellant to place the additional evidence on record with respect to his present condition as well as the treatment taken after the award of the Claims Tribunal.

23. The appellant submitted the additional evidence by way of affidavit before this Court which was proved as Ex.CW1/1. The relevant portion of the additional evidence led by the appellant is as under:-

“2. That I met with an accident on 10.5.1989 as mentioned in my petition and as a consequence of the accident I have become impotent and have suffered annal incontinence, left testicular atrophy and other disabilities as mentioned in the medical record.

3. That I had to undergo various surgical operations from 10-5-1989 to 18-12-1991 and during that period I remained confined to bed and could not work for approximately 3-1/2 years after the accident.

4. That due to the accident my intestines, stomach system, urinary system have become very weak and I pass stool about 12 to 14 times a day and I cannot hold my stool or urine even for a few minutes. I have stated so even in my evidence recorded as PW-1 on 6-1-1995. I am continuously suffering from diarrhea and other stomach problems.

5. That I have to undergo Urethral dilatation approximately after every six months and I incur medical expenses regularly and this problem of diarrhea etc and dilatation would continue throughout my life.

6. That I am unmarried because of impotency suffered by me and I feel very lonely, dejected and low because of disability.

7. That I am not engaged in any job and I am not earning anything for the last about five years as I am physically very weak and not in position to move out of the house. I

have no control over my stool and urine.

8. That I have filed medical record up to 18-11-1997 of LNJP Hospital, Delhi and I do not possess any medical record from 18-11-97 till date.

9. I submitted myself to the Medical Board of LNJP on 28/1/10, 11/2/10 and 11/3/10 and on other dates and I undertook various medical examinations as directed by the Board.

10. I refused to give my consent to the combined papaverine Injection and Penile Doppler test as I was told by Doctors that since I am accident victim and have undergone several surgical operations, the said tests may endanger my life.

11. That my medical record Exhibit PW1/27 shows that on 21/5/93 Papverine test was recommended and my consent was obtained for such test on 2/6/93.

12. I submit that Dr.Kaza issued certificate dated PW1/1 on 12-8-94 regarding my impotency after carrying out investigations.

13. I submit that Medical Board of LNJP assessed my medical record and in para no 1 of the report dtd 15/3/10 observed that previous records mention presence of impotence as a consequence as consequence of trauma, which if occurs, is permanent in nature.

14. I submit that the Board conducted Urethral dilatation and the relevant record is available with the Board."

24. The learned counsel for the appellant has placed on record the material downloaded from the internet to show the meaning of the medical terms used by the doctors in respect of the appellant and the side-effects of papaverine injection, which are reproduced hereunder:-

(i) Incontinent : In the website [www.MedicineNet.com](http://www.MedicineNet.com), “Incontinent” has been described as “unable to control excretions, to hold urine in the bladder or keep feces in the rectum”.

(ii) Anal Incontinence : In the website [www.MedicineNet.com](http://www.MedicineNet.com), “anal incontinence” has been described as “inability to hold feces in the rectum. This is due to failure of voluntary control over the anal sphincters. This failure results in the untimely passage of feces and gas”.

(iii) Faecal Incontinence : In the website <http://en.wikipedia.org/wiki/Fecal-Incontinence>, “Faecal Incontinence” has been described as “the loss of regular control of the bowels. Involuntary excretion and leaking are common occurrences for those affected. Subjects relating to defecation are often socially unacceptable, thus those affected

may be beset by feeling of shame and humiliation. Some do not seek medical help and instead attempt to self-manage the problem. This can lead to social withdrawal and isolation, which can turn into cases of agoraphobia. Such effects may be reduced by undergoing prescribed treatment, taking prescribed medicine and making dietary changes”.

(iv) Penile Doppler Test : In the website <http://mydoctortells.com/penile-doppler>, “penile doppler test” is described as a sophisticated test to measure the blood flow in and out of the penis. The test gives important information as to the nature of penile function, both in the erect and non-erect state. Intracavernosal Injection of Vasoactive substance like Papaverine is the main treatment for Erectile Dysfunction. Priapism is a risk associated with intra penile injection. Priapism is the presence of a persistence, usually painful, erection of the penis unrelated to sexual stimulation or desire. It is a true urologic emergency that may lead to permanent erectile dysfunction and penile necrosis, if left untreated.

(v) The side effects of Papaverine injection are described in <http://www.rxlist.com/papaverine-injection-drug.html> as

“general discomfort, nausea, abdominal discomfort, anorexia, constipation or diarrhea, skin rash, malaise, vertigo, headache, intensive flushing of the face, perspiration, increase in the depth of respiration, increase in heart rate, a slight rise in blood pressure, and excessive sedation”.

25. **LAW WITH RESPECT TO GRANT OF COMPENSATION IN INJURY CASES**

The law with respect to the grant of compensation in injury cases is well-settled. The injured is entitled to pecuniary as well as non-pecuniary damages. Pecuniary damages also known as special damages are generally designed to make good the pecuniary loss which is capable of being calculated in terms of money whereas non-pecuniary damages are incapable of being assessed by arithmetical calculations. The pecuniary or special damages, generally include the expenses incurred by the claimants on his treatment, special diet, conveyance, cost of nursing/attending, loss of income, loss of earning capacity and other material loss, which may require any special treatment or aid to the insured for the rest of his life. The general damages or the non-pecuniary loss include the compensation for mental or physical shock, pain, suffering,

loss of amenities of life, disfiguration, loss of marriage prospects, loss of expected or earning of life, inconvenience, hardship, disappointment, frustration, mental stress, dejection and unhappiness in future life, etc. The above list is not exhaustive and there may be special or additional circumstances depending on the facts in each case.

26. In the case of ***Raj Kumar v. Ajay Kumar & Anr., (2011) 1 SCC 343***, the Supreme Court laid down the following general principles for computation of compensation in injury cases:-

**“General principles relating to compensation in injury cases**

4. The provision of the Motor Vehicles Act, 1988 ('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 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. (See C. K. Subramonia Iyer v. T. Kunhikuttan Nair – AIR 1970 SC 376, R. D. Hattangadi v. Pest Control (India) Ltd. - 1995 (1) SCC 551 and Baker v. Willoughby – 1970 AC 467).

5. The heads under which compensation is awarded in personal injury cases are the following:-

**Pecuniary damages (Special Damages)**

- (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.
- (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:
  - (a) Loss of earning during the period of treatment;
  - (b) Loss of future earnings on account of permanent disability.
- (iii) Future medical expenses.

### **Non-pecuniary damages (General Damages)**

- (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
- (v) Loss of amenities (and/or loss of prospects of marriage).
- (vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses – item (iii) – depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages – items (iv), (v) and (vi) – involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered

by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case.”

27. In ***R.D. Hatangadi v. Pest Control (India) Pvt. Ltd., I (1995) ACC 281***, the Supreme Court held that:-

“Broadly speaking, while fixing the amount of compensation payable to a victim of an accident the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are capable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant; (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of

injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame.

In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards."

28. In the case of ***Common Cause, A Registered Society v. Union of India, AIR 1999 SC 376***, the Supreme Court held that:-

"121. The object of an award of damages is to give the plaintiff compensation for damage,

loss or injury he has suffered. The elements of damage recognized by law are divisible into two main groups: pecuniary and non-pecuniary loss is not so calculable. While the pecuniary loss is capable of being arithmetically worked out, the non-pecuniary loss is not so calculable. Non-pecuniary loss is compensated in terms of money, not as a substitute or replacement for other money, but as a substitute, what McGregor says, is generally more important than money: it is the best that a court can do.

29. In ***Nagappa v. Gurudayal Singh and Ors., AIR 2003***

**SC 674**, the Supreme Court held that:-

“26. While calculating such damages, the Tribunal/court is required to have some guesswork taking into account the inflation factor. This aspect is well discussed by M.J. Rao, J. (as he then was) in *P. Satyanarayana v. I. Babu Rajendra Prasad and Anr.* 1988 ACJ 88. The learned Judge has given a Classification of Injuries: A Useful Guide and has observed thus:-

24. If a collection of cases on the quantum of damages is to be useful, it must necessarily be classified in such a way that comparable cases can be grouped together. No doubt, no two cases are alike but still, it is possible to make a broad classification which enables one to bring comparable awards together. Such classifications have been

made by Bingham in his Motor Claims Cases, Munkman in his Employer's Liability and Kemp & Kemp in their Quantum of Damages. (Munkman p.181).

26. (sic) Cases relating to injuries have been classified into four categories, i.e.: (a) total works; (b) partial wrecks and (c) where limbs and eyes and other specific parts of the body are lost, which can be sub-grouped according to the type of limb lost and (b) smaller injuries which cannot be specifically grouped but for which compensation can be assessed by comparison with injuries of loss of limbs, e.g., comparing permanent 'wrist injuries' with 'loss of hand', or comparing a temporary broken arm with the loss of the arm etc. Such comparisons are often made by judges. Munkman points out that in America, Mr. Melvin M. Belli, an eminent lawyer, classified injuries into 11 categories as (1) Back; (2) Traumatic amputation of leg; (3) Paralysis; (4) Hand or arm off; (5) Death; (6) Multiple fractures; (7) Burns; (8) Personality change; (9) Blindness; (10) Brain injury and (11) Occupation diseases. By 1967, awards (say) for blindness had risen to 930,000 dollars (Munkman pp. 181-182). Today after 20 years, these awards must have gone up further. The 'total wreck' category comprises of cases of complete incapacity for work and virtually no

enjoyment of life, e.g., paralysis, severe brain injury causing insanity, multiple injuries leaving the victim a total cripple. The 'partial wreck' cases are also cases where the entire body is affected and not one set of limbs alone as in the third category. Cases of brain injuries resulting in a personality change and multiple injuries with grave disfigurement fall in this second category. The third category does not present much difficulty for sub-classification. The fourth category deals with minor injuries in a limb which be compared with major injuries in the same limb.

30. In case of a permanent disability, percentage of permanent disability is determined on the basis of the disability certificate issued by the Medical Board constituted by the competent authority. The permanent disability also results in functional disability and the loss of earning capacity is determined on the basis of the loss of functional disability. In the case of **Raj Kumar v. Ajay Kumar & Anr.** (supra), the Supreme Court laid down the following principles for assessment of future loss of earnings due to permanent disability:-

### **“Assessment of future loss of earnings due to permanent disability”**

6. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('Disabilities Act' for short). But if any of the disabilities enumerated in section 2(i) of the

Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

7. The percentage of permanent disability is expressed by the Doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100%.

8. 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, 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. What requires to be assessed by the Tribunal is the effect of the permanently 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 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) SCALE 298 and *Yadava Kumar v.D.M., National Insurance Co. Ltd.* – 2010 (8) SCALE 567).

9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

10. 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 ability (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. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability,

but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.

11. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as

a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to 'hold an enquiry into the claim' for determining the 'just compensation'. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the 'just compensation'. While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Referencer for evaluation of permanent physical impairment (for example, the Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons, prepared by American Academy of Orthopedic Surgeons or its Indian equivalent or other authorized texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the first schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen. If a Doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference

to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and if so the percentage.

12. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give 'ready to use' disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local Hospitals/Medical Colleges)

and refer the claimant to such Medical Board for assessment of the disability.

13. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of

profession, occupation or job, age, education and other factors.

14. The assessment of loss of future earnings is explained below with reference to the following illustrations:-

Illustration 'A': The injured, a workman, was aged 30 years and earning ₹3000/- per month at the time of accident. As per Doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows:

- a) Annual income before the accident : ₹36,000/-.
- b) Loss of future earning per annum : ₹5400/-.  
(15% of the prior annual income)
- c) Multiplier applicable with reference : 17  
to age
- d) Loss of future earnings (5400 x 17) : ₹91,800/-

Illustration 'B': The injured was a driver aged 30 years, earning ₹3000/- per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed

his loss of future earning capacity as 75%.  
Calculation of compensation will be as follows:

- a) Annual income prior to the accident : ₹36,000/-
- b) Loss of future earning per annum : ₹.27,000/-  
(75% of the prior annual income)
- c) Multiplier applicable with reference : 17  
to age
- d) Loss of future earnings : (27000 x 17) : ₹4,59,000/-

Illustration 'C': The injured was 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows:

- a) Minimum annual income he would : ₹60,000/-  
have got if had been employed as  
an Engineer
- b) Loss of future earning per annum : ₹42,000/-  
(70% of the expected annual  
income) Multiplier applicable (25 years)
- c) Multiplier applicable (25 years) : 18
- d) Loss of future earnings:(42000 x 18) : ₹7,65,000/-

[Note : The figures adopted in illustrations (A) and (B) are hypothetical. The figures in Illustration (C), however, are based on actuals

taken from the decision in *Arvind Kumar Mishra (supra)*].

15. After the insertion of section 163A in the Act (with effect from 14.11.1994), if a claim for compensation is made under that section by an injured alleging disability, and if the quantum of loss of future earning claimed, falls under the second schedule to the Act, the Tribunal may have to apply the following principles laid down in Note (5) of the Second Schedule to the Act to determine compensation:

**“5. Disability in non-fatal accidents :**

The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents:-

Loss of income, if any, for actual period of disablement not exceeding fifty two weeks.

**PLUS either of the following :-**

(a) In case of permanent total disablement the amount payable shall be arrived at by *multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation*, or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.

Injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923.”

16. We may in this context refer to the difficulties faced by claimants in securing the presence of busy Surgeons or treating Doctors who treated them, for giving evidence. Most of them are reluctant to appear before Tribunals for obvious reasons either because their entire day is likely to be wasted in attending the Tribunal to give evidence in a single case or because they are not shown any priority in recording evidence or because the claim petition is filed at a place far away from the place where the treatment was given. Many a time, the claimants are reluctant to take coercive steps for summoning the Doctors who treated them, out of respect and gratitude towards them or for fear that if forced to come against their wishes, they may give evidence which may not be very favorable. This forces the injured claimants to approach 'professional' certificate givers whose evidence most of the time is found to be not satisfactory. Tribunals should realize that a busy Surgeon may be able to save ten lives or perform twenty surgeries in the time he spends to attend the Tribunal to give evidence in one accident case. Many busy Surgeons refuse to treat medico-legal cases out of apprehension that their practice and their current patients will suffer, if they have

to spend their days in Tribunals giving evidence about past patients. The solution does not lie in coercing the Doctors to attend the Tribunal to give evidence. The solution lies in recognizing the valuable time of Doctors and accommodating them. Firstly, efforts should be made to record the evidence of the treating Doctors on commission, after ascertaining their convenient timings. Secondly, if the Doctors attend the Tribunal for giving evidence, their evidence may be recorded without delay, ensuring that they are not required to wait. Thirdly, the Doctors may be given specific time for attending the Tribunal for giving evidence instead of requiring them to come at 10.30 A.M. or 11.00 A.M. and wait in the Court Hall. Fourthly, in cases where the certificates are not contested by the respondents, they may be marked by consent, thereby dispensing with the oral evidence. These small measures as also any other suitable steps taken to ensure the availability of expert evidence, will ensure assessment of just compensation and will go a long way in demonstrating that Courts/Tribunals show concern for litigants and witnesses.

### **Assessment of compensation**

17. In this case, the Tribunal acted on the disability certificate, but the High Court had reservations about its acceptability as it found that the injured had been treated in the Government Hospital in Delhi whereas the disability certificate was issue by a District

Hospital in the State of Uttar Pradesh. The reason given by the High Court for rejection may not be sound for two reasons. Firstly though the accident occurred in Delhi and the injured claimant was treated in a Delhi Hospital after the accident, as he hailed from Chirori Mandi in the neighbouring District of Ghaziabad in Uttar Pradesh, situated on the outskirts of Delhi, he might have continued the treatment in the place where he resided. Secondly the certificate has been issued by the Chief Medical Officer, Ghaziabad, on the assessment made by the Medical Board which also consisted of an Orthopedic Surgeon. We are therefore of the view that the High Court ought not to have rejected the said disability certificate.

18. The Tribunal has proceeded on the basis that the permanent disability of the injured claimant was 45% and the loss of his future earning capacity was also 45%. The Tribunal overlooked the fact that the disability certificate referred to 45% disability with reference to left lower limb and not in regard to the entire body. The said extent of permanent disability of the limb could not be considered to be the functional disability of the body nor could it be assumed to result in a corresponding extent of loss of earning capacity, as the disability would not have prevented him from carrying on his avocation as a cheese vendor, though it might impede in his smooth functioning. Normally, the absence of clear and sufficient evidence would have

necessitated remand of the case for further evidence on this aspect. However, instead of remanding the matter for a finding on this issue, at this distance of time after nearly two decades, on the facts and circumstances, to do complete justice, we propose to assess the permanent functional disability of the body as 25% and the loss of future earning capacity as 20%.

19. The evidence showed that at the time of the accident, the appellant was aged around 25 years and was eking his livelihood as a cheese vendor. He claimed that he was earning a sum of ₹3000/- per month. The Tribunal held that as there was no acceptable evidence of income of the appellant, it should be assessed at ₹900/- per month as the minimum wage was ₹891 per month. It would be very difficult to expect a roadside vendor to have accounts or other documents regarding income. As the accident occurred in the year 1991, the Tribunal ought to have assumed the income as at least ₹1500/- per month (at the rate of ₹50/- per day) or ₹18,000/- per annum, even in the absence of specific documentary evidence regarding income.

20. In the case of an injured claimant with a disability, what is calculated is the future loss of earning of the claimant, payable to claimant, (as contrasted from loss of dependency calculated in a fatal accident, where the dependent family members of the deceased are the claimants). Therefore there

is no need to deduct one-third or any other percentage from out of the income, towards the personal and living expenses.

21. As the income of the appellant is assessed at ₹18000/- per annum, the loss of earning due to functional disability would be 20% of ₹18000/- which is ₹3600/- per annum. As the age of appellant at the time of accident was 25, the multiplier applicable would be 18. Therefore, the loss of future earnings would be  $3600 \times 18 = ₹64,800/-$  (as against ₹55,080/- determined by the Tribunal). We are also of the view that the loss of earning during the period of treatment (1.10.1991 to 16.6.1992) should be ₹12750/- at the rate of ₹1500/- for eight and half months instead of ₹3600/- determined by the Tribunal. The increase under the two heads is rounded off to ₹20,000/-.

31. In the case of **Arvind Kumar Mishra v. New India Assurance Co. Ltd., 2010 (10) SCALE 298**, the accident resulted 70% permanent disablement. The Supreme Court held the functional disability to be 70%. The loss of earning capacity was computed according to the multiplier method. The Supreme Court held as under:-

“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 in so far 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 that he had suffered. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases – and that is now recognized mode as to the proper measure of compensation – is taking an appropriate multiplier of an appropriate multiplicand.”

32. Assessment of General Damages is a vexed question. It is really difficult to assess the exact amount of compensation, which would be equivalent to the pain, suffering and the loss suffered by the claimant. It can never be full compensation, but it must be fair and just. No amount of money can restore the physical frame of the claimant, yet the Courts have to make an effort to assess the compensation, which may provide relief to the injured. The general damages are “so far as money can compensate” meaning thereby that it is impossible

to equate money with human suffering or personal deprivation. The money awarded can be calculated so as to make good a financial loss. Money may be awarded so that something tangible may be procured to replace something else of like nature, which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that Judges and Courts can do is to award sums which must be regarded as giving reasonable compensation. In the process, there must be the endeavour to secure some uniformity in the general method of approach. It is, therefore, eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. The general damages awarded in the case of injuries are therefore to a considerable extent conventional.

33. In ***Oriental Insurance Company Ltd. v. V.S. Vijay Kumar Mittal, 2008 ACJ 1300***, this Court discussed the principles relating to the award of non-pecuniary compensation towards pain and suffering, loss of amenities of life and disfiguration. This Court examined all the previous judgments with respect to the non-pecuniary compensation

awarded in the case of permanent disability and held that the courts have awarded about ₹3,00,000/- under the heads of non-pecuniary damages for permanent disability of 50% and above. The findings of this Court are as under:-

“10. The possession of one's own body is the first and most valuable of all human rights and while awarding compensation for bodily injuries this primary element is to be kept in mind. Bodily injury is to be treated as a deprivation which entitles a claimant to damages. The amount of damages varies on account of gravity of bodily injury. Though it is impossible to equate money with human suffering, agony and personal deprivation, the Court and Tribunal should make an honest and serious attempt to award damages so far as money can compensate the loss. Regard must be given to the gravity and degree of deprivation as well as the degree of awareness of the deprivation. Damages awarded in personal injury cases must be substantial and not token damages.

11. The general principle which should govern the assessment of damages in personal injury cases is that the Court should award to injured person such a sum as will put him in the same position as he would have been in if he had not sustained the injuries.

12. Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed

separately as pecuniary damages and non pecuniary damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money. Whereas, non pecuniary damages are those which are incapable of being assessed by arithmetical calculations.

13. Pecuniary loss may include the following:

- (i) Special damages or pre-trial pecuniary loss.
- (ii) Prospective loss of earnings and profits.
- (iii) Medicinal expenses.
- (iv) Cost of future care and other expenses.

14. Non pecuniary loss may include the following:

- (i) Pain and suffering.
- (ii) Damages for mental and physical shock.
- (iii) Loss of amenities of life which may include a variety of matters i.e. on account of injury the injured may not be able to walk, run or sit etc.
- (iv) Loss of expectation of life i.e. on account of injury normal longevity of the life of the person concerned is shortened.
- (v) Disfigurement.
- (vi) Discomfort or inconvenience, hardship, disappointment, frustration and mental stress in life.

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18. In order to properly appreciate the contentions advanced by the learned counsel for the appellant, I note the following judgments:-

(i) *B.N.Kumar vs. D.T.C., 118 (2005) DLT 36.*

In said case, injured sustained crush injuries on his right leg leading to its amputation above knee in a road accident on 5th November 1987. He suffered a permanent disability of 85%. Noting various judgments wherein Courts had awarded ₹3,00,000/- under the head non-pecuniary damages, a Single Judge of this Court awarded ₹75,000/- for 'pain and suffering' and ₹2,00,000/- for 'continuing disability suffered by him'. Thus, a total of ₹2,75,000/- was awarded under this head.

(ii) *Fakkirappa vs. Yallawwa & Anr., 2004 ACJ 141*

In said case, a minor male child sustained grievous injury in a road accident which occurred on 8.5.2000 resulting in amputation of his left leg below knee. Considering the gravity of injury suffered the injured, Division Bench of Karnataka High Court awarded following compensation under the head 'non-pecuniary damages':-

- (i) Pain and suffering : ₹50,000/-
- (ii) Loss of amenities of life : ₹1,00,000/-
- (iii) Loss of marriage prospects : ₹50,000/-
- (iv) Damages for amputation of: ₹1,50,000/-  
leg before knee
- (v) Loss of expectation of life : ₹50,000/-

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Total : ₹4,00,000/-

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(iii) *K. Shankar v. Pallavan Transport Corporation, 2001 ACJ 488*

In said case, injured sustained serious injuries on his right leg in an accident on 14.2.1989. His right leg was amputated and he suffered permanent disability of 80%. A learned Single Judge of Madras High Court awarded the following compensation under the head 'non-pecuniary damages'.

|       |                                                         |               |
|-------|---------------------------------------------------------|---------------|
| (i)   | For permanent disability                                | : ₹80,000/-   |
| (ii)  | Pain and suffering                                      | : ₹50,000/-   |
| (iii) | Loss of expectation of life and proper marital alliance | : ₹50,000/-   |
| (iv)  | For mental agony                                        | : ₹1,00,000/- |

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Total : ₹2,80,000/-

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(iv) *M. Jaganathan v. Pallavan Transport Corporation, 1999 ACJ 366*

In said case, injured aged 45 years sustained injuries in an accident on 21.6.1990. The injury sustained by the injured resulted in the amputation of his left leg above the knee. Division Bench of Madras High Court awarded following compensation under the head 'non pecuniary damages':-

|       |                                                  |               |
|-------|--------------------------------------------------|---------------|
| (i)   | Pain and suffering                               | : ₹1,00,000/- |
| (ii)  | Compensation for continuing permanent disability | : ₹2,00,000/- |
| (iii) | Mental agony, torture and Humiliation because of | : ₹75,000/-   |

## Amputation

Total : ₹3,75,000/-

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(v) *Bhagwan Singh Meena v. Jai Kishan Tiwari*,  
1999 ACJ 1200

In said case, the injured sustained severe and serious injuries on account of the road accident. His right leg was amputated. A learned Single Judge of Rajasthan High Court awarded a compensation of ₹3,00,000/- under the head non-pecuniary damages.

(vi) *Dr. Gop Ramchandani v. Onkar Singh & Ors.*,  
1993 ACJ 577

In said case, in an accident which had occurred on 17.12.1985, injured sustained injuries because of which his left leg was amputated resulting in 50% permanent disability. A Single Judge of Rajasthan High Court awarded a compensation of ₹3,00,000/- under the head 'non pecuniary damages'. Break-up of the compensation under the said head is as under:-

- (i) Physical and mental agony : ₹1,00,000/-
- (ii) Permanent disability : ₹1,00,000/-
- (iii) Loss of social life and loss : ₹1,00,000/-  
in profession

Total : ₹3,00,000/-

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(vii) *Jitendra Singh v. Islam*, 1998 ACJ 1301

In said case, in an accident which had occurred on 14.02.1992, injured sustained injuries because of which his left leg was amputated resulting in 55% permanent disability. A Single Judge of Rajasthan High Court awarded a compensation of ₹3,00,000/- under the head 'non pecuniary damages'.

(viii) *Iranna v. Mohammadali Khadarsab Mulla & Anr.* 2004 ACJ 1396

In said case, on 19.4.2000, injured aged 7 years met with an accident. Due to the said accident, he sustained grievous injuries resulting in amputation of his left leg below knee. Tribunal awarded following compensation to him under the head 'non pecuniary damages':-

|       |                                                        |                                 |
|-------|--------------------------------------------------------|---------------------------------|
| (i)   | Pain and suffering                                     | : ₹50,000/-                     |
| (ii)  | Loss of amenities, happiness, frustration              | : ₹1,00,000/-                   |
| (iii) | Loss of marriage prospects                             | : ₹50,000/-                     |
| (iv)  | Amputation of leg below knee and knee dis-articulation | : ₹1,50,000/-                   |
|       |                                                        | <hr/> Total : ₹3,50,000/- <hr/> |

From the afore noted judicial decisions, a trend which emerges is that between the years 1985 to 1990, Courts have been awarding about ₹3,00,000/- under the head 'non pecuniary damages' for amputation of leg resulting in permanent disability of 50% and above."

34. In ***A. Robert vs. United Insurance Co. Ltd., II (1999) ACC 425***, the claimant, aged 15 years, suffered fracture of pelvis and left humerus and bladder was distended in a road accident dated 17<sup>th</sup> June, 1984. The claimant suffered difficulty in passing urine and his sexual life was affected for the rest of his life. The Supreme Court awarded additional amount of ₹1,00,000/- to the claimant under the head of pain, shock and suffering considering that the injuries were permanent in nature and had permanent adverse effect on his future healthy life including his sexual life. The compensation was enhanced from ₹96,500/- to ₹1,50,000/-.

35. In ***National Insurance Co. Ltd. vs. Krishnappa, I (2001) ACC 686 (DB)***, the claimant, aged 40 years, agriculturist, suffered fracture of vertebra with traumatic paraplegia with involvement of bladder and bowel dysfunction in a road accident dated 17<sup>th</sup> July, 1997. The claimant was confined to a wheel chair and had no control over his bladder and bowel. He required constant assistance throughout his future life. The Karnataka High Court enhanced the compensation awarded under the head of injury, pain and

suffering from ₹16,000/- to ₹1,50,000/- and compensation under the head of inconvenience, hardship, disappointment frustration and mental stress undergone from ₹45,000/- to ₹75,000/-.

36. In ***New India Assurance Co. Ltd. vs. Har Lal, II (2009) ACC 162***, the claimant aged 50 years suffered crush injuries on his right leg below knee which was amputated and his right hand was severed due to the accident dated 20<sup>th</sup> July, 2003. This Court upheld the Tribunal's award for ₹2,00,000/- towards pain and suffering, ₹2,00,000/- towards loss of amenities of life/permanent disability, ₹75,000/- towards loss of income, ₹7,50,000/- towards loss of earning capacity and ₹50,000/- towards conveyance, special diet and attendant charges.

37. In ***Delhi Transport Corporation v. Arun Sondhi, 65 (1999) DLT 989***, the claimant bachelor aged 21 years suffered amputation of one leg and paralysis of the other leg and had no control on urine and stool due to the accident dated 4<sup>th</sup> March, 1983. This Court awarded ₹2,00,000/- for pain and suffering, assistance and loss of enjoyment of life.

38. In ***Jyoti Gupta v. Ashok Kumar, 2002 ACJ 1056***, the claimant, a married woman aged 33 years suffered spinal injuries which turned her into a paraplegic due to the accident dated 6<sup>th</sup> August, 1983. The claimant could not lead life of a normal human life and discharge her duties to her husband and her children. This Court enhanced the non-pecuniary damages of ₹20,000/- awarded by the Tribunal to ₹6,72,000/-.

39. In ***Virendra Singh v. Anand Prakash, I (2008) ACC 456***, the claimant bachelor aged 26 years, a Sepoy in the Indian Army, suffered serious head injuries which resulted in the paralysis of left side of body and 100% permanent disability. He also suffered various neurological disorders due to the accident dated 13<sup>th</sup> June, 2001. This Court awarded ₹1,50,000/- towards pain and suffering, ₹15,000/- for loss of expectation of life, ₹50,000/- towards depression and mental stress and ₹1,00,000/- towards loss of marriage prospects.

40. In ***Saravanan @Saravanakumar v. M. Sankaran, IV (2008) ACC 324***, the Madras High Court awarded ₹3 lakhs for loss of amenities of life due to impotency suffered by a 26 years old bachelor due to the road accident dated 23<sup>rd</sup> August,

1991.

## **FINDINGS**

### **41. FAO No.408/2002**

The appellant's right leg and thigh bone were fractured, bone of his leg entered into his stomach and both his testicles were damaged due to the accident. The appellant's penis was completely damaged in the accident. A major operation was conducted on his stomach to thighs at Dr. Ram Manohar Lohia Hospital. Another operation was conducted on his right leg for insertion of steel rod, which was removed after three months. The appellant has suffered 100% disability due to bilateral loss of testes and cannot reproduce and 10% extra for mental anguish due to his loss of testes, as per disability certificate, Ex.PW2/2, which has also affected his earning capacity. However, the Claims Tribunal has not awarded any compensation to the appellant towards loss of earning capacity. Applying the principles laid down by the Supreme Court in the case of **Ajay Kumar** (supra) to the facts of the present case, the loss of earning capacity of the appellant is taken to be 50%. The appellant claimed to be earning ₹2,500/-

at the time of accident. However, in the absence of any proof of income, the Claims Tribunal took the minimum wages of ₹1,107/- per month. In the case of **Kanwar Devi v. Bansal Roadways**, 2008 ACJ 2182 and **National Insurance Co. Ltd. v. Renu Devi**, III (2008) ACC 134, this Court took judicial notice of the increase of minimum wages, namely, price index and inflation rate. This Court held that minimum wages get doubled over a period of 10 years and increase in minimum wages is not akin to future prospects. Following the judgments of this Court in the above cases, the income of the appellant for computation of loss of earning capacity is taken to be ₹1,660.50 (₹1,107 + ₹2,214/2). The appellant was aged 29 years at the time of accident and applying the multiplier of 17 and taking 50% of the same, the loss of the earning capacity is taken to be ₹1,69,371/-(₹1,660.5 x 12 x 17 x 50%). The Claims Tribunal has awarded compensation of ₹6,642/- towards loss of income during the period of treatment. There is no proof on record with respect to the period of treatment of more than six months. In that view of the matter, the compensation for loss of income during the period of

treatment does not warrant any interference. The Claims Tribunal has awarded ₹4,000/- towards medical expenditure which do not warrant any enhancement in the absence of any evidence in support thereof. The Claims Tribunal has not awarded any compensation towards conveyance and special diet. Considering the nature of injuries suffered and period of treatment, the compensation of ₹20,000/- is awarded towards conveyance and special diet. The Claims Tribunal has awarded a sum of ₹1,00,000/- towards disability of reproduction, mental torture and pain. Applying the principles laid down in the aforesaid cases, the compensation of ₹1,00,000/- awarded by the learned Tribunal is treated towards the loss of impotency, loss of reproduction and marital life. ₹1,00,000/- is awarded to the appellant towards the pain and sufferings and ₹50,000/- is awarded towards the loss of amenities of life. The appellant is entitled to total compensation of ₹4,50,013/- as per break-up given hereunder:-

- (i) Compensation for loss of earning ₹1,69,371.00  
capacity due to permanent disability  
(₹1,660.5 x 12 x 17 x 50%)
- (ii) Compensation for loss of income ₹6,642.00  
during treatment

- |       |                                                                           |              |
|-------|---------------------------------------------------------------------------|--------------|
| (iii) | Compensation towards medical expenses                                     | ₹4,000.00    |
| (iv)  | Compensation towards loss of convenience and special diet.                | ₹20,000.00   |
| (v)   | Compensation towards loss due to impotency, reproduction and marital life | ₹1,00,000.00 |
| (vi)  | Compensation for pain and suffering                                       | ₹1,00,000.00 |
| (vii) | Compensation for loss of amenities of life                                | ₹50,000.00   |

**Total** **₹4,50,013.00/-**

**42. FAO No.350/1998**

The appellant was admitted to the LNJP Hospital for fracture of pelvis bone, crushing of left testicle, laceration of anal canal and rupture of urethra. The urinary bladder of the appellant has become completely damaged. The appellant has become permanently impotent due to the accident. The appellant was hospitalized on seven occasions and undergone six surgeries, namely, Debridement & Toileting along with Colostomy at the time of injury, Incisional Hernia repair, Urethroplasty, Internal urethrotomies, Urethrol dilatation and Colostomy closure. The appellant is unable to do any work due to the accident as he has no control over stool and urine and, therefore, the injuries suffered have affected his functional disability. The appellant has become impotent and has suffered anal incontinence, left testicular atrophy due to which

he cannot hold his stool or urine even for a few minutes. The appellant has also to undergo urethral dilatation after every six months. However, the learned Tribunal has not awarded any compensation to the appellant for loss of earning capacity. Applying the principles laid down by the Supreme Court in the case of **Ajay Kumar** (*supra*), the loss of earning capacity is taken to be 60%. The appellant was earning ₹2,500/- per month at the time of accident. However, the Claims Tribunal took the income of the appellant as ₹18,600/- per annum on the basis of his income tax returns, Ex.PW1/37 and Ex.PW1/38. Appellant was aged 26 years. Adding 50% towards future prospects, the annual income for the appellant is taken to be ₹27,900/- [₹18,600 + (50% of ₹18,600)]. Applying the multiplier of 17 and taking 60% of the same, the loss of earning capacity of the appellant is taken to be ₹2,84,580/- (₹27,900 x 17 x 60%). The Claims Tribunal has awarded a sum of ₹18,600/- for loss of earning for one year. The appellant remained under treatment for about 3½ years for which he is entitled to loss of income. The compensation for loss of earning is enhanced from ₹18,600/- to ₹65,100/- (₹18,600 x 3½

years). The Claims Tribunal has not awarded any compensation to the appellant for future treatment. The appellant has successfully proved on record that he has to undergo urethral dilation every six months for whole of his life and, therefore, the lump sum compensation of ₹1,00,000/- is awarded considering that the said amount shall be kept in fixed deposit and interest thereof should be sufficient for the future treatment of the appellant. The Claims Tribunal has awarded ₹30,000/- to the appellant towards general damages for pain and suffering and ₹20,000/- towards loss of amenities of life. No compensation has been awarded to the appellant towards impotency and loss of matrimonial prospects. Following the principles laid down by the courts in the aforesaid cases and the injuries suffered by the appellant and the six surgeries underwent by him, the compensation of ₹1,00,000/- is awarded to the appellant towards impotency and the loss of matrimonial prospects. The compensation towards the pain and suffering is enhanced from ₹30,000/- to ₹1,00,000/- and the compensation for loss of amenities of life is enhanced from ₹20,000/- to ₹1,00,000/-. The appellant is

entitled to total compensation of ₹8,27,766/- as per the breakup given hereunder:-

|              |                                                                                                    |                            |
|--------------|----------------------------------------------------------------------------------------------------|----------------------------|
| (i)          | Compensation for loss of earning capacity [{₹18,600 + (50% of ₹18,600)} x 17 x 60%]                | ₹2,84,580.00               |
| (ii)         | Compensation for loss of income during the treatment for a period of 3½ years (₹18,600 x 3½ years) | ₹65,100.00                 |
| (iii)        | Compensation for loss on account of brother's leave.                                               | ₹7,700.00                  |
| (iv)         | Compensation for expenditure of treatment, special diet and conveyance                             | ₹70,386.00                 |
| (v)          | Compensation for impotency and loss of matrimonial prospects                                       | ₹1,00,000.00               |
| (vi)         | Compensation for pain and suffering                                                                | ₹1,00,000.00               |
| (vii)        | Compensation for loss of amenities of life                                                         | ₹1,00,000.00               |
| (viii)       | Compensation for future treatment                                                                  | ₹1,00,000.00               |
| <b>Total</b> |                                                                                                    | <b><u>₹8,27,766.00</u></b> |

### **43. CONCLUSION**

43.1 In the facts and circumstances stated above, both the appeals are allowed.

43.2 In FAO No.408/2002, the compensation is enhanced from ₹1,10,642/- to ₹4,50,013/-. The Claims Tribunal has awarded interest at the rate of 9% per annum which is not disturbed on the original award of ₹1,10,642/-. However, on the enhanced award amount, the rate of interest shall be 7.5% from the date

of filing the petition before the Claims Tribunal till the date of payment.

43.3 In FAO 350/1998, the compensation is enhanced from ₹1,47,000/- to ₹8,27,766/-. The Claims Tribunal has awarded interest at the rate of 12% per annum which is not disturbed on the original award of ₹1,47,000/-. However, on the enhanced award amount, the rate of interest shall be 7.5% from the date of filing the petition before the Claims Tribunal till the date of payment.

43.4 The enhanced award amount along with up to date interest be deposited by respondent No.3 with UCO Bank within 30 days by means of cheque in the name of UCO Bank A/c Sunil Kumar in FAO No.408/2008 and UCO Bank A/c Bajrang Lal in FAO No.350/1998.

43.5 Upon the aforesaid amount being deposited, UCO Bank is directed to release 10% of the amount to the respective appellants by transferring the same to their Saving Bank Account and the remaining amount be kept in Fixed Deposit in the name of the respective appellants in the following manner:-

- (i) Fixed deposit of 10% of the enhanced award amount for a period of one year.
- (ii) Fixed deposit of 10% of the enhanced award amount for a period of two years.
- (iii) Fixed deposit of 10% of the enhanced award amount for a period of three years.
- (iv) Fixed deposit of 10% of the enhanced award amount for a period of four years.
- (v) Fixed deposit of 10% of the enhanced award amount for a period of five years.
- (vi) Fixed deposit of 10% of the enhanced award amount for a period of six years.
- (vii) Fixed deposit of 10% of the enhanced award amount for a period of seven years.
- (viii) Fixed deposit of 10% of the enhanced award amount for a period of eight years.
- (ix) Fixed deposit of 10% of the enhanced award amount for a period of nine years.

43.6 The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of the respective appellants.

43.7 Withdrawal from the aforesaid accounts shall be permitted to the respective appellants after due verification and the Bank shall issue photo identity card to the respective appellants to facilitate identity.

43.8 No cheque book be issued to the appellants without the permission of this Court.

43.9 The original fixed deposit receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to the respective appellants along with the photocopy of the FDRs. Upon the expiry of the period of each FDR, the Bank shall credit the maturity amount in the Savings Account of the respective appellants.

43.10 No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

43.11 Half yearly statement of account be filed by the Bank in this Court.

43.12 On the request of the appellants, the Bank shall transfer the Savings Account to any other branch according to the convenience of the appellants.

44. Before parting with the case, this Court would like to record the appreciation for the extremely valuable assistance provided by the learned amicus curiae. Ms. Manjusha Wadhwa not only provided valuable assistance on the questions of law but inspected the entire record of this Court and filed a comprehensive note with regard to the national and foreign law regarding compensation for impotency. It is extremely rare that such good assistance is provided by the amicus curiae. The learned amicus curiae has discharged her obligation towards the profession in an exemplary manner.

**SEPTEMBER 30, 2011**

**J.R. MIDHA, J.**