

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

+ FAO No.104/2003 & CM No.426/2003

% Date of decision : 22nd February , 2013

SHIVANI SHARMA Appellant

Through : Mr. Navneet Goyal, Adv.

versus

RAM CHANDER AND ORS. Respondents

Through : Mr. Divya Pratap, Adv.

CORAM :-

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of `5,50,000/- has been awarded to the appellant. The appellant seeks the enhancement of the award amount.

2. The accident dated 1st April, 1992 resulted in grievous injuries to the appellant. The appellant was sixteen year old at the time of the accident. She was waiting for her school bus with her father near Madhuban Chowk when truck No.DIL-7447, driven rashly and negligently by Respondent no.1, came from Peeragarhi Chowk and hit the left side 'patri' with a great force and went over the pavement after crushing the left foot of the appellant. The crush injuries resulted in the amputation of the four toes of the left foot of the appellant.

3. The Claims Tribunal has awarded `5,50,000/- to the appellant as per break up given hereunder:-

Medical Expenses	: ` 1,30,000/-
Future Medical Treatment	: ` 1,00,000/-
Pain and Suffering	: ` 1,00,000/-
Loss due to Permanent Disability	: ` 50,000/-
Loss of Matrimonial Prospects	: ` 1,50,000/-
Conveyance	: ` 20,000/-
Total	: <u>` 5,50,000/-</u>

4. The injuries suffered by the appellant and the treatment taken by her are summarized as under:-

(i) The appellant was initially taken to Sarvodaya Hospital, Pitam Pura on 1st April, 1992 where she underwent treatment for crush injury of the left foot with avulsion (ripping/tearing away of a part). The appellant underwent debridement (removal of foreign material and devitalized/contaminated tissue from or adjacent to a traumatic or infected lesion until surrounding healthy tissue is exposed).

(ii) On 2nd April, 1992, the appellant was admitted in Khosla Hospital where she remained till 13th April, 1992. She was treated by Dr. Devansh Sharma for degloving injury of left foot with loss of 2nd, 3rd, 4th and 5th toes (Ex.PW 4/1-A) and Ulnar forearm free flap with split thickness skin grafting (Ex.PW4/1-B).

(iii) On 18th June, 1993, the appellant was admitted in Maharaja Agarsain Hospital, West Punjabi Bagh where she was diagnosed for a scar on the left forearm. She underwent operation for

placement of tissue expander under the forearm skin (Ex.PW3/B). She was discharged from the hospital on 21st June, 1993.

(iv) On 13th August, 1993, the appellant was admitted in Maharaja Agarsain Hospital where she underwent operation for removal of tissue expander, advancement of flap to cover the excision graft and revision of flap of the foot (Ex.PW 3/A). She was discharged on 17th August, 1993.

(v) On 14th June, 1996, the appellant was admitted in Maharaja Agarsain Hospital where she underwent surgery for placement of tissue expander. She was discharged on 17th June, 1996 (Ex.PW5/1).

(vi) The appellant was admitted in Maharaja Agarsain Hospital for debridement and restructuring of the wound (Ex.PW 5/2). She was discharged on 29th June, 1996.

(vii) On 6th September, 1996, the appellant was admitted in Maharaja Agarsain for removal of tissue expander and scar scan. She was discharged on 7th September, 1996 (Ex.PW5/3).

5. The crush injury of left foot with amputation of 2nd, 3rd, 4th and 5th toes suffered by the appellant have resulted in 15% permanent physical impairment in relation to her whole body. PW-6 proved disability certificate as Ex.PX issued by Safdarjung Hospital.

6. The appellant appeared in the witness box as PW-1 and deposed that her parents spent `1,35,000/- for medical expenses. PW-1 stated that she underwent seven operations at Maharaja Agarsain Hospital; skin was taken from her left arm and right thigh

and was placed on the foot. PW-1 deposed that she could not walk normally for more than ten minutes due to the boils in her feet. PW-1 deposed that special shoes need to be worn, tissue expander was implanted, her left hand became weak, movements were slow and some more operations were to be performed. She deposed that another tissue expander was to be implanted. Cost of first tissue expander was ` 19,500/-. The cost of second tissue expander would be more than ` 15,000/-. She stated that she was limping and could not go by bus. In 1993, the appellant shifted to Chandigarh where she was admitted in B.A. First Year and used to travel by auto. She stated that she was having pain and swelling in the foot. She took pain killers and nourishing food and spent ` 50/- per day on the same for which she proved documents Ex.PW-1/1 to Ex.PW-1/145.

7. The appellant's father appeared in the witness box as PW- 6 and deposed that the appellant went for reskingraphy as the skin grafted earlier had not been fixed properly. He stated that the appellant underwent six surgeries. He proved the bills Ex.PW 6/1 and Ex.PW 6/2 of Khosla Hospital for ` 28,826.65/- and ` 1,700/- respectively. PW-6 proved the certified copies of the criminal case bearing FIR No.116 dated 1st April, 1992 under Sections 279/338 IPC, PS Shalimar Bagh as Ex.PW6/3 to Ex.PW6/7. Cash memos receipts of the hospital were proved as Ex.PW6/8 to Ex.PW6/11, Ex.PW6/13 to Ex.PW6/17, Ex.PW6/20, Ex.PW6/25, Ex.PW6/31, Ex.PW6/32, Ex.PW6/38, Ex.PW6/40, Ex.PW6/42, Ex.PW6/43, Ex.PW6/48, Ex.PW6/50 to Ex.PW6/68, Ex.PW6/73 to Ex.PW6/94, Ex.PW6/96 to Ex.PW6/99, Ex.PW6/101 to Ex.PW6/109. He also

proved that `25,000 was spent on treatment and `50,000 on conveyance as she had problem in walking and had to use special conveyance like auto or taxi. PW-6 deposed that the arms from which the skin was taken for grafting became weak; there were scars and spots on that arm. PW-6 further deposed that the injuries had caused a setback for her marriage prospects as he had negotiated with 3-4 parties for marriage but it broke down due to disablement. On cross examination, he stated that he received approx. `1,50,000/- towards reimbursement and gave an undertaking to his office that he would refund to his department as soon as he or his daughter gets compensation from the Court.

8. PW-2, Constable Asif Suleman proved the FIR No.116/92 as Ex.PW 2/1 and certified copy of the documents of the criminal case record as Ex.PW-6/3 to Ex. PW-6/7. PW-3, Laxman Singh, proved the record of hospitalization and treatment of appellant from Maharaja Agarsain Hospital where she was admitted from 18th to 27th June, 1993 and again from 13th to 17th August, 1993 as Ex.PW-3/A and Ex.PW-3/B.

9. PW-4, Dr. Devansh Sharma proved the discharge summary, Ex.PW-4/1-A and Ex.PW-4/1-B issued under his signatures. PW-4 deposed that the patient had come with 2nd, 3rd, 4th and 5th toes of her left foot missing on account of the injuries. He further deposed that he was involved in the further treatment of the appellant in Maharaja Agarsain Hospital. On his last examination, the appellant had got an Ulcer on the foot. PW-4 deposed that the appellant was able to walk as the skin from her left forearm was grafted on the

foot by plastic surgery and she was having a scar on her forearm. PW-4 also deposed that the scar could be removed by tissue expansion and further sittings would be required. The tissue expansion is done through tissue expander costing about `20,000/- each which could be used only once, and further sittings would require `40,000/- to `50,000/- excluding cost of expander. PW-5, Shri A.D. Sharma, Record Clerk, Maharaja Agarsain Hospital, produced the record of the treatment of appellant and deposed that the appellant remained under treatment of Dr. Devansh from 14th to 17th June, 1996, 29th June, 1996 and 6th to 7th September, 1996. The treatment record was proved as Ex.PW-5/1 to Ex.PW-5/3 and total amount paid was `24,961/-.

10. Vide order dated 30th November, 2012, the appellant was directed to remain present in Court as the Court wanted to see her condition in pursuance to which the appellant appeared in Court on 14th December, 2012 when her condition was seen. The Court has also recorded her statement under Section 165 of the Evidence Act to take on record her present condition. Her statement is reproduced hereunder:-

“I suffered grievous injuries in the road accident dated 1st April, 1992. I was aged 16 years at that time. I was a student of Class 11th at that time. I completed my education in the year 1996. There was no gap in my education. I joined HDFC Bank in the year 2001 as a Deputy Manager at a salary of Rs.3,00,000/- per annum. I got married in March 2004 to a divorcee. I worked with HDFC Bank till 2006. I quit the job from HDFC Bank in 2006 to take care of my children and at that time, my salary was Rs.45,000/- per month.

I again started my job in March 2012 with Airtel as an Assistant Manager at a salary of Rs.6,00,000/- per annum.

My left foot was crushed under the rear wheel of the offending vehicle. My four fingers of the left foot were amputated due to the crush injuries. A portion of the skin from my left arm was removed for skin grafting on the sole of the left foot. Some portion of the skin was also taken from my right thigh for skin grafting on the upper portion of the left foot. The photographs of my left foot as well as the left arm have been placed on record along with CM No.426/2003. The same are marked as Ex.P-1 to P-7 respectively.

I have to wear special shoes with soft soles due to the amputation of four toes of the left foot. I have also to insert a special sole in the shoe. I cannot keep bare foot on the ground due to the sensitive skin. Since the foot always has to be covered, I have problem of occasional rashes, corns and blisters. I also find difficulty in walking and running. Since I cannot do much of the walking, it has also resulted in obesity. I also occasionally suffer bleeding and swelling in my left foot. I cannot drive due to the permanent disability suffered by me due to the above accident.

I am not able to undertake higher responsibilities due to the above problems. The higher responsibilities involve travelling which I am unable to do. I have been advised not to keep the foot down for a long time. Therefore, intermittently I keep my left foot at an elevated level. As such, the injuries suffered by me have affected my career as well as promotion prospects.”

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

(i) The compensation be awarded for loss of amenities of life.

- (ii) The compensation be awarded towards disfiguration.
- (iii) The compensation be awarded for loss of studies.
- (iv) The compensation be awarded for special shoes.
- (v) The compensation be awarded for special diet.
- (vi) The compensation be awarded towards loss of earning capacity due to permanent disability.
- (vii) The compensation towards conveyance be enhanced.

12. Learned counsel for the respondent no.3 has made the following submissions in reply:

(i) This Court has no jurisdiction to record the statement of the appellant under Section 165 of the Indian Evidence Act. It is further submitted that Section 165 of the Indian Evidence Act is applicable only to Trial Courts and the Appellate Court has no jurisdiction whatsoever to record the statement of any person and this Court has exceeded its jurisdiction. Learned counsel further submits that appellant should lead additional evidence to place on record her present condition and this Court cannot take note of her present condition and cannot record her statement.

(ii) The learned counsel for respondent No.3 further submitted that the case be adjourned to some other date to enable him to read the statement although appellant's statement under Section 165 was recorded in his presence. The learned counsel further submitted that he would verify the statement of the appellant and then make submissions. Upon the rejection of this plea by the Court, learned counsel for respondent No.3 made following submissions on merits:

(a) The compensation awarded towards loss of matrimonial prospects would include the loss of amenities and therefore, no further compensation be awarded towards loss of amenities of life.

(b) The compensation for loss of education has not been proved by the appellant and therefore, no compensation should be awarded towards loss of education. It is submitted that the appellant has already stated that there was no disruption in her studies.

(c) The compensation for permanent disability includes the compensation towards disfiguration and therefore, no further compensation is warranted under this head.

(d) With respect to the appellant's contention that she cannot drive, the learned counsel for the respondent no.3 submitted that the judicial notice be taken that special vehicles are available in the market for handicapped persons and therefore, the appellant may drive a special vehicle. It was further submitted that the appellant has not placed on record any disqualification certificate from a driving licence authority or from an automobile expert that she was disentitled for driving a special vehicle.

(e) The appellant is not entitled to compensation towards special diet as she has not proved what special diet she took during the period of the treatment.

13. The objection of the respondent's counsel to the applicability of Section 165 of Indian Evidence Act is absolutely misconceived and is rejected. The law with respect to Section 165 of the Indian Evidence Act is well settled and discussed hereinbelow:-

13.1 Section 165 of the Indian Evidence Act, 1872 reads:

“The Judge may, in order to discover or obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149 ; nor shall he dispense with primary evidence of any document, except in the cases herein before excepted.”

13.2 This section invests the Judge with plenary powers to put any question to any witness or party; in any form, at any time, about any fact relevant or irrelevant. Section 165 is intended to arm the Judge with the most extensive power possible for the purpose of getting at the truth. The effect of this section is that in order to get to the bottom of the matter before it, the Court will be able to look at and inquire into every fact whatever and thus possibly acquire valuable indicative evidence which may lead to other evidence strictly relevant and admissible. The Court is not, however, permitted to found its judgment on any but relevant statements.

13.3 The Judge contemplated by Section 165 is not a mere umpire at a wit-combat between the lawyers for the parties whose only duty is to enforce the rules of the game and declare at the end of the combat who has won and who has lost. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover the truth and to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or willfully avoided. A Judge, who at the trial merely sits and records evidence without caring so to conduct the examination of the witnesses that every point is brought out, is not fulfilling his duty.

13.4 The object of a trial is, first to ascertain truth by the light of reason, and then, do justice upon the basis of the truth and the Judge is not only justified but required to elicit a fact, wherever the interest of truth and justice would suffer, if he did not.

13.5 The framers of the Act, in the Report of the Select Committee published on 31st March, 1871 along with the Bill settled by them, observed as follows:-

“Passing over certain matters which are explained at length in the Bill and report, I come to two matters to which the Committee attach the greatest importance as having peculiar reference to the administration of justice in India. The first of these rules refers to the part taken by the Judge in the examination of witnesses; the second, to the effect of the improper admission or rejection of evidence upon the proceedings in case of appeal.

That part of the law of evidence which relates to the manner in which witnesses are to be examined assumes the existence of a well-educated Bar, co-operating with the

Judge and relieving him practically of every other duty than that of deciding questions which may arise between them. I need hardly say that this state of things does not exist in India, and that it would be a great mistake to legislate as if it did. In a great number of cases – probably the vast numerical majority – the Judge has to conduct the whole trial himself. In all cases, he has to represent the interests of the public much more distinctly than he does in England. In many cases, he has to get at the truth, or as near to it as he can by the aid of collateral inquiries, which may incidentally tend to something relevant; and it is most unlikely that he should ever wish to push an inquiry needlessly, or to go into matters not really connected with it. We have accordingly thought it right to arm Judges with a general power to ask any questions upon any facts, of any witnesses, at any stage of the proceedings, irrespectively of the rules of evidence binding on the parties and their agents, and we have inserted in the Bill a distinct declaration that it is the duty of the Judge, especially in criminal cases, not merely to listen to the evidence put before him but to inquire to the utmost into the truth of the matter. ...”

“With respect to the question of appeals, we have drawn a series of provisions, the object of which is to prevent mere mistakes in procedure from destroying the value of work properly done, as far as it goes. We have gone through the various cases in which, as appears to us, the questions of the improper admission or rejection or omission of evidence can arise; and have provided that whenever any Appellate Court discovers the occurrence of any mistake, it shall not reverse the decision of the inferior Court, but shall either strike out what is redundant, or supply what is defective, as the case may be, and give, judgment accordingly.”

13.6 Cunningham, Secretary to the Council of the Governor – General for making Laws and Regulations at the time of the passing of the Indian Evidence Act explained the Section as under:-

“It frequently happens that the parties do not, in their questions, elicit all the facts necessary to sound a view of the merits of the case. A plaintiff may have some weak points in his case which he is afraid of betraying and so dexterously avoids or a defendant may fail to perceive the import of some answers given and allow it to pass uncriticised: in any case it is highly important that the Judge should be armed with full power enabling him to get at the facts. He may, accordingly, subject to conditions to be immediately noticed, ask any question he pleases, in any form, at any stage of the proceedings, about any matter relevant or irrelevant, and he may order the production of any document or thing. No objection can be taken to any such question or order, nor are the parties entitled, without Court’s permission to cross-examine on the answers given. This general power, however, is very closely restricted. In the first place, the judgment must be based on relevant facts and those relevant facts must have been duly proved : next the Judge cannot compel a witness to answer any question, or to produce any document, which he (witness) would be entitled to refuse to answer or produce at any instance of the opposite party : nor may the Judge ask any of the questions as to credit which would be improper if asked by the adverse party : nor can he dispense with primary evidence of a document unless the facts of the case show that secondary evidence is admissible. A Judge accordingly, cannot, by the exercise of the powers conferred by this section import into the decision of the case any fact which is not relevant under the Act nor can he in any case dispense with the prescribed mode of proof, or ask questions to credit, accept such as would be permitted if asked by the parties. Thus restricted, the power of asking questions is of obvious utility in a country like India, where in the vast majority of cases, no advocate is employed, but the Judge has to make out the truth as best he can from the confused, inaccurate and

often intentionally false accounts of ignorant, excited and mendacious witnesses.”

13.7 Under Section 165, the Court has ample power and discretion to interfere and control conduct of trial properly, effectively and in a manner as prescribed by law. While conducting trial, Court is not required to sit as a silent spectator or umpire but to take active part within the boundaries of law. The Supreme Court in *Ramchander v. State of Haryana*, (1981) 3 SCC 191 observed as follows:-

“1. What is the true role of a Judge trying a criminal case? Is he to assume the role of a referee in a football match or an umpire in a cricket match, occasionally answering, as Pollock and Maitland Pollock and Maitland : The History of English law point out, the question 'How is that', or, is he to, in the words of Lord Kenning 'drop the mantle of a Judge and assume the role of an advocate? *Jones v. National Coal Board*, [1957] 2 All. E.R. 155. Is he to be a spectator or a participant at the trial? Is passivity or activity to mark his attitude? If he desires to question any of the witnesses, how far can he go? Can he put on the gloves and 'have a go' at the witness who he suspects is lying or is he to be soft and suave ? These are some of the questions which we are compelled to ask ourselves in this appeal on account of the manner in which the Judge who tried the case put questions to some of the witnesses.

2. The adversary system of trial being what it is, there is an unfortunate tendency for a Judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive element entering the trial procedure. If a criminal Court is to be an effective instrument in dispensing justice, the presiding Judge

must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth. As one of us had occasion to say in the past:

Every criminal trial is a voyage of discovery in which truth is the quest. It is the duty of a presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. For that purpose he is expressly invested by Section 165 of the Evidence Act with the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may 'ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact, relevant or irrelevant. Section 172(2) of the CrPC enables the Court to send for the police-diaries in a case and use them to aid it in the trial. The record of the proceedings of the committing Magistrate may also be perused by the Sessions Judge to further aid him in the trial. *Session Judge, Nellore v. Intha Ramana Reddy*, ILR 1972 AP 683 : 1972 CriLJ 1485.

3. With such wide powers, the Court must actively participate in the trial to elicit the truth and to protect the weak and the innocent. It must, of course, not' assume the role of a prosecutor in putting questions. The functions of the counsel, particularly those of the Public Prosecutor, are not to be usurped by the Judge, by descending into the arena, as it were. Any questions put by the Judge must be so as not to frighten, coerce, confuse or intimidate the witnesses. The danger inherent in a Judge adopting a much too stern an attitude towards witnesses has been explained by Lord Justice Birkett:

People accustomed to the procedure of the Court are likely to be over-awed or frightened, or confused, or distressed when under the ordeal of prolonged questioning from the presiding Judge.

Moreover, when the questioning takes on a sarcastic or ironic tone as it is apt to do, or when it takes on a hostile note as is sometimes almost inevitable, the danger is not only that witnesses will be unable to present the evidence they may wish, but the parties may begin to think, quite wrongly it may be, that the Judge is not holding the scales of justice quite eventually" Extracted by Lord Denning in *Jones v. National Board* [1957] 2 All. E.R. 155.

In *Jones v. National Coal Board*, [1957] 2 All. E.R. 155, Lord Justice Denning observed:

The Judge's part in all this is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been over looked or left obscure; to see that the advocates behave themselves seemly and keep to the rules laid down by law; to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of the Judge and assumes the role of an advocate; and the change does not become him well.

We may go further than Lord Denning and say that it is the duty of a Judge to discover the truth and for that purpose he may "ask any question, in any form, at any time, of any witness, or of the parties, about any fact, relevant or irrelevant" (Section 165 Evidence Act). But this he must do, without unduly trespassing upon the functions of the public prosecutor and the defence counsel, without any hint of partisanship and without appearing to frighten or bully witnesses. He must take the prosecution and the defence with him. The Court, the prosecution and the defence must work as a team whose goal is justice, a team whose captain is the Judge. The

Judge, like the conductor of a choir, must, by force of personality, induce his team to work in harmony; subdue the raucous, encourage the timid, conspire with the young, flatter and (*sic* the) old'."

13.8 In *Ritesh Tewari v. State of Uttar Pradesh*, (2010) 10 SCC 677, the Supreme Court held that every trial is a voyage of discovery in which truth is the quest. The power under Section 165 of the Indian Evidence Act is to be exercised with the object of subserving the cause of justice and public interest, and for getting the evidence in aid of a just decision and to uphold the truth. The relevant portion of the judgment is reproduced hereunder:-

"37. Section 165 of the Evidence Act, 1872 empowers the Court to ask questions relevant, irrelevant, related or unrelated to the case to the party to ascertain the true facts. The party may not answer the question but it is not permitted to tell the Court that the question put to him is irrelevant or the facts the Court wants to ascertain are not in issue. Exercise of such a power is necessary for the reason that the judgment of the Court is to be based on relevant facts which have been duly proved. A Court in any case cannot admit illegal or inadmissible evidence for basing its decision. It is an extraordinary power conferred upon the Court to elicit the truth and to act in the interest of justice. A wide discretion has been conferred on the Court to act as the exigencies of justice require. Thus, in order to discover or obtain proper proof of the relevant facts, the Court can ask the question to the parties concerned at any time and in any form. *"Every trial is voyage of discovery in which truth is the quest"*. Therefore, power is to be exercised with an object to subserve the cause of justice and public interest, and for getting the evidence in aid of a just decision and to uphold the truth. The purpose being to secure justice by full discovery of truth and an accurate knowledge of facts, the Court can put questions to the parties, except those which

fall within exceptions contained in the said provision itself. (Vide: *Jamatraj Kewalji Govani v. State of Maharashtra*, AIR 1968 SC 178; 1968 Cri LJ 231 and *Zahira Habibulla H. Sheikh and Anr. v. State of Gujarat and Ors.* 2004 (4) SCC 158; 2004 SCC Cri 999”

13.9 In *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158 ,the Supreme Court held that Section 165 of the Indian Evidence Act and Section 311 of the Code of Criminal Procedure confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process. The relevant portion of the judgment reads :-

“43. The Courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that ultimate objective i.e. truth is arrived at. This becomes more necessary when the Court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The Court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and Courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.

44. The power of the Court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The section consists of two parts i.e. (i) giving a discretion to the Court to examine the witness at any stage and (ii) the mandatory portion which compels the Courts to examine a witness if his evidence appears to be essential to the just decision of the Court. Though the discretion given to the Court is very wide, the very width requires a corresponding caution. In *Mohan Lal v. Union of India*, AIR 1991 SC 1346, this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the word such as, "any Court" "at any stage", or "any enquiry or trial or other proceedings" "any person" and "any such person" clearly spells out that the Section has expressed in the widest possible terms and do not limit the discretion of the Court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow any discretion but obligates and binds the Court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case - 'essential', to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the Section is to enable the Court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the Court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.

45. It is not that in every case where the witness who had given evidence before Court wants to change his mind and is prepared to speak differently, that the Court concerned should readily accede to such request by lending its

assistance. If the witness who deposed one way earlier comes before the appellate Court with a prayer that he is prepared to give evidence which is materially different from what he has given earlier at the trial with the reasons for the earlier lapse, the Court can consider the genuineness of the prayer in the context as to whether the party concerned had a fair opportunity to speak the truth earlier and in an appropriate case accept it. It is not that the power is to be exercised in a routine manner, but being an exception to the ordinary rule of disposal of appeal on the basis of records received in exceptional cases or extraordinary situation the Court can neither feel powerless nor abdicate its duty to arrive at the truth and satisfy the ends of justice. The Court can certainly be guided by the metaphor, separate the grain from the chaff, and in a case which has telltale imprint of reasonableness and genuineness in the prayer, the same has to be accepted, at least to consider the worth, credibility and the acceptability of the same on merits of the material sought to be brought in.

46. Ultimately, as noted above, *ad nauseam* the duty of the Court is to arrive at the truth and subserve the ends of justice. Section 311 of the Code does not confer any party any right to examine, cross-examine and re-examine any witness. This is a power given to the Court not to be merely exercised at the bidding of any one party/person but the powers conferred and discretion vested are to prevent any irretrievable or immeasurable damage to the cause of society, public interest and miscarriage of justice. Recourse may be had by Courts to power under this section only for the purpose of discovering relevant facts or obtaining proper proof of such facts as are necessary to arrive at a justice decision in the case.”

“51. Need for circumspection was dealt with by this Court in Mohanlal Shamji Son's case (supra) and Ram Chander v. **State of Haryana**, (1981) 3 SCC 191 : 1981 SCC (Cri) 683 which dealt with the corresponding Section 540 of Code of Criminal Procedure, 1898 (in short the “old Code”) and also in Jamatraj's case (supra). While dealing with

Section 311 this Court in *Rajendra Prasad v. Narcotic Cell thr. Its officer in Charge, Delhi*, (1999) 6 SCC 110 : 1999 SCC (Cri) 1062 held as follows: (SCC p.113, paras 7-8)

"7. It is a common experience in criminal Courts that defence counsel would raise objections whenever Courts exercise powers under Section 311 of the Code or under Section 165 of the Evidence Act, 1872 by saying that the Court could not 'fill the lacuna in the prosecution case'. A lacuna in the prosecution is not to be equated with the fallout of an oversight committed by a Public Prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage 'to err is human' is the recognition of the possibility of making mistakes to which humans are prone. A corollary of any such laches or mistakes during the conducting of a case cannot be understood as a lacuna which a Court cannot fill up.

8. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal Court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better."

"54. Though justice is depicted to be blind-folded, as popularly said, it is only a veil not to see who the party before it is while pronouncing judgment on the cause brought before it by enforcing law and administer justice and not to ignore or turn the mind/attention of the Court away

from the truth of the cause or lis before it, in disregard of its duty to prevent miscarriage of justice. When an ordinary citizen makes a grievance against the mighty administration, any indifference, inaction or lethargy shown in protecting his right guaranteed in law will tend to paralyse by such inaction or lethargic action of Courts and erode in stages faith inbuilt in judicial system ultimately destroying the very justice delivery system of the country itself. Doing justice is the paramount consideration and that duty cannot be abdicated or diluted and diverted by manipulative red herrings.

55. The Courts at the expense of repetition we may state, exist for doing justice to the persons who are affected. The Trial/First Appellate Courts cannot get swayed by abstract technicalities and close their eyes to factors which need to be positively probed and noticed. The Court is not merely to act as a tape recorder recording evidence, overlooking the object of trial i.e. to get at the truth. It cannot be oblivious to the active role to be played for which there is not only ample scope, but sufficient powers conferred under the Code. It has a greater duty and responsibility i.e. to render justice, in a case where the role of the prosecuting agency itself is put in issue and is said to be hand in glove with the accused, parading a mock fight and making a mockery of the criminal justice administration itself.

56. As pithily stated in *Jennison v. Baker*, 1972 (1) All E.R. 1006: (1971) 2 QB 52 : (1972) 2 WLR 429 (CA) (All E.R. p.1006d).

"The law should not be seen to sit limply, while those who defy it go free and, those who seek its protection lose hope". Courts have to ensure that accused persons are punished and that the might or authority of the State are not used to shield themselves or their men. It should be ensured that they do not wield such powers which under the Constitution has to be held only in trust for the public and society at large. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies Courts have to deal with the same with an iron hand appropriately within the

framework of law. It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. (See *Shakila Abdul Safar Khan (Smt.) v. Vasant Raghunath Dhoble and Anr*, (2003) 7 SCC 749 : 2003 SCC (Cri) 198.” “62. In *Paras Yadav and Ors. v. State of Bihar*, (1999) 2 SCC 126 : 1999 SCC (Cri) 104 (para 8), it was held that if the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand on the way of Courts getting at the truth by having recourse to Sections 311, 391 of the Code and Section 165 of the Evidence Act at the appropriate and relevant stages and evaluating the entire evidence; otherwise the designed mischief would be perpetuated with a premium to the offenders and justice would not only be denied to the complainant party but also made an ultimate casualty.”

13.10 In *State of Rajasthan v. Ani*, AIR 1997 SC 1023, the Supreme Court held that Section 165 of the Indian Evidence Act confers vast and unrestricted powers on the Court to elicit truth. The relevant portion of the judgment is reproduced hereunder:-

“10. Shri Sushil Kumar, learned senior counsel criticized the manner in which the trial Judge had put the question. Counsel submitted that when the cross-examiner has successfully elicited a pivotal answer from PW-3 it was improper for the Court to have interjected to upset the trend. 11. We are unable to appreciate the above criticism. Section 165 of the Evidence Act confers vast and unrestricted powers on the trial Court to put "any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant in order to discover relevant facts. The said section was framed by lavishly studding it with the word "any" which could only

have been inspired by the legislative intent to confer unbridled power on the trial Court to use the power whenever he deems it necessary to elicit truth. Even if any such question crosses into irrelevancy the same would not transgress beyond the contours of powers of the Court. This is clear from the words "relevant or irrelevant" in Section 165. Neither of the parties has any right to raise objection to any such question.

12. Reticence may be good in many circumstances, but a Judge remaining mute during trial is not an ideal situation. A taciturn Judge may be the model caricatured in public mind. But there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. Criminal trial should not turn out to be about or combat between two rival sides with the Judge performing the role only of a spectator or even an umpire to pronounce finally who won the race. A Judge is expected to actively participate in the trial, elicit necessary materials from witnesses at the appropriate context which he feels necessary for reaching the correct conclusion. There is nothing which inhibits his power to put questions to the witnesses, either during chief examination or cross-examination or even during re-examination to elicit *truth*. The corollary of it is that if a Judge felt that a witness has committed an error or a slip it is the duty of the Judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross-examination. Criminal justice is not to be founded on erroneous answers spelled out by witnesses during evidence collecting process. It is a useful exercise for trial Judge to remain active and alert so that errors can be minimised."

13.11 In *Mohanlal Shamji Soni v. Union of India*, 1991 Supp. (1) SCC 271 referring to Section 165 of the Indian Evidence Act and Section 311 of the Code of Criminal Procedure, the Supreme Court stated that the said two sections are complementary to each other

and between them, they confer jurisdiction on the Judge to act in aid of justice. Referring to a situation where best available evidence is not brought before the Court for one or the other reason by either of the parties, it was observed thus:

“10. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court to prove a fact or the points in issue. But it is left either for the prosecution or for the defence to establish its respective case by adducing the best available evidence and the Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their sides. Nonetheless if either of the parties withholds any evidence which could be produced and which, if produced, be unfavourable to the party withholding such evidence, the Court can draw a presumption under illustration (g) to Section 114 of the Evidence Act. In such a situation a question that arises for consideration is whether the Presiding Officer of a Court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties to take an active role in the proceedings in finding that truth and administering justice? It is a well-accepted and settled principle that a Court must discharge its statutory functions – whether discretionary or obligatory – according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done. In order to enable the Court to find out the truth and render a just decision, the salutary provisions of Section 540 of the Code (Section 311 of the new Code) are enacted whereunder any Court by exercising its discretionary authority at any stage of enquiry, trial or other proceeding can summon any person as a witness or examine any person in attendance

though not summoned as a witness or recall or re-examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to be able to throw light upon the matter in dispute; because if judgments happen to be rendered on inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated.”

“15. Besides the above specific provisions under the CrPC and Code of Civil Procedure empowering the criminal and civil Courts as the case may be, to summon and examine witnesses, a Judge in order to discover or to obtain proof of relevant facts is empowered under Section 165 of the Indian Evidence Act to exercise all the privileges and powers subject to the proviso to that section which power he has under the Evidence Act. Section 540 of the old Code (Section 311 of the new Code) and Section 165 of the Evidence Act may be said to be complementary to each other and as observed by this Court in *Jamatraj Kewalji Govani v. State of Maharashtra* “these two sections between them confer jurisdiction on the Judge to act in aid of justice”.”

13.12 In *Jamatraj Kewalji Govani v. State of Maharashtra*, AIR 1968 SC 178, the Supreme Court held that Section 165 of the Indian Evidence Act and Section 540 of the Code of Criminal Procedure, 1898 confer jurisdiction on the Judge to act in aid of justice. In criminal jurisdiction, statutory law confers a power in absolute terms to be exercised at any stage of the trial to summon a witness or examine one present in Court or to recall a witness already examined, and makes this the duty and obligation of the Court provided the just decision of the case demands it.

13.13 In *Jai Prakash v. National Insurance Company*, (2010) 2 SCC 607, the Supreme Court held that the Motor Accident Claims Tribunal should take an active role in deciding and expeditiously disposing of the applications for compensation and make effective use of Section 165 of the Indian Evidence Act to determine the just compensation.

13.14 In *Somari Devi v. Ragwar Singh*, III (2010) ACC 147, this Court has discussed the scope of Section 165 of the Indian Evidence Act.

13.15 In *Sessions Judge Nellore Referring Officer v. Intha Ramana Reddy*, 1972 CriLJ 1485, the Andhra Pradesh High Court held as under:-

“1. In this case we are presented with a difficult problem and faced with a strange situation. quite unprecedented, arising out of an unusual attitude adopted by the accused, who quite unmindful of the serious charge of murder made against them, refused to participate in the proceedings before the lower Court and persist in their refusal in this Court also. In the committal Court as well as in the Court of Session, when examined by the presiding magistrate and the Judge respectively, they plainly and bluntly stated that they had no faith in the law Courts of the land, established according to them to protect the interests of the landlords, capitalists and the like, they professed to be 'Naxalbarites.' As they had not engaged any Counsel to defend them and as they had refused to answer the question whether they were possessed of sufficient means to engage a Counsel, the learned Sessions Judge thought it desirable to appoint a Counsel at the cost of the State to defend them. He requested a senior practitioner of the Court to defend them but the accused would have none of it and told the

Sessions Judge that they did not want the services of a lawyer. The case therefore proceeded without the accused being defended by a lawyer. The prosecution examined twenty witnesses. At the end of the examination of each witness, the accused were asked by the Sessions Judge whether they wished to cross-examine the witness. They declined to cross-examine any witness. Instead they shouted slogans. When examined by the Sessions Judge at the conclusion of the evidence for the prosecution, they reaffirmed their lack of faith in Court and the present social system. At the close of the trial the learned Sessions Judge convicted the three accused under Section 302 read with Section 34 and sentenced A-1 and A-2 to death and A-3 to imprisonment for life. While A-3 has preferred an appeal through Counsel, A-1 and A-2. it is reported by the Jail Superintendent, have refused to prefer an appeal. Their case also is however before us in the reference made by the learned Sessions Judge under Section 374 Cr. P.C. for confirmation of the sentences of death. They have refused to be represented by any Counsel at the hearing of the reference. Having regard to the importance of the matter we requested three senior practitioners of this Court, Sri R. Ramalinga Reddy. Ex-Public Prosecutor of the State. Sri P. A. Chowdary and Sri B. P. Jeevan Reddy to assist us on the legal and constitutional questions involved. We are grateful to them for their assistance.

2. We may at once state that the learned Sessions Judge who tried the case adopted a negative and a passive attitude at the trial. It was as if he was spectator and not a participant in the trial. In a case where the charge is of a capital nature and where the accused are undefended, be it by choice, one would expect the presiding Judge to evince an active interest and participate in the trial by putting questions to witnesses in order to ascertain the truth. Every criminal trial is a voyage of discovery in which truth is the quest, It is the duty of a presiding Judge to explore every avenue open to him in order to

discover the truth and to advance the cause of justice. For that purpose he is expressly invested by Section 165 of the Evidence Act with the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may ask any question he pleases, in any form at any time, of any witness, or of the parties about any fact, relevant or irrelevant. Section 172(2) Criminal P.C. enables the Court to send for the police-diaries in a case and use them to aid it in the trial. The record of the proceedings of the committing Magistrate may also be perused by the Sessions Judge to further aid him in the trial. In the present case there were certainly several matters which required clarification and elucidation.”

“5...We are prepared to go so far as to say that in every capital case and in every case of a complicated nature it is the duty of the Court to assign a counsel to defend an undefended accused. In other cases also if the accused appears to be incapable of intelligently following the case, it is the duty of the Court to assign a counsel to defend the accused. If in such cases no counsel is assigned it can perhaps be urged with force that there is a violation of the Constitutional right, not to be deprived of life or liberty except according to procedure established by law. But where the accused refuses to have a counsel assigned to him it cannot be said that there is any such violation. The Constitutional right may extend in appropriate cases to being asked whether the accused would like to have a counsel assigned to him and to the assigning of a counsel if he desires but it cannot extend to have a counsel imposed on an unwilling accused. As pointed out by us earlier no Court can appoint a counsel to represent an accused if the accused does not want a counsel to represent him. That is clear. The Court may perhaps appoint a counsel to act as *amicus curiae* but such a counsel does, not represent the accused and cannot cross-examine witnesses since cross-examination must be by the adverse party. The only way in which the Court may protect the accused in such a situation is to put

necessary questions itself to the prosecution witnesses on all matters requiring clarification. We have already pointed out that the learned Sessions Judge failed to do this. In the circumstances of the case we do not think that we will be justified in quashing the conviction and ordering a retrial. We think that the interests of Justice will be adequately served if in exercise of our powers under Section 375 of the Code of Criminal Procedure. We recall and examine the, material witnesses ourselves by putting necessary questions. On such an examination the accused will naturally have a right to cross-examine the witnesses if they so choose and the prosecution will have the right to re-examine the witnesses. Summons will therefore be issued forthwith to PWs. 1 to 3. 5. 6, 13, 14. 17 and 20 to appear in this Court on 22-2-1971. The accused will be produced in this Court on that day.”

13.16 Conclusion : -

Section 165 casts a duty on the Judge to discover truth to do complete justice and empowers him to summon and examine or recall and re-examine any such person if his evidence appears to be essential to the just decision of the case. The Judge has to play an active role to discover the truth. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover the truth and, to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or willfully avoided.

14. Law with respect to grant of compensation in injury cases

14.1. 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.

14.2. In *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd.*, (1995) 1 SCC 551, a road accident resulted in 100% disability due to paraplegia below waist to a lawyer (retired Judge). The Supreme Court observed that 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. When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life.

14.3. In *Common Cause, A Registered Society v. Union of India*, (1999) 6 SCC 667, the Supreme Court held that the object of an award of damages is to give the plaintiff compensation for damage, loss or injury he has suffered. The Court further held that the elements of damage recognized by law are divisible into two main groups: pecuniary and non-pecuniary loss. 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.

14.4. In *Nagappa v. Gurudayal Singh*, (2003) 2 SCC 274, the Supreme Court held that 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. Inflation should be taken into account while calculating damages.

14.5. In *Divisional Controller, KSRTC v. Mahadeva Shetty*, (2003) 7 SCC 197, the road accident resulted in paraplegia due to serious injury to the spinal cord. The Supreme Court held that the object of providing compensation is to mitigate the hardship and place the claimant as far as possible in the same position financially as he was before the accident. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. The compensation awarded has to be “just” and not a bonanza. Every method or mode adopted for assessing compensation has to be considered in the background of “just” compensation which is the pivotal consideration. Though by use of the expression “which appears to it to be just”, a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression “just” denotes equitability, fairness and reasonableness, and non-arbitrariness. A person not only suffers injuries on account of

accident but also suffers in mind and body on account of the accident throughout his life and a feeling is developed that he is no more a normal man and cannot enjoy the amenities of life as another normal person can. The Supreme Court further held that while fixing compensation, suffering of the mind, shortening of life expectancy, loss of earning capacity, permanence of the disability, loss of amenities of life etc. are to be considered against the backdrop of age, marital status, unusual deprivation one has undertaken in one's life etc.

14.6. In *Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka*, (2009) 6 SCC 1, the Supreme Court held that adequate compensation must strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. The Supreme Court further held that the case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price not only on the victim but even more so on the injured's family and attendants and the stress saps their energy and destroys their equanimity. The Apex Court further held that compensation has been computed keeping in mind that the brilliant career of the claimant has been cut short and there is, as of now, no possibility of improvement in the claimant's condition, the compensation will ensure a steady and reasonable income to the claimant for a time when the claimant is unable to earn for himself.

14.7. In *Arvind Kumar Mishra v. New India Assurance Co. Ltd.*, (2010) 10 SCC 254, the road accident resulted in 100% permanent disability to a final year engineering student. The Supreme Court held the functional disability to be 70% to compute the loss of earning capacity according to the multiplier method. The Supreme Court further held that the whole idea of compensation is to put the claimant in the same position as he was insofar 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 what he had suffered.

14.8. In *Raj Kumar v. Ajay Kumar*, (2011) 1 SCC 343, the Supreme Court considered a large number of precedents and laid down the following 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.”

14.9. In *Sri Kumaresh v. Divisional Manager, National Insurance Co. Ltd.*, 2011 ACJ 1975, the appellant aged 20 years, suffered amputation of his right leg as a result of the accident. The Supreme Court held that the injury will not only severely affect his future prospects of earning, but will also permanently disable him for life and suffer necessary discomforts which accompany living without a leg. The Supreme Court awarded compensation of `10 lakhs for pain and suffering, loss of income during treatment, medical expenses for whole life, loss of future earnings, loss of amenities and enjoyment of life including loss of marital prospects, conveyance charges and food and nourishment.

14.10. In *Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd.*, (2011) 13 SCC 236, the Supreme Court held that

compensation to be awarded is not measured by the nature, location or degree of injury but rather by the extent or degree of the incapacity resulting from the injury. The compensation awarded should be just, fair and proper. The Supreme Court further held that the term 'disability', as so used, ordinarily means loss or impairment of earning power and has been held not to mean loss of a member of the body.

14.11. In *Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Co. Ltd.*, 2012 ACJ 191, the Supreme Court held that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to accident, loss of earning and victim's inability to lead a normal life and enjoy other amenities, which he would have enjoyed but for the disability caused due to the accident.

14.12. In *Kavita v. Deepak*, (2012) 8 SCC 604, the Supreme Court held that victims of accident, who are disabled either permanently or temporarily, adequate compensation should be awarded not only for the physical injury and treatment but also for the loss of earning and inability to lead a normal life and enjoy amenities, which one would have enjoyed had it not been for the disability. The Supreme Court further held that the amount awarded under the head of loss of earning capacity is distinct and does not overlap with amount awarded for pain, suffering, loss of enjoyment of life and medical expenses.

14.13. 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.

X X X X X

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. Yallowwa & 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 leg before knee | : ` 1,50,000/- |
| (v) | Loss of expectation of life | : ` 50,000/- |

Total : ` 4,00,000/-

(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/- |

Total : ` 2,80,000/-

(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 Amputation	: ` 75,000/-
		Total : ` 3,75,000/-

(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 in profession	: ` 1,00,000/-

Total : ` 3,00,000/-

(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/- |

Total : ` 3,50,000/-

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.”

15. **Findings**

15.1 **Loss of amenities of life**

The Claims Tribunal has not awarded any compensation for loss of amenities of life to the appellant who has suffered 15% permanent disability relating to whole body due to amputation of

four toes of left foot. However, the Claims Tribunal has awarded `50,000/- under the head of permanent disability which is treated as compensation for loss of amenities of life and therefore, no further compensation is warranted under this head.

15.2 **Disfiguration**

The Claims Tribunal has not awarded any compensation to the appellant on account of disfiguration due to the amputation of four toes of the left foot. The amputation of four toes of the left foot have disfigured the foot. A portion of the skin from left arm was removed for skin grafting on the sole of the left foot. Some portion of the skin was also taken from the appellant's right thigh for skin grafting on the upper portion of the left foot. As such, the left foot as well as the left arm and right thigh from where the skin was taken for grafting, have been disfigured which also adversely affected her matrimonial prospects. `1,00,000/- is awarded to the appellant on account of disfiguration.

15.3 **Loss of studies**

The appellant was studying in Class XI at the time of accident. Although there was no gap in her education, the amputation of the four toes of the left foot and the period spent in the treatment have certainly affected her education as well as the performance in examination and, therefore, the appellant is entitled to compensation for loss of education. A sum of `50,000/- is awarded to the appellant under this head.

15.4 Compensation on account of special shoes

The appellant has to wear special shoes with soft soles due to the amputation of the four toes of the left foot. She cannot keep her bare foot on the ground due to the sensitive skin and suffers problem due to rashes, corns and blisters. She finds difficulty in walking and running. She occasionally suffers bleeding and swelling in her left foot. The compensation of `50,000/- is awarded to the appellant under this head.

15.5 Special diet

The Claims Tribunal has not awarded any compensation to the appellant under the head of special diet. The appellant has deposed on oath before the Claims Tribunal that she used to spend `50/- per day on special diet during the period of treatment. The appellant underwent seven surgeries which included treatment for crush injury, debridement, degloving injury, ulnar forearm free flap with split thickness skin grafting, placement and removal of tissue expander, advancement of flap to cover the excision graft and revision of flap of the foot. The compensation of `20,000/- is awarded to the appellant under this head.

15.6 Loss of earning capacity

The Claims Tribunal has not awarded any compensation to the appellant for loss of earning capacity. The appellant has suffered 15% permanent disability relating to whole body due to amputation of four toes of the left foot. The appellant has deposed on oath that she cannot walk normally for more than 10 minutes due to the boils in the left foot and has to wear special shoes with

tissue expander. Her left arm has also become weak and its movement is slow. The loss of earning capacity due to permanent disability is taken as 15%. The appellant has not led any evidence before the learned Trial Court with respect to her occupation and income. Although the appellant has given the details of her present occupation and income in her statement before this Court under Section 165 of the Indian Evidence Act, but the same cannot be taken into consideration for computing the compensation for loss of earning capacity. As such, minimum wages of `1,406/- for a graduate at the time of the accident are taken into consideration. 30% is added towards inflation in terms of *Santosh Devi v. National Insurance Co. Ltd.*, (2012) 6 SCC 421. Applying the multiplier of 18, the loss of earning capacity of 15% of the appellant is computed to be `59,220.72 (15% of 1406 + 30% x 12 x 18). The compensation of `59,220.72 is awarded under this head.

15.7 **Conveyance**

The Claims Tribunal has awarded `20,000/- to the appellant under the head of conveyance which is grossly inadequate considering that the appellant shall have to spend on conveyance for the rest of her life. She is not able to travel by public transport due to the amputation of four toes of left foot and the permanent disability suffered on that account. The compensation of `1,00,000/- is awarded to the appellant under this head on the basis that the said amount be kept in fixed deposit and the interest

thereon would be sufficient to meet the expenditure of the appellant on her conveyance for the rest of her life.

15.8 The appellant is held to be entitled to a total compensation of `9,09,220.72 as per the break-up given hereunder:-

Pain and suffering	:	` 1,00,000.00
Loss of amenities of life	:	` 50,000.00
Disfiguration	:	` 1,00,000.00
Loss of studies	:	` 50,000.00
Compensation on account of special shoes	:	` 50,000.00
Special Diet	:	` 20,000.00
Loss of earning capacity	:	` 59,220.72
Conveyance	:	` 1,00,000.00
Medical expenses	:	` 1,30,000.00
Future medical treatment	:	` 1,00,000.00
Loss of matrimonial prospects	:	` 1,50,000.00
Total	:	<u><u>` 9,09,220.72</u></u>

16. **Conclusion**

16.1. In the facts and circumstances of this case, the appeal is allowed and the compensation is enhanced from `5,50,000/- to `9,09,220.72 along with interest @9% per annum from the date of filing of the claim petition till realization.

16.2. The enhanced award amount along with interest at the aforesaid rate be deposited by New India Assurance Company Ltd.– Respondent no. 3 with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c

Shivani Sharma within 30 days.

16.3. Upon the aforesaid amount being deposited, UCO Bank is directed to release 10% of the said amount to the appellant by transferring the same to her savings bank account and the remaining amount be kept in fixed deposit in the name of the appellant in the following manner:-

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

16.4 The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of the beneficiary.

16.5 Withdrawal from the aforesaid account shall be permitted to the beneficiary after due verification and the Bank shall issue photo Identity Card to the beneficiary to facilitate identity.

16.6 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 beneficiary along with the photocopy of the FDRs. Upon the expiry of the period of each FDR, the Bank shall automatically credit the maturity amount in the Savings Account of the beneficiary.

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

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

16.9 On the request of the beneficiary, Bank shall transfer the Savings Account to any other branch according to their convenience.

16.10 The beneficiary shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to the AGM, UCO Bank, Delhi High Court Branch, New Delhi.

16.11 The pending application is disposed of.

16.12 Copy of this judgment be sent to the AGM, UCO Bank,
Delhi High Court Branch, New Delhi.

J.R. MIDHA, J

FEBRUARY 22, 2013