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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Date of decision: 24th November, 2014**

+ **MAC.APP. 337/2014**

KEWAN KISHAN & ANR

..... Appellant

Through

Mr.Nikhil Malhotra, Advocate

versus

JASKARAN SINGH CHAWLA & ANR

..... Respondent

Through

Mr.L.K.Tyagi, Adv. for the Insurance
Company/R-2

+ **MAC.APP. 338/2014**

KEWAL KISHAN & ANR

..... Appellant

Through

Mr.Nikhil Malhotra, Advocate

versus

INDERJEET SINGH & ANR

..... Respondent

Through

Mr.L.K.Tyagi, Adv. for the Insurance
Company/R-2

+ **MAC.APP. 339/2014**

KEWAL KISHAN & ANR

..... Appellant

Through

Mr.Nikhil Malhotra, Advocate

versus

SMT GURMEET KAUR CHAWLA & ANR

..... Respondent

Through

Mr.L.K.Tyagi, Adv. for the Insurance
Company/R-2

+ **MAC.APP. 340/2014**

KEWAL KISHAN & ANR

..... Appellant

Through

Mr.Nikhil Malhotra, Advocate

versus

RAMAN DEEP KAUR CHAWLA & ANR

..... Respondent

Through

Mr.L.K.Tyagi, Adv. for the Insurance
Company/R-2

- + **MAC.APP. 1112/2013**
 GURMEET KAUR CHAWLA Appellant
 Through Ms.Rupika Singh, Adv. for Mr.Navneet
 Goyal, Advocate
- versus
- BALVINDER SINGH & ORS Respondent
 Through Mr.Nikhil Malhotra, Advocate for
 R-1 and R-2
 Mr.L.K.Tyagi, Advocate for Insurance
 company
- + **MAC.APP. 1114/2013**
 INDERJEET SINGH Appellant
 Through Ms.Rupika Singh, Adv. for Mr.Navneet
 Goyal, Advocate
- versus
- BALVINDER SINGH & ORS Respondent
 Through Mr.Nikhil Malhotra, Advocate for
 R-1 and R-2
 Mr.L.K.Tyagi, Advocate for Insurance
 company
- + **MAC.APP. 1115/2013**
 JASKARAN SINGH CHAWLA Appellant
 Through Ms.Rupika Singh, Adv. for Mr.Navneet
 Goyal, Advocate
- versus
- BALVINDER SINGH & ORS Respondent
 Through Mr.Nikhil Malhotra, Advocate for
 R-1 and R-2
 Mr.L.K.Tyagi, Advocate for Insurance
 company

+ **MAC.APP. 1135/2013**

RAMAN DEEP KAUR CHAWLA Appellant
Through Ms.Rupika Singh, Adv. for Mr.Navneet
Goyal, Advocate

versus

BALVINDER SINGH & ORS Respondent
Through Mr.Nikhil Malhotra, Advocate for
R-1 and R-2
Mr.L.K.Tyagi, Advocate for Insurance
company

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present appeals arise out of a common award and the same accident. The brief facts are that on 30.5.2007 the claimants were coming to Delhi via Ludhiana after visiting the Golden Temple Amritsar in a Maruti Wagon R. Shri Inderjeet Singh was driving the car. When they reached Subhanpur, a oil tanker came from the opposite direction said to be driven in a rash and negligent manner by its driver and hit the car of the claimants. All the claimants sustained grievous injuries. Four separate claim petitions were filed. One by Inderjeet Singh, second by his wife Mrs. Gurmeet Kaur Chawla, third by Master Jaskaran Singh Chawla his minor son and fourth by Ms.Raman Deep Kaur Chawla his daughter. All four petitions were disposed of by a common Award dated 6.9.2013.

2. Common issues were framed as follows:-

“1. Whether Sh.Inderjeet Singh Chawla, Miss Raman Deep Kaur, Mrs.Gurmeet Kaur Chawla and Master Jaskaran Singh Chawla sustained injuries due to rash and negligent driving of Oil Tanker No.PB-02M-9895 by R-1? OPP

2. Whether the above mentioned persons sustained injuries due to rash and negligent driving of Wagon R No.DL-2C-AC-5145 and if so, to what effect? OPR1R2.
3. Whether the petitioners are entitled to get any compensation, if so, from whom and of what amount?
4. Relief.”

3. On issue No.1 and 2 the Tribunal concluded that the accident took place due to the rash and negligent driving of the driver of the offending oil tanker, namely, Shri Balvinder Singh. The details of compensation awarded to the respective complaints is mentioned later on.

MAC.APP.337/2014, 338/2014, 339/2014 & 340/2014

4. These four appeals are filed by the owner/Kewal Kishan and driver/Balvinder Singh of the offending oil tanker. I will deal with these appeals first. Learned counsel appearing for the owner and the driver of the offending oil tanker/appellants have made two submissions to support his contentions. He submits that the Award has erroneously held that the accident took place due to the rash and negligent driving of the driver of the offending oil tanker. He secondly submits that the Tribunal also wrongly concluded that the said driver was not holding a valid driving license and wrongly awarded recovery rights to the insurance company against the appellants.

5. On the issue of negligence of the driver, learned counsel for the appellant submits that a perusal of the evidence of the driver of the offending oil tanker, Shri Balvinder Singh R1W1 and the evidence of Inderjeet Singh the claimant/PW-1 would show that there is no allegation that the driver of the offending vehicle had come on the wrong side of the road and had hit the car of the claimants. It is urged that it was PW-1 Inderjeet Singh who was driving the car and has gone on the wrong side and had a head on collision with the oil

tanker. Without prejudice, he further submits that at best it was a case of contributory negligence and hence in any case the appellants cannot be held liable for the full liability. He hence argues that in case this Court holds that it is a case of contributory negligence the insurer of the car of the claimant was a necessary party and his impleadment was mandatory.

6. On the issue of recovery rights leaned counsel for the appellant has submitted that the Tribunal wrongly came to a conclusion that the license of the driver of the tanker Shri Balvinder Singh was not valid on the date of the accident and that the license verification report filed by the appellants, showing that the license was valid upto 23.10.2007 is fake. He submits that this conclusion is erroneous and the license was valid on the date of the accident. He also points out that the appellants have filed an application which should have been listed today for permission to lead additional evidence and that alongwith this application they have filed a verification letter from the District Transport Office, Gurdaspur showing that the driving license of the driver in question/appellant No.2 was valid upto 23.10.2007. Hence, he submits that an opportunity should be granted to lead additional evidence or in the alternative the verification report be taken on record and the grant of recovery rights by the Tribunal be modified.

7. He further submits that it is on record that appellant No.2 had a valid driving license since 2001. He was an experienced driver of the tanker. He relies on the judgment of the Supreme Court in the case of ***National Insurance Co. Ltd. vs. Swaran Singh and Ors. (2004) 3 SCC 297*** and ***United India Insurance Co. Ltd v. Lehu & ors., AIR 2003 SC 1292*** to contend that it was not for the owner to verify the driving license from the authority and in these

facts in any case the owner had taken adequate care and precaution and no recovery rights could have been granted to the insurance company.

8. Regarding the question of negligence of appellant No.2/the driver of the offending tanker, I may first look at the evidence on record. The driver in his affidavit by way of evidence has said that the car was being driven at a very high speed in a rash and negligent manner and came on the wrong side and struck against the right side of the truck and caused the accident. He further states that in photographs it can be clearly seen that the car was totally on the wrong side. In his cross-examination he has said as follows:-

“It is correct that I am facing trial in a criminal case regarding the accident. I was arrested by the police and released on bail by the Court. I have not filed any complaint regarding my arrest and false implication to the said criminal case before any higher authority. It is wrong to suggest that accident was caused due to my sole negligence. I have stated in my affidavit Ex.R1W1/A that the driver of the other vehicle went asleep. Confronted with Ex.R1W1/A where it is not so recorded. It is wrong to suggest that I am deposing falsely and I filed a false affidavit.”

9. Hence, the evidence of R1W1/Balvinder Singh is not reliable. He seems to have forgotten what he has said in his affidavit by way of evidence. In his cross-examination he stated that in his evidence he has said that the driver of the other vehicle had gone to sleep. When confronted with his affidavit by way of evidence he has denied the same.

10. Coming to the evidence of PW-1 the claimant/driver of the car, namely, Inderjeet Singh, he has said that the oil tanker was being driven in a rash and negligent manner and came at a very fast speed from the opposite direction and hit the car with great force. The only cross-examination of PW-1 on negligence

part by counsel for the appellant is as follows:-

“It is incorrect to suggest that I was tired because of any excessive driving by me and for that reason I was feeling sleepy. It is wrong to suggest that there was no negligence of truck driver in the accident.”

11. Here also it is obvious that the stress of the appellant is that the driver of the car has fallen asleep and that was the cause of the accident. There is no evidence to conclude the said fact of driver Inderjeet Singh having fallen asleep.

12. This court has in the case of *National Insurance Company Limited vs. Pushpa Rana, 2009 ACJ 287* held that where a chargesheet is filed against the driver of the offending vehicle, the chargesheet read with other documents would be sufficient proof to show negligence. To the same extent are observations of the *Basant Kaur & ors. vs. Chatarpal Singh & ors., 2003 ACJ 369*.

13. Reference may also be had to the judgment of the Supreme Court in the case of *NKV Bros (P) Ltd v. M. Karumai Ammal & ors., 1980 ACJ 435* where in para 3 the Supreme Court held as follows:

“3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of *res ipsa loquitur*. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes.

We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their 'neighbour'. Indeed, the State must seriously consider no fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Article 41 of the Constitution lays the jurisprudential foundation for state relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The states must appoint sufficient number of tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many states are unjustly indifferent in this regard.”

14. In the light of the fact that a chargesheet has been filed by the police against the appellant/Balvinder Singh who was driving the tanker, I am not willing to accept the averment made in his affidavit by way of evidence that the car had come on the wrong side of the road. No such suggestion was put to PW-1 in his cross-examination. There is no attempt to file the relevant copies of the criminal record, namely, the site plan etc. by the appellant which would show the correct position. The appellant No.2 being an accused would be in possession of the case papers of the criminal case. Filing the site plan etc., would not have been difficult for him.

15. I see no reasons to differ with the findings recorded by the Tribunal on the negligence of the oil tanker merely on the basis of self protecting

submissions of appellant No.2 in his affidavit by way of evidence which are wholly unsupported by any other evidence. The said contention of the appellant is rejected.

16. I will now deal with the application of the appellant. I am not inclined in any way to allow the new application now filed by the appellants for leading additional evidence under Order 41 Rule 27. This appeal first came up for hearing on 16.4.2014. On 20.11.2014 when the matter was fixed for arguments, an adjournment was sought by the appellant saying that the main counsel for the appellant was not available and the matter was adjourned for 24.11.2014 with the direction that no adjournment shall be given on the next day. Yet now this application has been filed belatedly and is not even on the court record. The application was called for from the Registry which has now sent the application. With the said application a new license verification letter has been produced which is dated 23.9.2014 stating that the license of appellant No.2 is valid upto 23.10.2007.

17. R3W2/Sh.Gurnam Kumar, Clerk, DTO Office, Gurdaspur, Punjab was cross-examined on 13.3.2013 and 17.4.2013. He has said that the verification report of the appellant was not issued by their office and is forged. He said that the license of the driver, appellant No.2 was not valid on the date of the accident. Award was passed on 6.9.2013. Now after 18 months after evidence of R3W2 the appellants have woken up to file this application and produce a second license verification letter.

18. This see-saw cannot be allowed to be continue in this manner. Order 41 Rule 27 provides that parties can produce additional evidence before the appellate Court if the Court from whose decree appeal is preferred has refused

to admit the evidence or party establishes that notwithstanding exercise of due diligence such evidence was not within his knowledge and could not be produced or the appellate court requires any documentary proof to enable it to pronounce judgment or for any other substantial cause.

19. In my opinion, there are no grounds made out to permit the appellants to lead additional evidence. The application is without merits and is dismissed.

20. Coming to the issue of the driving license of appellant No.2. Before the tribunal the appellants had placed on record a driving license Verification Report showing that the license was valid upto 24.10.2004. R3W2 Shri Gurnam Kumar, Clerk from the DTO Office Gurdaspur, Punjab has confirmed that the license in question dated 25.10.2001 was issued in the name of the driver appellant No.2 Shri Balvinder Singh. He further confirmed that as per record available the driving license has not been renewed from their office and that on the date of the accident the license of Sh. Balvinder Singh was not valid. In his cross-examination counsel for the appellant has put the license verification report submitted by the appellant to the said witness. He has said that the signatures on the said report are his forged signatures at point X.

21. In the light of the above evidence the Tribunal rightly held that the report of the license verification filed by the appellant is fake and concluded that the appellant No.2 did not have a valid driving license on the date of the accident.

22. I will now consider the submissions of the appellant about their liability based on evidence on record. The Supreme Court in the case of ***United India Insurance Co. Ltd v. Lehu & ors.*** AIR 2003 SC 1292, MANU/SC/0219/2003 in paragraph 20 held as follows:-

“20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the

driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner should then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTO's, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The Insurance Company would not then be absolved of liability....”

23. In the present case, the owner has not entered the witness box. It is not clear as to since when the driver has been engaged by him. It was for the owner-appellant No.1 to have shown that he was vigilant and had taken due care and precaution while engaging the driver. As no such evidence has been placed on record I see no reasons to differ with the view of the Tribunal.

24. Present appeals are accordingly dismissed.

MAC.APP.1114/2013

25. The present matter pertains to enhancement of the compensation payable to Sh. Inderjeet Singh Chawla. The claimant was also the driver of the car. Based on the evidence on record, the tribunal awarded a total compensation of Rs.2,50,000 as follows:

Compensation on account of cost on treatment	Rs. 65,000/-
On account of loss of income	Rs. 1,00,000/-
On account of pain and suffering	Rs. 20,000/-
On account of conveyance and special diet	Rs. 5,000/-

On account of Domestic help	Rs. 10,000/-
On account of Disability	Rs. 50,000/-
Total	Rs. 2,50,000/-

26. The tribunal noted that the claimant had been admitted in hospital from 30.05.2007 to 30.06.2007 and has undergone an operation for hip replacement.

27. Learned counsel appearing for the claimant/appellant submits that no compensation has been awarded for future treatment as provided in Ex. PW1/16. It is next stated that as per the disability certificate, the appellant has 55% permanent disability of right lower limb and the tribunal awarded a meagre compensation for disability of only Rs.50,000/-. It is next submitted that for cost of treatment only Rs.65,000/- has been awarded whereas the appellant has spent Rs.6,44,753/-. On loss of income, it is urged that only Rs.1 lac was awarded whereas the appellant was earning Rs.26,021/- per month and had been on leave for 234 days. Hence, it is urged that the compensation for loss of income for this period should have been much higher. It is lastly urged that compensation awarded under the Non-pecuniary heads were on the lower side.

28. The evidence on record shows that there is a certificate issued by Sant. Parmanand Hospital which is Ex. PW1/16 which states that Mr. Inderjeet Singh Chawla/ claimant required a fresh implant as the hip replacement implant has a fixed duration. The estimated cost is said to be Rs.2,50,000/- which may increase in the future. It is also stated that he would require surgery for foot drop, the estimated cost for which is Rs.60,000/-. However, there is no attempt to explain or elaborate this document in evidence. No doctor has been

examined. Even PW1 himself, namely the appellant merely exhibits the document without any averment stating that he would require replacement of the implant at any stage. Hence, I agree with the views of the tribunal. There are no grounds made out or evidence on record for award of compensation for future medical treatment as claimed.

29. Coming to the issue of disability, it is on record that as per the disability certificate, the appellant has 55% permanent disability of the right lower limb. The evidence of PW1 however shows that in his affidavit by way of evidence, he has nowhere elaborated the affect of the said disability on his earning capacity or as to how it has resulted in loss of income to him. The appellant was working as an Officer with the Oriental Bank of Commerce, a PSU of the Government. He continues to work on the same post and drawing the same salary. There is no evidence to show as to how the disability had affected his future career. PW7 Mr. Kishan Singh from Oriental Bank of Commerce has confirmed that as on November 2010, the appellant was drawing a salary of Rs.35,707/- per month whereas in May 2007 he was drawing a salary of Rs.19,301.50. In the light of the evidence produced by the appellant, there is no reason to differ with the findings of the tribunal awarding compensation of Rs.50,000/- on account of disability.

30. On expenses for medical treatment, the tribunal has noted that the appellant has spent Rs.6,44,753/- on treatment out of which Rs.5,83,696/- has been reimbursed leaving a balance of Rs.61,057/-. This is also confirmed by PW7 Mr. Kishan Singh from the bank. Hence no grounds are made to interfere in the said reimbursement of Rs.61,057/- for the cost of treatment.

31. On the issue of leave PW7 has confirmed that the appellant remained on leave from 28.05.2007 to 30.11.2007 and from 03.12.2007 to 19.12.2007 and later on 10.03.2008 to 10.04.2008 being a total of 234 days. However, there is no evidence to show the loss that the appellant has suffered on account of having taken leave during the said period. In the absence of any cogent evidence, award of Rs.1 lac on account of loss of income by the tribunal is in order.

32. Coming to the non-pecuniary damages, PW1 namely the appellant has said that he remained admitted in hospital at Jalandhar from 30.05.2007 to 02.06.2007, thereafter on 02.06.2007, he was removed to Sir Ganga Ram Hospital at Delhi till 30.06.2007. He underwent an operation of ORIF right Acetabulum with POP application right forearm on 08.06.2007 in Sir Ganga Ram Hospital. He has also undergone a total hip replacement surgery in Sant Parmanand Hospital on 10.03.2008. He has 55% permanent disability on right lower limb.

33. Given the nature of injuries suffered by the appellant and the prolonged period of treatment I enhance the compensation for pain and suffering from Rs.20,000/- to Rs.75,000/-. I award attendant charges of Rs.50,000/- instead of Rs.10,000/- granted by the tribunal. Conveyance and special diet compensation is enhanced from Rs.5,000/- to Rs.50,000/-.

34. The total compensation now works out as follows:

Compensation on account of cost on treatment	Rs. 65,000/-
On account of loss of income	Rs. 1,00,000/-
On account of pain and suffering	Rs. 75,000/-

On account of conveyance and special diet	Rs. 50,000/-
On account of Domestic help (attendant charges)	Rs. 50,000/-
On account of Disability	Rs. 50,000/-
Total	Rs. 3,90,000/-

35. This appeal is disposed of as above.

MAC.APP.1112/2013

36. This matter pertains to the injuries sustained by Ms. Gurmeet Kaur Chawla. The tribunal awarded a total compensation of Rs.85,000/- as follows:

Compensation on account of cost on treatment	Rs. 20,000/-
On account of loss of income	Rs. 50,000/-
On account of pain and suffering	Rs. 10,000/-
On account of conveyance and special diet	Rs. 5,000/-
Total	Rs. 85,000/-

37. Learned counsel for the appellant submits that the compensation is liable to be enhanced. Firstly, he submits that only Rs.20,000/- has been awarded for reimbursement of medical expenses whereas the appellant has spent Rs.1,66,434/-. He next submits that the appellant was on leave for 142 days and a compensation of only Rs.50,000/- has been given for loss of income. Lastly, he submits that the non-pecuniary damages are awarded on the lower side.

38. The said claimant in her affidavit by way of evidence as PW2 has stated that she has sustained grievous injuries of fracture of ribs besides other cuts and abrasions all over the body and has become permanently disabled. She was working as Senior Assistant with Oriental Insurance Co. Ltd. and she remained

on leave for 142 days out of which 57 days' salary was not paid to her and 36 days' salary was paid on half day basis. In the light of this evidence, it is not possible to award any more compensation for the loss of income suffered by the claimant.

39. On medical treatment, the appellant in her affidavit submits that she has incurred an expenditure of Rs.2 lacs out of which Rs.1,05,345/- has been reimbursed by Oriental Insurance Company Limited. She also had a medi-claim policy. There is no clarity as to how much amount the said appellant received from the medi-claim policy. The evidence by way of affidavit is silent on the same. The tribunal also noted that no original medical bills were filed. Hence, the tribunal awarded Rs.20,000/- for medical treatment. In the light of the evidence on record there are no reasons to differ with the compensation awarded by the tribunal on this count.

40. I now come to the last submission regarding the non-pecuniary damages. The appellant remained in hospital from 30.05.2007 to 22.06.2007. She sustained fracture of ribs. She is stated to have been on leave for 142 days. Hence, in the light of the above evidence, I enhance compensation for pain and sufferings from Rs.10,000/- to Rs.50,000/-. I also enhance compensation for conveyance and special diet from Rs.5,000/- to Rs.50,000/-. The total compensation will now read as follows:

Compensation on account of cost on treatment	Rs. 20,000/-
On account of loss of income	Rs. 50,000/-
On account of pain and suffering	Rs. 50,000/-
On account of conveyance and special diet	Rs. 50,000/-
Total	Rs. 1,70,000/-

41. This appeal stands disposed of accordingly.

MAC APP. 1135/2013

42. This matter pertains to the injuries sustained by Ms. Ramandeep Kaur Chawla d/o Mr. Inderjeet Singh Chawla. The Tribunal awarded a total compensation of Rs. 45,000/- as follows:

Compensation on account of cost on treatment	Rs. 10,000/-
On account of loss of study	Rs. 20,000/-
On account of pain and suffering	Rs. 10,000/-
On account of conveyance and special diet	Rs. 5,000/-
Total	Rs. 45,000/-

43. Learned counsel appearing for the appellant submits that the said claimant has suffered 31% permanent disability but the tribunal has granted no compensation for the same. Further, it is urged that the tribunal has awarded Rs.10,000/- for cost of treatment whereas the cost of treatment should have been at least Rs.50,000/-. Lastly, it is urged that the non-pecuniary damages are on the lower side.

44. As per the disability certificate placed on record as Ex.PW3/7 by the appellant, she has suffered 31% permanent disability in respect of the right lower limb. The tribunal has noted that the appellant was studying LL.B. and she has suffered the loss of studies due to the said accident. An amount of Rs.20,000/- was awarded for loss of studies.

45. A perusal of evidence by way of affidavit of PW3, Ms. Raman Deep Kaur shows that she has not elaborated anywhere the loss of income that she would have suffered on account of disability.

46. She was a student of LL.B. In her affidavit by way of evidence she only elaborates that she was studying LL.B. from Ideal Institute of Management and Technology (Indraprastha University, Delhi). On account of her injuries, her studies have been adversely affected. In her additional affidavit by way of evidence, it was stated that the disability has adversely affected her career as she was studying LL.B. and she will not be able to participate and involve in active practice after completing the LL.B. Course. The tribunal had awarded Rs.20,000/- on account of loss of studies.

47. Keeping in view the judgments of the Supreme Court in *V.Mekala vs M.Malathi & Anr. 2014ACJ1441*, *Ashvinbhai Jayantilal Modi vs Ramkaran Ramchandra, 2014(11SCALE)427*, *V.Selvaraj & Anr. vs Bajaj Allianz General Insurance Co. Ltd. & Anr., SLP(C) No.(s) 39510/2013* in my opinion, the income of the appellant should be assessed at Rs.10,000/- per month. Keeping in view the disability and the fact that she would have worked in the legal profession, I assess the functional disability of the appellant at 20%. As the age of the injured was around 18years on the date of accident, the appropriate multiplier as per the judgement of the Supreme Court in *Sarla Verma vs DTC (2009) 6 SCC 121* will be 18. Hence, compensation on account of loss of income due to disability would now be Rs. 4,32,000/- (10x20/100x12x18).

48. Hence, the total amount of Rs. 4,32,000/- would be payable on account of loss of income due to disability.

49. On medical treatment, the tribunal has noted that on her treatment, she has spent Rs.2 lac out of which Rs.1,13,106/- was reimbursed to her. In her affidavit by way of evidence, she reiterates the said contention that she incurred expenses of Rs.2 lac out of which Rs.1,13,106/- have been reimbursed by the employer of her mother as she was dependent upon her mother. She however stated that the original medical bills/papers have been retained by the employer of her mother at the time of reimbursement and hence, she has filed necessary photocopies of the same.

50. The tribunal has awarded Rs.10,000/- on the cost of treatment. I enhance this amount to Rs.40,000/-

51. On non-pecuniary damages, I may note that the tribunal has awarded Rs.10,000/- on account of pain and sufferings and Rs.5,000/- on account of conveyance and special diet.

52. As per the affidavit by way of evidence of PW3, has said that she has remained admitted in hospital from 30.5.2007 to 12.6.2007. She has suffered a fracture of medial malleolus (right) and injuries in lower back region, right leg and left clavicle and she has become permanently disabled. Accordingly, I enhance the total compensation on account of pain and sufferings from Rs.10,000/- to Rs.25,000/-. Similarly, I enhance compensation on account of conveyance and special diet from Rs.5000/- to Rs.25,000/-. The total compensation would now be as follows:

Compensation on account of cost on treatment	Rs. 40,000/-
On account of loss of study	Rs. 20,000/-
On account of pain and suffering	Rs. 25,000/-
On account of conveyance and special diet	Rs. 25,000/-

On account of loss of income due to Disability	Rs. 4,32,000/-
Total	Rs. 5,42,000/-

MAC. APP. 1115/2013

53. This matter pertains to the injuries sustained by Master Jaskaran Singh Chawla, s/o Sh. Inderjeet Singh Chawla in the said accident. The tribunal awarded a total compensation of Rs. 45,000/- as follows:

Compensation on account of cost on treatment	Rs. 10,000/-
On account of loss of study	Rs. 20,000/-
On account of pain and suffering	Rs. 10,000/-
On account of conveyance and special diet	Rs. 5,000/-
Total	Rs. 45,000/-

54. Learned counsel appearing for the appellant submits that compensation awarded on account of cost on treatment is on the lower side. The medical bills for Rs. 49,258/- have been placed on record. He also submits that the compensation for non-pecuniary heads is awarded on the lower side.

55. As per the evidence by way of affidavit of PW2, Ms. Gurmeet Kaur, Jaskaran Singh Chawla remained in hospital from 30.05.2007 to 9.06.2007. He sustained fracture in left ankle and other injuries all over his body. It is stated that he could not attend classes for four months. Out of the bills placed on record, it is stated that the employer reimbursed Rs.49,258/- whereas according to PW2, she incurred an expenditure of Rs.1,50,000/- on the treatment of her

son. However, no proper break-up is given. Few original bills of nominal amount being Ex.PW-2/48 to 2/52 have been filed. Given the nature of injuries sustained by Jaskaran Singh Chawla, I see no reason to enhance the compensation for cost of treatment.

56. As per the evidence by way of affidavit of PW2, Ms. Gurmeet Kaur, Jaskaran Singh Chawla has sustained fracture in left ankle and other injuries all over his body. Accordingly I enhance the compensation on account of conveyance & special diet from Rs. 5,000/- to Rs. 25,000/-. Also, I enhance the compensation on account of pain & sufferings from Rs. 10,000/- to Rs. 25,000/-. The total compensation would now serve as follows:

Compensation on account of cost on treatment	Rs. 10,000/-
On account of loss of study	Rs. 20,000/-
On account of pain and suffering	Rs. 25,000/-
On account of conveyance and special diet	Rs. 25,000/-
Total	Rs. 80,000/-

57. The present appeals stands disposed of.

58. The National Insurance Co. Ltd.-respondent shall deposit the enhanced compensation as directed above with the Registrar General of this High Court along with interest @ 7.5% per annum from the date of filing of the claim petition till deposit in the Court within six weeks from today. The Registrar General shall release the amount to the respective claimants.

JAYANT NATH, J

NOVEMBER 24, 2014/n/raj