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

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Judgment delivered on: 13th May, 2014

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MAC.APP. No.504 /2010

ANITA GUPTA

..... Appellant

Represented by: Mr. Ravindra Narayan, Advocate.

Versus

KAMLESH & ORS.

..... Respondents

Represented by: Mr.L.K.Tyagi Advocate for
Respondent No.3/Insurance
Company.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the present appeal, the appellant/injured has assailed the award dated 03.04.2010, whereby the learned Tribunal has granted compensation as under:-

<i>“Medical expenses</i>	:	<i>Rs. 5,00,000/-</i>
<i>Proposed future medical expenses</i>	:	<i>Rs. 3,00,000/-</i>
<i>Domestic help/attendant charges</i>	:	<i>Rs. 1,00,000/-</i>
<i>Future medication, physiotherapy, conveyance, domestic help/attendant charges</i>	:	<i>Rs. 2,00,000/-</i>
<i>Conveyance, boarding and lodging charges</i>	:	<i>Rs. 1,00,000/-</i>
<i>Special diet</i>	:	<i>Rs. 1,00,000/-</i>
<i>Future loss of income</i>	:	<i>Rs. 20,25,000/-</i>
<i>Mental agony, pain and sufferings</i>	:	<i>Rs. 1,50,000/-</i>

<i>Loss of amenities of life</i>	:	<i>Rs. 1,50,000/-</i>
<i>Depression and mental state</i>	:	<i>Rs. 1,50,000/-</i>
<i>Matrimonial discomfort</i>	:	<i>Rs. 1,00,000/-</i>
<i>Total :</i>		<i>Rs 38,75,000/-”</i>

Interest at the rate of 7.5% *per annum* from the date of filing of the claim petition till realization of the amount was also awarded.

2. This appeal is filed for enhancement of the compensation as noted above.

3. Brief facts of the case are that on 18.02.2005 the appellant boarded bus No. DL1PA5730 from Red Fort for her residence at Laxmi Nagar, Delhi. At about 8.00 p.m., the bus was proceeding on Vikas Marg and was nearing Laxmi Nagar crossing. The injured was to de-board the bus at Laxmi Nagar Bus Stop. She got up from seat and proceeded towards exit gate. She was holding the rod at the side of front exit gate of the bus. At that time, the bus was being driven at a high speed and in a rash and negligent manner. The bus driver abruptly applied the brakes with full force before the crossing, as a result she fell out from the front gate and came under the rear left wheel of the bus and sustained multiple grievous injuries.

4. Mr.Ravindra Narayan, learned counsel appearing on behalf of the appellant/injured submitted that due to the accident, the appellant suffered multiple grievous injuries including “crush injury left forearm upper 2/3 with extensive degloving injury left forearm and arm with extensive crushing of left forearm muscles with fracture both bone forearm with ulner, median and radial nerve injury with fracture ribs left with surgical emphysema with fracture coracoids process left scapula

with large haematoma around left thigh, trochanture region and glutial region with abrasions over left knee”, with other injuries as shown in discharge summary Ex.PW4/A.

5. It is submitted that the appellant is leading a crippled life. The treatment is continuing (bills and prescriptions have already been placed on record for the period from 31.07.2008 to 11.01.2010 and from 12.01.2010 to 18.08.2011). The appellant has suffered permanent disability to the extent of 90% qua left upper and lower limbs, the certificate to this effect is Ex.PW1/A. PW1, Dr.Binod Kalita, who issued the aforesaid disability certificate, deposed as under:-

“.....this certificate is issued after examination of the patient by me. Patient can move with the help of crutches, but not independently on her own. She is unable to tie a knot independently, the patient can attend to the extent where the right limb is normal and the rest of the daily chore cannot be looked after by her independently.”

6. Learned counsel further submitted that the statement of PW6, Sunita, Maid Servant, clearly shows the dependency of the appellant on attendant. Relevant portion of para 4 and 5 of her statement is as under:-

“4.....I help her in her daily chores of life such as to take her to bathroom, to take bath to dress her after bath and to remain with her all throughout.....”

5.....one domestic help namely Ms. Noor Jahan is also working with the family of Mrs. Anita Gupta to look after the daily needs of the family such as cleaning the house, washing the clothes, kitchen work.....”

7. Accordingly, keeping in view her dependency, the learned Tribunal has considered the permanent disability as 100% qua whole body. Moreover, as per Schedule I, Sections 2 (1) and 4 of the Workmen

Compensation Act, in case of permanent disability because of loss of a hand and a foot, the percentage of loss of earning capacity will be 100%.

8. Mr.Narayan, learned counsel further submitted that consequent to the accident, the appellant has become Asthmatic, suffering from Severe Urine Incontinence, Gait-in coordination, Diplopia, Squint, Poor Eye-sight and Double Vision, Gynae problem and joint and back pain due to lengthening of leg by one inch.

9. Learned counsel further submitted that after recording evidence of the appellant on 01.06.2009, she had fallen down resulting in breakage of L2 vertebra into three pieces. Dr. B.B.Choudhary stated that the fall was due to ‘Gait-in coordination’(as annexure D at page No. 13 of the application dated 10.10.2011) as under:-

“.....The fracture of L-2 was due to a fall which was due to gain-in coordination which in turn was possible due to the Poly-trauma (due to road traffic accident).”

10. According to R.P.Centre, AIIMS, the injured who was examined on 06.04.2011 has received 40 to 75% permanent visual disability. The same is annexure E at page No.37 of an application.

11. It is further submitted that as per Para 30 of the award, the Ld. Tribunal added future prospects at the rate of 50%, thus, making income to be Rs.22,500/-, but deducted 50%, i.e., Rs.11,250/-. She was 36 years only at the time of the accident and would have definitely had a very good chance to reach to the appreciable heights in the profession in future if she had not suffered the grievous injuries and permanent disability of 100% on account of the accident.

12. Learned counsel further submitted that the learned Tribunal erred

in deducting 50% towards personal expenses as the same is done only in death cases and not in the permanent disability cases. The appellant is alive and has to spend more upon herself to meet the daily needs. So, the compensation must have been calculated by taking the income as Rs.22,500/- per month instead of Rs.11,250/- per month.

13. Learned counsel submitted that the appellant has proved on record that she has been spending a minimum of Rs.35,000/- (Rs.30,000/- at the time of evidence) on medical expenses, which was not required prior to the accident. Thus, the appellant may be awarded a sum, which can fetch a minimum of at least Rs.45,000/-, i.e., her income + medical expenses at the rate of Rs.35,000/- per month.

14. Mr. Narayan, learned counsel further submitted that the appellant has not been awarded any amount towards litigation expenses during the period of trial although pleaded in the claim petition and required to be granted as is law of the land.

15. Learned counsel further submitted that the learned Tribunal failed to consider the entire aspect. It has to take into account the inflation with reference to the date of the accident.

16. To support his submissions, learned counsel for the appellant has relied upon a case of *Shri Virender Singh Vs. Shri Anand Prakash & Ors.*, 2008 ACJ 2519, wherein the Apex Court has awarded a sum of Rs.4,50,000/- as non-pecuniary damages in the year 1980. The cost inflation index of Government of India for 1980-81 was Rs.100/- and for the year 2011-12 was Rs.785/-, thus, the value of Rupee on account of cost inflation index comes to Rs.785/-. Accordingly, it is prayed, this court may grant compensation for non-pecuniary losses by 7-8 times.

17. Learned counsel further submitted that the appellant requires to be operated upon for removal of nails and plates from radius and ulna bones, and plastic surgeries of left hip up to knee for which an estimate of Rs.15,00,000/- has been given, which itself is sufficient to show the magnitude of the injuries suffered by the appellant. For her mobility, the appellant is required to purchase a four wheeler and to engage a driver to take her to hospital for treatment which is still continuing.

18. Learned counsel for the appellant has relied upon a case of ***Rekha Jain Vs. National Insurance Co. Ltd. & Ors. 2013 8 SCC 389*** wherein held as under:-

“31. Both the Tribunal as well as the High Court have gravely erred both on facts and in law in not evaluating the legal evidence on record to award just and reasonable compensation in favour of the appellant keeping in view the fact that the appellant was a good actress, model and has acted in many films, albums, T.V. serials etc. This evidence is not challenged though the appellant was cross examined by the counsel for the respondent Insurance Company extensively without obtaining the permission from the Tribunal as required under Section 170(b) to contest in the proceeding. In the absence of such permission, the Insurance Company has got limited defence as provided under section 149(2) of the Motor Vehicles Act, which provides for the conditions which determines breach of the terms and conditions of the insurance policy. The Tribunal did not apply the legal principles laid down by this Court to award just and reasonable compensation by following various guiding factors and legal principles under the heading of future loss of earnings. It has also not awarded compensation under the following heads namely (1) damages for mental and physical shock, pain and suffering already undergone by the appellant or she is likely to undergo in future, (2) damages for loss of amenities of life on account of injury due to which the appellant is unable to act in the films

and (3) damages for the loss of expectations of life, inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life. The said principles have been recognized by this Court time and again in catena of cases reference to which are not required to be mentioned again as we have referred to the same in the preceeding paragraphs of this judgment.

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34. Further, she has stated in her evidence that at the time of accident she had completed her graduation in Commerce from G.M. College, Sambalpur and she was pursuing her studies for her post graduate degree in that College. Prior to her admission to P.G. Class, she had done P.G. Diploma course in Hotel Management from the Institute of Hotel Management and Catering Technology, Bhubaneswar. She has further stated that while pursuing her studies she was performing in the films referred to supra. She has further stated that after the accident, her physical fitness, physical appearance and her zeal to perform in films have been reduced to zero. The vital statistics required of her for modelling has also become disproportionate after the accident. She has categorically stated that she became permanently handicapped and disabled. She has also stated that prior to the accident she was lean and thin. But due to continued treatment after accident, she gained 4 to 5 k.gs. The aforesaid positive and substantive legal evidence remained unshaken in the cross examination of the appellant – PW-3 by the counsel of the respondent Insurance Company, though he was not entitled to cross examine all these aspects since the Company did not obtain the permission from the Tribunal. Nonetheless, permission was granted by the Tribunal to cross examine the appellant-PW3. Despite her cross examination by the counsel, the aforesaid important facts could not be shaken and the same remained unchallenged and undisturbed.

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38. For a film actress, the physical appearance particularly the facial features are very important to act

in the films and in T.V. serials. It is in her evidence that on account of the accident her face was disfigured, she has put on weight and has become fat and therefore she is unable to perform the role as an actress in films in future. Having regard to the nature of vocation she has been carrying on and wishes to carry on with in future, the opportunity is lost on account of the disfigurement of her face, to act in the films as an actress either as a heroine or actress in supporting role or any other role to be played in T.V. serials, albums and also as a model. It is in the evidence of the appellant that as per the District Medical Board of Sambalpur, her permanent disability is 30%. Having regard to the nature of injuries and observations made by this Court and Karnataka High Court in the cases referred to supra, we have to record a finding of fact that the appellant's permanent disability should be treated as 100% functional disablement as she cannot act in the films and in T.V. serials in future at all. Therefore, on account of the aforesaid reasons, she has suffered functional disability. In this regard, it is relevant to refer to the judgment of this Court in the case of National Insurance Company Ltd. V. Mubasir Ahmed¹⁵. This Court has held that loss of earning capacity is not a substitute for percentage of physical disablement. It is simply one of the factors taken into account to award just and reasonable compensation. Even though the claimant does not suffer from 100% physical permanent disability, he suffers from 100% functional disability if he loses the capacity to pursue his work as a result of the accident. It is worthwhile to extract paragraph no. 8 from the aforesaid judgment which reads as under:

“8. Loss of earning capacity is, therefore, not a substitute for percentage of the physical disablement. It is one of the factors taken into account. In the instant case the doctor who examined the claimant also noted about the functional disablement. In other words, the doctor had taken note of the relevant factors relating to loss of earning capacity. Without indicating any reason or basis the High Court held that there was 100% loss of earning capacity.”

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42. *In view of the aforesaid decisions of this Court and various courts and High Court of Karnataka and authors referred to supra, we have to record the finding of fact having regard to the nature of grievous injuries and her disfigured face and that she was acting as an actress in the films, T.V. serials, etc. her functional disablement is 100%. This relevant aspect of the matter has been conveniently omitted to be considered both by the Tribunal as well as by the High Court while determining compensation under various heads of non-pecuniary damages. For the foregoing reasons, we are of the view that under the different heads of non-pecuniary damages she is entitled to higher compensation in her appeal. For that purpose, we are required to consider her annual income for the purpose of computation of just and reasonable compensation under the aforesaid different heads of non-pecuniary damages. It is in her evidence that her income depends upon the project. She got 30,000/- for her first film “Maa Pari Kiye Haba” and Rs.75,000/- for Malayalam film ‘Paith Digem Alam’. For her performance in a serial, she used to get within Rs.7000/- to 10,000/-. She had received Rs.50,000/- for winning the “Ponds Women of Tomorrow” Contest. The said evidence remains unchallenged in the cross examination by the counsel for the respondent Insurance Company. Having regard to her age and qualification and that she was acting in various Oriya and Malayalam films, T.V. serials and that she was in the beginning stage of her acting career and having regard to the fact that she has acted in various films, she would have definitely had a very good chance for acting in future if she had not suffered the grievous injuries, facial disfigurement and other injuries on account of the accident. She has also stated in her evidence that she is an assessee for income tax. She has got PAN card and has produced the same. Having regard to the aforesaid legal evidence on record and in the absence of documentary evidence to show her probable annual income, it would be proper for this Court to take her probable annual income as*

Rs.5,00,000/- for the purpose of computation of her future loss of earning. We have already held that though the disability certificate speaks of her disability at 30% on account of disfigurement of the face and other injuries to her body, her physical fitness is completely changed, she has put on weight 4 to 5 kgs., she is not fit to act and no film producer will offer her roles in their films to act as an actress. Having regard to the nature of the vocation, we have to hold that she is suffering from 100% functional disability. In the light of the facts of this case and keeping in view the aforesaid evidence on record that she is a film actress and also taking into consideration that in the film world of this country the heroine will certainly get the substantial sum for acting in films, T.V. serials, modelling, it would be just and proper for us to take 50% of her annual income for the purpose of computation of her future loss of income keeping in view that throughout her life she may not be in a position to act in the films, albums and modelling. Her annual income is assessed at Rs.5,00,000/-. 50% of which is Rs.2,50,000/- per annum which is multiplied by 17 as the proper multiplier considering her age at the time of accident by applying the legal principle laid down by this Court in Sarla Verma & Ors. v. Delhi Transport Corp. & Anr.18, which amounts to Rs.42,50,000/-. Hence, we award Rs.42,50,000/- compensation under the aforesaid head. The Tribunal awarded only Rs.2,00,000/- which is enhanced to Rs.42,50,000/- under the said head. 43. The Tribunal awarded compensation of Rs.2,00,000/- for the loss of amenities, pleasure of life and her inability to attend social functions in future, which is inadequate, therefore, it should be enhanced to Rs.10,00,000/-.”

19. On the other hand, Mr. L.K.Tyagi, learned counsel appearing on behalf of the respondent No.3/Insurance Company submitted that income of the claimant was taken at Rs.15,000/- per month without any proof or record and the same is on higher side. The claimant had not filed any documents except the certificates alleged to be issued by the Bankers showing some FDRs in the names of her children. Even otherwise, the

income of a person cannot be proved from the amount deposited in the FDRs unless the source of said money is proved on record.

20. He further submitted that the loss of earning capacity of the claimant at 100%, as taken by the learned Tribunal, is on a higher side. As per the disability certificate of the claimant, she suffered permanent disability to the extent of 90% in relation to her left upper and lower limbs, but her mental faculties have not been impaired in any manner and as per the statement of the claimant she was helping her husband in court cases. In these circumstances, the claimant still can continue to assist her husband by doing the chamber work.

21. Mr. Tyagi, learned counsel further submitted that the additional documents filed by the appellant cannot be read in evidence till the same are proved on record and the respondent No.3/Insurance Company is given liberty to cross-examine the witness examined by the appellant.

22. He further submitted that the Tribunals are required to make an award determining the amount of compensation which is to be in real sense for 'damages', which in turn appears to be 'just and reasonable'. However, the compensation is not expected to be a windfall for the victims. The statutory provisions clearly indicate that the compensation must be just' and it cannot be a bonanza, not a source of profit.

23. Learned counsel further submitted that keeping in view the injuries and the treatment undergone, the learned Tribunal has taken into consideration the medical expenses, loss of income, loss of future prospects, proposed future medical expenses, domestic help/attendant charges, loss of amenities of life, mental agony, pain and sufferings, depression and mental state, marital enjoyment etc. and thereafter,

granted the compensation rather on a higher side. Therefore, no interference is required from this Court.

24. I have heard the learned counsel for the parties and have perused the record.

25. Perusal of the record shows that in the accident in question, the appellant received multiple grievous injuries. She remained under treatment as an Indoor patient of Monga Medical Center from the date of accident, i.e., 18.02.2005 to 07.03.2005. The MLC and discharge summary of Monga Medical Center had been proved as Ex.PW4/A. She has proved the medical bills of her treatment as Ex.P-79 to Ex.P-292 and her consolidated statement alongwith bills and vouchers as Ex.PW5/J to the amount of Rs. 3,85,987/-.

26. PW2, Dr. V.K. Sharma, Consultant Orthopaedic Surgeon, Monga Medical Center, deposed that he had treated the injured for fracture in both bones of forearms with crush injuries on the left forearm, with fracture coronoid process (in shoulder) and the left scapula, with surgical emphysema with large haematoma around left thigh and whole gluteal with abrasions left knee. The injured was surgically treated twice on 19.02.2005 and 02.03.2005. The second surgery was on 02.03.2005 followed by plastic surgery. The skin grafting was done by taking the skin from left thigh.

27. Dr. V.K.Sharma, further deposed that even after surgery and treatment, the injured was not completely cured. She was treated only for left forearm. She was advised for further management for the injuries in gluteal region and upper part of left thigh as it required special care as any immediate surgery could have resulted into serious complications.

28. PW3, Abhey Ram, Record Clerk from Safdarjung Hospital, has proved the discharge summary and treatment record of the appellant, as was admitted there on three occasions. Firstly, she was admitted for the period from 17.03.2005 to 27.04.2005, to this effect discharge summary is proved as Ex.PW3/A. She was again admitted from 27.05.2005 to 13.06.2005, the discharge summary for this period is Ex.PW3/B. During her stay in the hospital, an operation was performed on 30.05.2005 for post traumatic degloving injury debridement and skin grafting under GA, accordingly, a large portion of skin from her thigh was taken and grafted on her left hip. She was discharged with advise to remain on strict bed rest.

29. The appellant was again remained admitted in the hospital from 22.06.2005 to 28.06.2005, the discharge summary is Ex.PW3/C. While admission on 23.06.2005, an operation was performed for plating and nailing of radius and ulna bones of left forearm alongiwth bone graft. The bone for grafting was taken from right pelvic bone.

30. Thus, in connection with her treatment, the appellant was referred to one hospital to another such as Safdarjung Hospital, AIIMS, Apollo, Lucknow, Aligarh, LNJP, LBS, Ganga Ram and even to Chennai. The documents of which have been proved on record by PW5 as Ex.P-5 to Ex.P-62. The appellant was examined by the Medical Board of Rehabilitation, LBS Hospital for assessment of permanent disability and assessed as 90% disability of the left lower and upper limb. The disability certificate of the same is Ex.PW1/1.

31. According to Dr. Binod Kalita, who was one of the members of the Board and examined as PW1, the appellant could move with the help

of clutches but not independently. She was unable to even tie a knot independently.

32. On further perusal of the trial court record, it is revealed that her treatment was still continuing despite the long period of hospitalization.

33. The appellant has placed on record a certificate issued from the Apollo Hospital as Ex.P-6 for her future surgery showing approximate expenses for an amount of Rs.1,70,000/-. At the same time, she also placed on record certificate Ex.P-64 issued by the same hospital for her future surgery for removing of plates from forearm and rough estimate of the surgery was given as Rs.1,00,000/-.

34. The appellant also examined PW6 Sunita, who was working as an attendant with her and was being paid salary of Rs. 2,800/- per month upto March, 2006, Rs.3,200/- from April, 2006 to March, 2007 and after April, 2007 to March, 2008 she was paid Rs. 3,500/- and from April, 2008 till the date of recording of her evidence she was being paid Rs. 4,000/- per month. Affidavit to this effect is Ex.PW6/A. PW6, Sunita, further deposed that one more domestic help was working with family of the injured for cleaning the house, washing clothes and cooking meals.

35. The appellant is an Advocate by profession and proved that she was earning Rs.15,000/- per month from the practice. She was helping her husband in court cases in addition to her own separate cases as she was on panel of Insurance Companies. The documents to this effect have been proved as Ex. P-72 to P-74. She has also proved the income generated from her private practice, which she used to put in the FDRs in her name and in the names of her children. To this effect an amount of Rs.3,59,300/-, has been proved vide certificates Ex. P-76 to P-78 issued

by the Bankers.

36. Even as per the Workmen Compensation Act, 2011, income of a graduate was Rs.8,814/-, whereas appellant is a triple Graduate (B.Sc. B.Ed. and L.LB), M.Sc. PGDBA and Arts etc. Apart, she was looking after the household of the family including teaching to her children.

37. It is proved on record that she was hospitalized for 86 days on five different occasions. She is unable to live a normal life. The accident has changed all script of her life. She needs an attendant to carry out her daily chores.

38. As per the evidence Ex.PW5/A, on all aspects such as nature of injuries, treatment, implants, conveyance, special diet, attendants, value of services rendered by the members of the family, loss of her income, value of services rendered in profession to her husband (the practicing advocate), value of services rendered as house wife to the family and her present condition etc. remained unchallenged and unrebutted as the Insurance Company has failed to cross-examine the appellant on any of the issues noted above.

39. Admittedly, the appellant is an Advocate. Due to the accident, her entire movement has been restricted. The legal profession is an exerting and demanding. One has to keep moving and running from one court to another for attending the cases and from one office to another for clientele. This accident has rendered the injured totally unfit to do any kind of work personal or professional. Accordingly, the functional disability of the appellant was assessed as 100%.

40. It is not in dispute that that appellant had suffered permanent disability to the extent of 90% qua left upper and lower limbs. This fact has been proved vide certificate Ex.PW1/A.

41. Dr. Binod Kalita, who had issued the aforesaid Disability Certificate, deposed that the appellant unable to tie the knot independently and the rest of the daily chore cannot be looked after by her independently. However, while granting the compensation, Ld. Tribunal has assessed 100% functional disability in relation to whole body.

42. It is on record that after recording the evidence of the appellant on 01.06.2009, she had fallen down resulting in breakage of L2 vertebra into three pieces. Dr. B.B. Choudhary stated that the fall was due to 'Gait-in coordination'. According to R.P.Centre, AIIMS, injured who was examined on 06.04.2011 assumed 40 to 75% visual disability.

43. The issue before this court is whether the accident victim is entitled to get compensation for functional disability?

44. The parameters for assessing the compensation has been prescribed by the Apex Court while considering the case of ***Rajesh and Ors. Vs. Rajbir Singh and Ors. 2013 (6) SCALE 563, Master Malikarjun v. Divisional Manager, the National Insurance Company Limited 2013 (10) SCALE 668 and Rekha Jain (Supra).***

45. The appellant met with an accident on 18.02.2005. She was 36 years of age on the date of accident. Ld. Tribunal deducted 50% from her actual income towards personal expenses contrary to the settled law. Hence, the Ld. Tribunal ought not to have deducted towards personal expenses.

46. It is also proved on record that the appellant has been spending a minimum of Rs.35,000/- (Rs.30,000/- at the time of evidence) on medical expenses, which was not required prior to the accident.

47. Admittedly, the appellant received disability to the tune of 90%. It is noted that no amount has been granted towards disfigurement of body and expectation of life as non-pecuniary losses. She was a young advocate and has proved her income to the tune of Rs.15,000/- per month.

48. It is pertinent to mention here that in the case of **Virender Singh (Supra)** the Apex Court awarded a sum of Rs.4,50,000/- towards non-pecuniary damages for the accident took place in the year 1980. The cost inflation index of Government of India from the year 1980-81 was Rs.100/- and for the year 2011-12 was Rs.785/-. Thus, the value of rupee on account of cost inflation index comes to Rs.785/-.

49. The appellant requires to be operated upon for removal of nails and plates from radius and ulna bones and plastic surgeries of left hip up to knee for which she was given an estimate of more than Rs.15,00,000/-. For her mobility, the appellant is required to spend huge amount on conveyance as she has to visit hospital periodically for treatment, which is still continuing.

50. I note, in the case of **Rekha Jain (Supra)**, Ld. Tribunal awarded Rs.2,00,000/- for the loss of amenities, pleasure of life and her inability to attend social functions in future, which was inadequate. However, the Apex Court enhanced the same to Rs.10,00,000/-.

51. It is not in dispute that the appellant remained admitted in the hospital from 17.03.2005 to 27.04.2005. She was again admitted from 27.05.2005 to 13.06.2005. During her stay in the hospital, an operation was performed on 30.05.2005 for post-traumatic degloving injury debridement and skin grafting under GA and a large portion of skin from her thigh was taken and grafted on her left hip. The appellant was again remained admitted in the hospital from 22.06.2005 to 28.06.2005. During her stay in the hospital, on 23.06.2005 an operation was performed for plating and nailing of radius and ulna bones of left forearm alongwith bone graft. The bone for grafting was taken from right pelvic bone.

52. It is also on record that the appellant was referred to various hospitals and accordingly taken treatment from Safdarjung Hospital, AIIMS, Apollo, Sir Ganga Ram Hospital, LNJP, LBS and various other places at Lucknow, Aligarh and even to Chennai.

53. The appellant has placed on record a certificate issued from Apollo Hospital as Ex.P6 for her future surgery showing approximate expenses as Rs.1,70,000/-. At the same time, she also placed on record certificate Ex.P-64 issued by the same hospital for her future surgery for removal of plates from forearms and a rough estimate of Rs.1,00,000/- was given.

54. The appellant also examined PW6, Sunita who was working as an attendant with her and was being paid salary of Rs. 2,800/- per month up to March, 2006, Rs.3,200/- from April, 2006 to March, 2007, from April, 2007 to March, 2008 she was paid Rs. 3,500/- per month, and from

April, 2008 till date of her evidence she was being paid Rs. 4,000/- per month.

55. The case in hand is under the welfare legislation. Rule of law is to interpret the documents in favour of the victim. It is not in dispute that the appellant was a practicing Advocate. She was on panel of Insurance Companies. This profession is exerting and demanding. One has to move and run from one court to another for attending the cases and from one office to another to maintain her official work. The accident in question has restricted the entire movement of the appellant. She has become totally unfit to do professional or any kind of personal work as well including sexual enjoyment with husband. Accordingly, Ld. Tribunal has assessed the functional disability of the appellant as 100%.

56. It is relevant to note that the Apex Court in the case of *N. Manjegowda v. the Manager, the United India Insurance Co. Ltd.* **2013 (13) SCALE 642** held as under:

“12. In a recent judgment in the case of Rekha Jain v. National Insurance Co. Limited and Ors. : (2013) 8 SCC 389, this Court drew a very relevant distinction between permanent disability which was found to be 30% and functional disability which this Court held to be 100% on account of serious disfigurement of the face of the Appellant because it was bound to cause loss of career for the Appellant who in that case was an actress in films/T.V. features. Hence, it must be taken as a trite law that functional disability of an accident victim requires determination on the basis of nature of disability in the light of the career or profession which he or she was pursuing in life. It should not be computed mechanically only on percentage of physical disability. In the present case the Appellant has been found to suffer weakness of four limbs. He has to work slowly and requires help in

climbing steps, cannot run, cannot write sharply and speedily with his right hand. With his left hand he cannot lock the shirt button and has difficulty in holding of spoon for self-feeding. He was having partial sensory loss all over his limbs and lacked proper coordination in all four limbs. It is the medical opinion that for these reasons the Appellant requires an assistant for daily routine work. In view of aforesaid medical assessment of Appellant's condition after sustaining injuries in the accident and in the light of whole body disability of 50%, it would be certainly very difficult for the Appellant to practice as an Advocate and compete with others so as to command confidence and acceptability of general clients. Unlike many other professions, legal profession requires not only sharp and focused mind but also good health and ability to put in hard work within a limited time frame. The requirement of impressing the client at the age of 36 is much more. It is only when a young Advocate has built a good impression and reputation, then in the evening of his life he may continue to command professional work on the basis of his acquired knowledge and reputation. A young Advocate is bound to suffer huge professional loss on account of injuries as have been sustained by the Appellant and the condition in which the Doctor found him."

57. In view of above discussion and the settled law, the compensation comes as under:

Sl. No.	Heads	Compensation granted by Ld. Tribunal	Compensation granted by this Court
1.	Medical expenses	Rs. 5,00,000/-	Rs. 5,00,000/-
2.	Proposed future medical expenses	Rs. 3,00,000/-	Rs.17,00,000/-
3.	Domestic help/attendant charges	Rs. 1,00,000/-	Rs.5,00,000/-
4.	Future medication, physiotherapy, conveyance,	Rs. 2,00,000/-	Rs.3,00,000/-

	<i>domestic help/attendant charges</i>		
5.	<i>Conveyance, boarding and lodging charges</i>	<i>Rs. 1,00,000/-</i>	<i>Rs.1,00,000/-</i>
6.	<i>Special diet</i>	<i>Rs. 1,00,000/-</i>	<i>Rs.1,00,000/-</i>
7.	<i>Future loss of income on account of disability</i>	<i>Rs. 20,25,000/-</i>	<i>Rs.40,50,000/-</i>
8.	<i>Mental agony, pain and sufferings</i>	<i>Rs. 1,50,000/-</i>	<i>Rs.3,00,000/-</i>
9.	<i>Loss of amenities of life</i>	<i>Rs. 1,50,000/-</i>	<i>Rs.1,50,000/-</i>
10.	<i>Loss of Expectation of life</i>	<i>Nil</i>	<i>Rs.2,00,000/-</i>
11.	<i>Loss of disfigurement</i>	<i>Nil</i>	<i>Rs.2,00,000/-</i>
12.	<i>Depression and mental state</i>	<i>Rs. 1,50,000/-</i>	<i>Rs.3,00,000/-</i>
13.	<i>Matrimonial discomfort</i>	<i>Rs. 1,00,000/-</i>	<i>Rs.3,00,000/-</i>
	Total	Rs.38,75,000/-	Rs.87,00,000/-

Resultantly, the total compensation is assessed at Rs.87,00,000/-.

58. Accordingly, Rs.48,25,000/- is enhanced (Rs.87,00,000 - Rs.38,75,000).

59. The enhanced compensation shall carry interest at the rate of 7.5% *per annum* from the date of filing of the claim petition till its realization.

60. The respondent / Insurance Company is directed to deposit the enhanced compensation amount with the Registrar General of this Court within a period of six weeks from today, failing which, appellant /

claimant shall be entitled for penal interest @ 12% *per annum* on account of delayed payment.

61. On deposit, the Registrar General is directed to release the amount in favour of the appellant / claimant in terms of the impugned award dated 03.04.2010 passed by the learned Tribunal on taking necessary steps by them.

62. In view of the above, the appeal is allowed.

SURESH KAIT, J

MAY 13, 2014

Sb/jg