

**HIGH COURT OF TRIPURA
AGARTALA
MAC App. No.36 of 2024**

Sri Monaranjan Debbarma,
S/o. Lt. Sashi Kumar Debbarma,
Resident of Jagaibari,
P.S.-Bishramganj,
District- Sepahijala, Tripura.

---- Appellant(s)

Versus

1. Manik Miah,

S/o. Kader Miah,
Of Barjala,
P.S.-Bishramganj, District-Sepahijala.
[Owner of the offending Bolero Maxi Truck
bearing Registration No.TR01-X-1575]
Pin-799103

2. The Manager,

The Choramandalam M/S General Insurance Company Limited,
Mantribari Road, Old RMS Chowmuhani, Agartala,
P.S.-West Agartala, District-West Tripura.
[Insurer of the offending Bolero Maxi Truck bearing registration
No.TR01-X-1575]
Pin-799001

----Respondent(s)

along with

CO(FA) No.10 of 2024

Choramandalam MS General Insurance Company Ltd.

Represented by its Authorized Signatory,
1st Floor, Above 'W' Showroom,
Mantribari Road, Old RMS Chowmuhani,
P.S.-West Agartala,
District- West Tripura.
(Insurer of Vehicle bearing Registration No.TR-01AD-1834, Truck)

---- Cross-objector-Appellant

Versus

1. Sri Monoranjan Debbarma,

S/o. Lt. Sashi Kumar Debbarma,
Resident of Jagaibari,
P.S. Bishramganj,
District- Sepahijala

---- Claimant-Appellant-Respondent

2. Manik Miah,
S/o. Kader Miah,
Resident of Barjala,
P.S.-Bishramganj, District-Sepahijala.
[Owner of the offending Bolero Maxi Truck
bearing Registration No.TR01-X1575]

-----Owner-Respondent(s)

In MAC App. No.36 of 2024

For Appellant(s) : Mr. Saugat Datta, Adv.
For Respondent(s) : Mr. Rajib Saha, Adv,
Mr. Samrat Ghosh, Adv.

In CO(FA) No.10 of 2024

For Cross-objector(s) : Mr. Rajib Saha, Adv.
For Respondent(s) : Mr. Saugat Datta, Adv.

Date of hearing : 17.04.2025

Date of delivery of
Judgment & Order : 25.04.2025

Whether fit for
reporting : YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

The appeal filed under Section 173 of MV Act is preferred by the claimant as appellant and the cross-objection filed by the OP-Insurance Company being cross-objector under Order 41 Rule 22 read with Section 151 of CPC challenging the judgment and award dated 21.02.2024 delivered by Learned MAC Tribunal, Sepahijala District, Bishalgarh in connection with case No.TS(MAC) No.4 of 2020 are taken up together for hearing and decision.

2. Heard Learned Counsel, Mr. Saugat Datta appearing on behalf of the appellant-claimant and also heard Learned

Counsel, Mr. Rajib Saha appearing on behalf of the objector-Insurance Company in both the appeal and the cross-objection.

3. At the time of hearing of appeal and cross-objection, Learned Counsel for the claimant-appellant, Mr. Saugat Datta rests his submission on limited grounds that in the award, Learned Tribunal below determined an amount of Rs.35,000/- in para No.15 i.e. Rs.10,000/- for purchase of medicines, Rs.5,000/- for transportation charge and Rs.20,000/- for nourishment and miscellaneous expenses. But at the time of final calculation of the award, the said amount of Rs.35,000/- was omitted from the calculated amount of Rs.55,46,520/-. So, this amount of Rs.35,000/- needs to be added with the said amount. Learned Counsel for the appellant-claimant again drawn the attention of the Court that no interest has been paid upon future medical expenses and Learned Counsel for the appellant-claimant again submitted that the Learned Tribunal below at the time of awarding of compensation has paid lesser amount of compensation to the claimant ignoring the guidelines laid down in the judgment of Hon'ble Supreme Court of India reported in **(2020) 4 SCC 413** in Kajal v. Jagdish Chand and others. It was further submitted by the Learned Counsel for the claimant that the Learned Tribunal below did not award any amount towards loss of earnings during the period of treatment.

4. On the other hand, Learned Counsel for the Insurance Company i.e. the objector, Mr. Rajib Saha in course of hearing of argument fairly submitted that an amount of Rs.35,000/-

which was awarded by the Tribunal at the time of delivery of judgment may be added with the total amount of compensation awarded but Learned Counsel further drawn the attention of the Court that the Learned Tribunal below at the time of determination of compensation wrongly determined the disability of the injured victim to the extent of 100% when the victim actually sustained 60% disability which was of temporary in nature which needs to be modified. Learned Counsel further drawn the attention of the Court that the amount calculated towards attendant charges appears to be in higher side which also needs to be modified for the sake of justice otherwise the objector-Insurance Company would be prejudiced. Towards loss of earning during the period of treatment, Learned Counsel for the objector-Insurance Company submitted that since the Learned Tribunal below awarded a sum of Rs.21,85,488/- towards loss of earnings including future earnings, so, that amount also covered under the said head. So, in view of the principle of law laid down by the Hon'ble Apex Court in Kajal's case(supra), the Learned Tribunal below rightly determined the aforesaid amount. So, in summing up Learned Counsel for the objector-Insurance Company urged for modification of the award for the sake of justice to the extent as stated above.

5. Heard both the sides at length and perused the record of the Learned Tribunal below. In the case at hand, the appellant-claimant petitioner filed one claim petition before the Learned Tribunal below alleging inter alia that on 11.08.2019

when the son of the claimant Laisha Debbarma at about 1630 hours was standing at Jagaibari SB School near 1st gate in front of the shop of one Amulya Debbarma that time one vehicle bearing No.TR-01-X-1575 Bolero Maxi Truck came from the side of Pramod Nagar Bazar towards Jagaibari with rash and negligent manner dashed against the son of the claimant petitioner for which he fell down on the road and sustained grievous injury on his person. Immediately the victim was taken to Bishramganj PHC by the local people from where he was referred to AGMC & GBP Hospital, Agartala for better treatment as his condition was alarming. The victim was admitted in the Department of Ortho, Unit-II, AGMC & GBP Hospital on 11.08.2019 and discharged from the Hospital on 25.09.2019. During admission in the Hospital, he was operated for fracture femur and left leg bone fracture. Thereafter, the injured again admitted into the same hospital on and from 19.10.2019 to 26.10.2019 as an indoor patient along with two attendants. It was also alleged that the accident occurred due to rash and negligent driving of the driver of the offending Bolero vehicle. It was contended that the injured Laisha Debbarma was aged about 4 years old at the time of accident and due to his accident he sustained grievous injury on his person.

In the original claim, the OP No.1 being the owner of the offending vehicle contested the same by filing written statement denying the assertions of the claimant petitioner and also submitted that he was the owner of the offending vehicle

which was being driven by its driver having valid driving licence and the vehicle was duly insured with the OP No.2 i.e. the Insurance Company on the alleged date and time of accident.

The OP No.2 being the Insurance Company denied the assertions of the claimant petitioner in the claim petition and took the plea that the claimant petition was subjected to strict proof by the claimant petitioner.

6. Upon the pleadings of the parties, Learned Tribunal below framed the following issues:

- i) Whether the case is maintainable?
- ii) Whether claimant petitioner is entitled to compensation due to permanent disablement and multiple grievous injuries sustained by his minor son namely Laisha Debbarma due to Road Traffic Accident on 11.08.2019 at about 4:30 am at Jagaibari under Bishramganj PS? If so,
- iii) To what extent and he shall be liable to pay the compensation?

7. To substantiate the issues, the appellant-claimant petitioner and the OP-owner relied upon some documentary evidence which were marked as Exhibits.

Name of the witness of the appellant-claimant petitioner:

1. PW-1: Monaranjan Debbarma
2. PW-2: Dr. Manik Jamatia

Exhibits of the appellant-claimant petitioner:

1. Exbt.1 series: Certified copy of FIR, ejahar, seizure list and charge sheet filed in connection with case No.2019BRG040.
2. Exbt.2: Copy of Discharge summary issued by AGMC dated 25.09.2019 & 26.10.2019 (in 2 sheets).
3. Exbt.3 series: Some original prescriptions and OPD tickets (in 5 sheets).
4. Exbt.4: Some original bills/cash memos of Rs.5,901/- (in 17 sheets).
5. Exbt.5: 2 nos of bills of Pathological Laboratory amounting to Rs.2000/-
6. Exbt.6: Original School Certificate of Laisha Debbarma.

7. Exbt.7: Copy of mark sheet of Laisha Debbarma.
8. Exbt.8: Disability Certificate of Laisha Debbarma dated 12.12.2022 along with signature of PW-2 Dr. Manik Jamatia.

Name of the witness of the owner-respondent:

1. OPW-1: Manik Miah

Exhibits of the owner-respondent:

1. Exbt.A: Driving Licence of Rajib Debnath vide D.L. No.TR0720140000604.
2. Exbt.B: Registration certificate of vehicle bearing No.TR-01-X-1575 (Bolero Maxi Truck) along with Fitness Certificate dated 04.09.2018.
3. Exbt.C: Tax token and Pollution Certificate in 2 sheets.
4. Exbt.D: Copy of Insurance Certificate bearing policy No.3379/02397210/000/00 (valid w.e.f. 30.05.2019 to 29.05.2020).

Finally, on conclusion of enquiry, the Learned Tribunal below allowed the claim petition and passed the award and fastened the liability of payment of compensation upon the Insurance Company i.e. the objector herein as on the date of alleged occurrence of accident, the offending vehicle was duly insured with the objector-Insurance Company. The operative portion of the judgment and award of the Learned Tribunal below runs as follows:

ORDER

"22. In the result, the application under Section 166 of the M.V. Act, 1988 filed by the claimant, Sri Monaranjan Debbarma is allowed on contest.

The minor victim Laisha Debbarma is entitled to a sum of Rs.55,46,520/-. (Rupees Fifty five Lakhs forty six thousand five hundred twenty) only as compensation in this case.

O.P. No.2, the Cholamandalam M/S General Insurance Co. Ltd. being insurer of the offending vehicle bearing No.TR-01-X-1575 shall pay the said amount of compensation to the claimant within a period of 30(thirty) days from the date of award in terms of Section 168(3) of the Act.

The amount of compensation shall carry interest @ 7.5% per annum from the date of presentation of the claim petition before the Tribunal on 01.02.2020 till realization as imposed by the Hon'ble Apex Court in the Kajal case(Supra).

The O.P. insurance company shall give notice of the deposit of the compensation amount to the claimant

and shall also file a compliance report with this Tribunal within 15 days of the deposit.

The 80% of the whole amount shall be kept in a fixed deposit in a nationalized Bank till attainment of the victim at the age of 21 years and shall be payable to the victim on his application after completion of such age.

The interest payable on such amount shall be released on quarterly basis to the father of the child i.e. the claimant of this case which shall be spent for paying the Attendants and for the care of the child alone.

20% of the compensation amount shall be released to the father of the minor victim i.e. the claimant of this case instantly which shall be spent for the purpose of treatment, education and well being of the minor victim.

No fixed amount shall be released to the parents or guardian of the child without prior permission of this Tribunal. However, immature release may be permitted by this Tribunal to meet special medical expenses of the victim child on its satisfaction.

Supply a copy of the judgment to the claimant and the O.P. No.2 free of cost.

The case stands disposed of on contest."

Challenging the said judgment and award, the appellant-claimant petitioner has challenged the appeal for enhancement of compensation/award and at the same time, the objector-Insurance Company has filed the cross-objection for modification.

8. I have perused the award of the Learned Tribunal below. It appears that in determining the award, Learned Tribunal below relied upon the judgment of Hon'ble Supreme Court of India reported in **(2011) 1 SCC 343** in **Raj Kumar v. Ajay Kumar** and also relied upon the judgment of Hon'ble Supreme Court of India in *Kajal*(supra). Further, it appears that Learned Tribunal below in calculating the amount of compensation under the head pecuniary damages awarded an amount of Rs.35,000/- towards expenditure incurred for purchasing of medicines, travelling charges and also for

nourishment and miscellaneous expenses. Learned Tribunal below also in determining the compensation under the head loss of earnings including future loss of income awarded an amount of Rs.21,85,488/- which covers loss of earning during the period of treatment. Learned Tribunal below further awarded a sum of Rs.15,31,032/- towards attendant charges relying upon the aforesaid judgment of kajal's case(supra) and thereafter, Learned Tribunal below determined an amount of Rs.5,00,000/- towards future medical expenses. Under the head non-pecuniary damages(general damages), Learned Tribunal below further awarded a sum of Rs.10,00,000/- towards pain, suffering and loss of amenities and for loss of marriage prospect, a further sum of Rs.3,00,000/- was awarded by the Tribunal. Thus, a total sum of Rs.55,46,520/- was determined by the Learned Tribunal below towards amount of compensation to be awarded in favour of the appellant-claimant petitioner with 7.5% interest.

9. Now, after hearing both the sides and also going through the judgment and award of the Learned Tribunal below, it appears to this Court that what was the observation of the Hon'ble Supreme Court of India in Kajal's case reported in **(2020) 4 SCC 413**. In para No.16 of the said judgment, Hon'ble the Apex Court relied upon the judgment of Raj Kumar v. Ajay Kumar reported in **(2011) 1 SCC 343** which reads as under:

"16. In Raj Kumar v. Ajay Kumar:(2011) 1 SCC 343, this Court laid down the heads

under which compensation is to be awarded for personal injuries: (SCC p. 348, para 6)

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

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, 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."

Further, Hon'ble the Apex Court in para 20 discussed about loss of earnings and para No.22 discussed about attendant charges and in para No.26 discussed about pain, suffering and loss of amenities and in para No.28 discussed about loss of marriage prospects and in para No.29 discussed about future medical treatment which are summarized as under:

"Loss of earnings

20. Both the courts below have held that since the girl was a young child of 12 years only notional income of Rs 15,000 p.a. can be taken into consideration. We do not think this is a proper way of assessing the future loss of income. This young girl after studying could have worked and would have earned much more than Rs 15,000 p.a. Each case has to be decided on its own evidence but taking notional income to be Rs 15,000 p.a. is not at all justified. The appellant has placed before us material to show that the minimum wages payable to a skilled workman is Rs 4846 per month. In our opinion, this would be the minimum amount which she would have earned on becoming a major. Adding 40% for the future prospects, it works to be Rs 6784.40 per month i.e. 81,412.80 p.a. Applying the multiplier of 18, it works out to Rs 14,65,430.40, which is rounded off to Rs 14,66,000.

Attendant charges

22. The attendant charges have been awarded by the High Court @ Rs 2500 per month for 44 years, which works out to Rs 13,20,000. Unfortunately, this system is not a proper system. Multiplier system is used to balance out various factors. When compensation is awarded in lump sum, various factors are taken into consideration. When compensation is paid in lump sum, this Court has always followed the multiplier system. The multiplier system should be followed not only for determining the compensation on account of loss of income but also for determining the attendant charges, etc. This system was recognised by this Court in *Gobald Motor Service Ltd. v. R.M.K. Veluswami*:AIR 1962 SC 1. The multiplier system factors in the inflation rate, the rate of interest payable on the lump sum award, the longevity of the claimant, and also other issues such as the uncertainties of life. Out of all the various alternative methods, the multiplier method has been recognised as the most realistic and reasonable method. It ensures better justice between the parties and thus results in award of "just compensation" within the meaning of the Act.

Pain, suffering and loss of amenities

26. Coming to the non-pecuniary damages under the head of pain, suffering, loss of amenities, the High Court has awarded this girl only Rs 3,00,000. In *Mallikarjun v. National Insurance Co. Ltd.*:(2014) 14 SCC 396, this Court while dealing with the issue of award under this head held that it should be at least Rs 6,00,000, if the disability is more than 90%. As far as the present case is concerned, in addition to the 100% physical disability, the young girl is suffering from severe incontinence, she is suffering from severe hysteria and above all she is left with a brain of a nine-month-old child. This is a case where departure has to be made from

the normal rule and the pain and suffering suffered by this child is such that no amount of compensation can compensate.

Loss of marriage prospects

28. The Tribunal has awarded Rs 3,00,000 for loss of marriage prospects. We see no reason to interfere with this finding.

Future medical treatment

29. The claimant has been awarded only Rs 2,00,000 under this head. This amount is a pittance. Keeping in view the nature of her injuries and the fact that she is bedridden this child is bound to suffer from a lot of medical problems. True it is that there is no evidence in this regard but there can hardly be such evidence. She may require special mattress which will have to be changed frequently. In future as this girl grows, she may face many other medical issues because of the injuries suffered in the accident. Keeping in view her young age and assuming she would live another 50 to 60 years, it would not be unjust to award her Rs 5,00,000 for future medical expenses."

10. Now, for the sake of convenience, I would like to discuss herein below the relevant synopsis of the evidence on record of the appellant-claimant petitioner before the Learned Tribunal below. The claimant petitioner filed examination-in-chief by way of affidavit before the Learned Tribunal below wherein he reiterated the contentions made in the claim petition as PW-1 and he relied upon the documents which were marked as Exbt.-1 series to Exbt.-8 as referred above. During cross-examination by the OP-owner and the objector-Insurance Company, nothing came out relevant save and except denial.

11. It is also necessary to mention here that in the examination-in-chief by way of affidavit, the appellant-claimant petitioner in para No.6, 7, 8 and 9 mentioned the following facts:

"6) That, after discharge from hospital my son was advised by the attending Doctor for bed rest, review in Ortho OPD and plastic surgery OPD and till filing this petition my son

was attended other Doctors also at Agartala and also attend AGMC & GBP Hospital as OPD by hired vehicle several times with attendant.

After filing the said case my son unable to do play in normal life i.e. his childhood is totally cripple till now and near future also as my son suffered Locomotor Disability i.e. WEAKNESS AND RESTRICTED MOVEMENT OF LEFT LOWER LIMB FOLLOWING FRACTURE OF LEFT FEMOR AND SHORTENING OF LEFT LOWER LIMB. In this regard a Disability Certificate vide No.TR0610620150032502 dated 12/12/2022 i.e. 60% (Sixty percent) Temporary Disability has been issued against my son and the said certificate shall be valid till 12.12.2027.

7) That, It is pertinent to mention here that every disability cause has depended upon the nature of the job of the injured person, prior to the accident my son was student and age about 4 years old lad. After the accident my son left leg both bone are totally fracture and now he is unable to walk due to restricted movement of left lower limb as he used to do earlier and he will suffer such type of injury for whole life and also unable to do any daily based work for earning his livelihood in near future also, so it is expected that in future my son suffering from functional disability.

Due to the said accident my son cannot move normally as he used to do earlier and it is reasonably expected that more operation will be required to correct the both bones of left leg and now a days the cost of expenditure as living and medical treatment is very high, it is difficult to make a guess of the expenses likely to be incurred in surgeries.

8) That, It is submitted that due to the accident my son lost his confidence, suffering from disability problems, conscious, confused, afebrile & deprived of his enjoying free and frequent life and also left sided hemi-paresis and my son also become mentally handicapped too being arises discomfort, frustration, pain suffering and other physical inconveniences.

9) That, Due to this road traffic accident my son left leg both bone fractured and I could not do any movement as he used to do earlier and it is reasonably expected that after the accident my son earning capacity totally disable near future also and as a result pain, suffering & mental agony become part of his life and as such my son is required to be compensated for the general as well as the special losses and damages already suffered and likely to be suffered."

12. Surprisingly, the contesting opposite parties-respondents during cross-examination of the appellant totally

remained silent in respect of injuries and the subsequent consequences facing by the victim due to the said accident.

13. Now, let us examine the evidence of PW-2, Dr. Manik Jamatia. He deposed on oath that on 12.12.2022 he was serving as a Locomotor Specialist in the District Disability Board, West Tripura. On the day he physically examined the patient Laisha Debbarma and found that it was a case of Locomotor disability. After examination, it was found that there were weakness and restricted movement of left lower limb following fracture of left femur and shortening of left lower limb. The disability was of 60% and temporary in nature and it was recommended for five years with the validity till 12.12.2027. With such observation, the disability certificate was issued by him which was marked as Exbt.-8 in one sheet. He further stated that the issuing authority was CMO, Sepahijala District, Dr. Ranjan Biswas. He further stated that the disability suffering by the patient is completely functional and it may prevent the patient to join various services like Air Force, Navy, etc and even he cannot perform his duty as a labourer also. He further stated that due to such disability the patient suffered loss of childhood pleasure and also prevented from functioning naturally without assistance of others. Further he stated that due to disability suffered by the patient/victim, lifelong treatment may be required.

During cross-examination by the contesting parties, nothing came out relevant save and except denial.

14. A co-ordinate bench of this High Court in a similar nature of this case by a judgment dated **31.01.2020** in **MAC App. No.3 of 2019** was pleased to discuss about the assessment of disability in dealing with a case under MAC Tribunal in para No.8 to 10, this High Court observed as under:

"8. Secondly, I have come across all injury certificates issued by the District Disability Medical Boards which routinely suggest that the validity of the injury certificate is for a period of 5(five) years and that the injured should appear before the Medical Board at the end of the said term. There is no provision under the Motor Vehicles Act, 1988 or the Rules framed thereunder to assess the disability of the injured for a fixed period and to work out his loss of future income on such basis. No decision of this Court or any other Court is brought to my notice under which such procedure is evolved. Such procedure thus has no authority in law.

9. The complications and the injustice which such procedure can lead, need to be appreciated. Under the Motor Vehicles Act, a claimant would file his claim petition in terms of either Section 166 or 163A. On an application for compensation filed under Section 166 of the Motor Vehicles Act, the Claims Tribunal would pass award under Section 168 which requires determination of the amount of compensation which appears to the Tribunal to be just. Awarding just compensation thus is central to any motor accident claim case. Under Section 173 of the Motor Vehicles Act, any person aggrieved by the award of the Claims Tribunal could prefer an appeal to the High Court. The filing and awarding compensation for a motor accident claim is thus a one time measure and is not open to periodic revision. In a routine manner thus if the Medical Board certifies the disability of an injured for a fixed period, it is difficult to see how after completion of the said period of 5(five) years the claimant could seek any redress for compensation for the rest of the duration of his life. Take for example, if a claimant whose disability has been certified by the Medical Board for a period of 5(five) years and on which basis, as in the present case compensation is assessed and awarded by the Claims Tribunal for loss of income for a limited period, what would happen if such injured revisits the Medical Board at the end of said period of 5(five) years and is certified that his disability is permanent. His original claim petition would have been decided assessing his loss of income for a period of 5(five) years. He would have no opportunity of filing a fresh claim

petition. This would result into a grave loss to the claimant and would destroy the very basis of awarding just compensation in a motor accident claim case. Such practice, therefore, must be stopped forthwith. It is, therefore, provided that hereafter whenever a claimant injured presents himself to the District Medical Board for issuance of disability certificate, the Medical Board shall certify whether such disability if at all is permanent or temporary. If it is assessed as temporary, the period that such disability is likely in the opinion of the Medical Board to last shall be indicated. In any case, there shall be no recommendation for revisiting the Medical Board after completion of period of 5(five) years by issuing certificate with limited validity.

10. In the present case, since the claimant was examined by the Medical Board almost a year and a half after the accident and the Medical Board still found that he was suffering from 60% physical disability, such disability must be considered as permanent in nature. The Claims Tribunal forced the doctor to opine on what this physical disability would convert in terms of functional disability. Ordinarily Courts project a person's loss of earning capacity in proportion to the permanent disability suffered by him as a body as a whole. This may not be the ideal way of assessing possible loss of earning capacity, nevertheless presents a better alternative than any other readily available. However, the Courts always make a distinction between physical disability and functional disability whenever the projection of physical disability over the reduction in earning capacity of the injured is dramatically different. For example, if a painter by profession undergoes amputation of his dominant hand, his medically assessed physical disability may be in the range of 40% or thereabouts whereas on the premise that such person totally loses his ability to generate income from his original source, his functional disability is taken at 100%. It is not necessary to refer to large number of decisions on this point. In this context, reference to a decision of Supreme Court in case of Rekha Jain vrs. National Insurance Company Limited and others reported in (2013) 8 SCC 389 would be sufficient."

Here in the given case according to the Medical Officer of the disability Board, he examined the child victim on 12.12.2022 i.e. almost after a period of 3(three) years and after examination, he found that there was weakness

and restricted movement of left lower limb following fracture of left femur and shortening of left lower limb and the disability was of 60% and temporary in nature and it was recommended for five years with the validity till 12.12.2027. This observation of the concerned Medical Officer of the Disability Board, in my considered view, was not proper in view of the observation made by a co-ordinate Bench of this High Court in the aforementioned case(supra).

15. So, considering the nature of injury sustained by the victim and also the evidence of the doctor of the medical board, it appears that the victim was suffering from incontinence and meaning thereby, he does not have any control over her bodily functions and with that disability, it would be difficult on his part to lead a normal life in near future without the assistance of support person i.e. attendant. The Learned Tribunal below at the time of delivery of judgment/award came to the observation that when the disability is continuing for years together it cannot be considered as a temporary disability and applying the ratio of the judgment of the High Court, the Learned Tribunal below came to the observation that the disability suffered by the child victim was permanent in nature and the functional disability was 100%. So, in my considered view, the observation of the Learned Tribunal below was justified and there is no scope to interfere with the judgment of the Learned Tribunal below in delivering the award. Furthermore, at the time of alleged accident, the victim was aged about 4 years and

his condition was so critical that he is to remain non-functional over the period of his life which also includes mental disability and with that disability, it would be difficult on his part to render job in various services like Air Force, Navy, etc in normal parlance and also it would be difficult on her part to enjoy the pleasures of normal life properly.

16. Situated thus, it appears that Learned Tribunal below considering the nature of his injury rightly determined the amount of compensation towards loss of earnings including future earnings and the amount of Rs.21,85,488/- determined by the Learned Tribunal below appears to be just and reasonable. As such, I find no scope to interfere with the said amount of award but since at the time of calculation of loss of earnings, the Learned Tribunal below covered all the aspects and determined the amount. So, in my considered view, no amount is required to be awarded for loss of earning during the period of treatment which the Learned Tribunal below rightly considered and awarded in favour of the claimant, as such, there is no scope to interfere with the said findings of the Learned Tribunal below.

17. Towards attendant charges, Learned Tribunal below based upon the notification dated 04.06.2019 issued by the Government of Tripura determined the wages of a skilled labour at the rate of Rs.7,227/- per month and relying upon the principle of law laid down by the Hon'ble Apex Court in the aforesaid case applied 18 multiplier and calculated

Rs.15,61,032/- towards cost of one attendant because without the assistance of a support person i.e. attendant, it would be difficult on the part of the victim to lead a normal life. Although in the Kajal's case(supra), Hon'ble the Apex Court determined the cost of two attendants for the support of the victim in that case.

Here in this case, considering the nature of injury and the evidence on record, in my considered view Learned Tribunal below based upon the aforesaid judgment of the Hon'ble Apex Court and also this High Court in MAC App. No.3 of 2019 dated 31.01.2020 rightly determined the amount of Rs.15,61,032/- and I find no scope to interfere with the said award. So, the submission of Learned Counsel for the objector-Insurance Company cannot be accepted.

18. Towards non-pecuniary damages, Learned Tribunal below awarded Rs.10,00,000/- for pain, suffering and loss of amenities and Rs.3,00,000/- for loss of marriage prospects in view of principle of law laid down by the Hon'ble Apex Court in Kajal's case(supra) and in my considered view, Learned Tribunal below also rightly awarded the said amount of compensation to the claimant.

19. As, in course of hearing of argument, excepting the amount of Rs.35,000/- which was found to be missing in the final amount of calculation, no other points were raised by Learned Counsel for the appellant-claimant towards the award granted under different heads. So, after careful consideration of

the submission made by Learned Counsel for the appellant and the cross-objector, it appears to this Court that there was no infirmity or irregularity in the judgment delivered by Learned Tribunal below in connection with case No.TS(MAC) No.4 of 2020 dated 21.02.2024 excepting the amount of Rs.35,000/-, which has been deleted by mistake from the total amount of compensation. So the said amount of Rs.35,000/- needs to be added with the total amount of compensation of Rs.55,46,520/-

20. In the result, the appeal filed by the appellant-claimant petitioner is partly modified and the cross-objection filed by the respondent-Insurance Company deserves no consideration and the same is accordingly dismissed. The appellant-claimant petitioner is entitled to total amount of compensation of (Rs.55,46,520/-+Rs.35,000/-)=Rs.55,81,520/-, which was wrongly deleted, from the respondent-Insurance Company i.e. the objector with 7.5% as awarded by the Learned Tribunal below from the date of presentation of the claim petition before the Learned Tribunal below i.e. on 01.02.2020 to till realization as imposed by the Hon'ble Apex Court in Kajal's case(supra). No separate order is passed towards disbursal of the amount of compensation as the same has already been decided by the Learned Tribunal below in the judgment and award delivered in connection with case No.TS(MAC) No.4 of 2020 dated 21.02.2024. The objector-Insurance Company be asked to deposit the total amount of compensation awarded by this judgment/award to the Registry of the High Court within a

period of 6(six) weeks from the date of passing of judgment /award.

With this observation, the appeal and the cross-objection are accordingly disposed of.

Send down the LCR along with a copy of this judgment/award.

A copy of this judgment be furnished free of cost to the Learned Counsel for the appellant-claimant and also to the Learned Counsel for the objector-Insurance Company for information and compliance.

Pending application(s), if any, also stands disposed of.

JUDGE

