

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

+ Judgment delivered on: February 24, 2015

% **MAC. APP. 5/2008**

**ZAHID KHAN**

..... Appellant/Petitioner

Through: Mr. R.K. Bachchan, Advocate.

versus

1. **ARUN MANDAL**

Son of Sh. Durga Prasad Mandal

Resident of Village Dhanokhar Naya Tolla,

P.O. Dhanokhar, District – Bhagalpur, Bihar

2. **NARESH SINGH**

Son of Sh. Sohan Singh,

Resident of 214 Prakash Mohalla,

East of Kailash, New Delhi

3. **THE ORIENTAL INSURANCE CO. LTD.**

RO-1, 88, Janpath, New Delhi ..... Respondents

Through: None on behalf of R-1 & R-2. Mr. A.K.  
Soni, Advocate for R-3/ Insurance Co.

**CORAM:**

**HON'BLE MR. JUSTICE I.S.MEHTA**

### **JUDGMENT**

**I. S. MEHTA, J.**

1. The appellant has preferred the present appeal for enhancing the compensation against the Award dated 03.05.2006 passed by the Motor Accident Claims Tribunal, Tis Hazari Court, Delhi. The brief facts are that on the intervening night of

22/23.01.2005, the appellant alongwith his friend Ramzani was going from Idgah Sadar Bazar to his village via Boulward road by tractor bearing No. HNQ-3736 driven by Ramzani. At about 3 a.m, the appellant parked the tractor by the side of the road. The appellant thereafter got down from the tractor and went towards the side of ISBT to purchase *beedi*/cigarette. After the purchase of *beedi*/cigarette when the appellant was coming back to the aforesaid tractor, it was around 3.10 a.m, a vehicle bearing registration No. HR-29-GA-0409 (hereinafter called the offending vehicle), driven by Arun Mandal (respondent No. 1) in a rash and negligent manner at a fast speed hit the appellant and consequently the appellant fell down on the road and the offending vehicle ran over his right leg as a result of which his right leg was cut off. The driver (respondent No. 1) Arun Mandal stopped the offending vehicle and got down from the vehicle and the appellant was taken to the Trauma Centre in a precarious condition. The incident resulted into the filing of FIR bearing No. 41/05 dated 23.02.2005 u/s 279/338 of the IPC and later his right leg above the knee joint had to be amputated. Consequently, the MLC of the appellant was prepared and later after due treatment, he was discharged from the hospital. He suffered permanent disability to the extent of 85% due to the amputation of his right leg above the knee joint. Subsequently, he filed a petition for compensation before the Court of Shri. R Pandey, Presiding Officer, Motor Accident Claims Tribunal, Tis Hazari Courts, Delhi. The Ld. Tribunal on 03.05.2006 passed the award which is tabulated hereinunder:

| S.No | Compensation under Various Heads                    | Awarded by the Claims Tribunal           |
|------|-----------------------------------------------------|------------------------------------------|
| 1.   | Loss of Income                                      | 5,32,440/-                               |
| 2.   | Loss of whole Income for 6 months post the accident | Rs 17,400/- (2900 X 6)                   |
| 3.   | Pain and Suffering                                  | Rs. 30,000/-                             |
| 4.   | Conveyance and Special Diet                         | Rs. 5000/-                               |
| 5.   | Medicines                                           | Rs. 4000/-                               |
| 6.   | Loss of amenities and Enjoyment of Life             | Rs. 25000                                |
|      | <b>Total</b>                                        | <b>Rs. 613840 @ 6% Interest p.a from</b> |

|  |  |                                                     |
|--|--|-----------------------------------------------------|
|  |  | <b>date of filing of petition till realization.</b> |
|--|--|-----------------------------------------------------|

2. The appellant on being granted insufficient compensation to him by the Ld. Tribunal (*Supra*) preferred the present appeal seeking enhancement of compensation amount.

I have heard the learned counsel for the parties at length and have carefully gone through the records available.

3. The learned counsel for the appellant argued that the Ld. Tribunal has failed to appreciate the deposition of the appellant that he was earning Rs. 200/- per day and thus, oral evidence has been over looked by the Ld. Tribunal, particularly, when there is no cross-examination to this effect by the opposite party.

The appeal filed is civil in nature. Therefore, it is for the appellant to prove his plea on his own leg. The plea taken by the appellant in the present appeal that he was earning Rs. 200/- per day is to be either corroborated with ocular evidence or with documentary evidence. The appellant failed to discharge this onus. His mere ocular evidence of his earning Rs. 200/- per day alone does not *ipso facto* discharge him from the onus of proving the same under the *Indian Evidence Act, 1872*. As such, in the absence of documentary evidence, it is difficult to accept the contention that the appellant, a labourer, was earning the abovementioned amount as was deposed by him. Since no documentary evidence was put forth by the appellant, the Ld. Tribunal has rightly assessed the income of the appellant on the basis of the minimum wages as applicable to unskilled labourer as on the date of accident. Hence, no enhancement of the compensation is warranted on this ground.

4. The learned counsel for the appellant, Mr. R.K. Bachchan argued that compensation for loss of income, in case of an unskilled labourer, should be granted keeping in mind the future increase in income.

On the other hand, the learned counsel for the respondent No. 3, Mr. A.K. Soni, argued that future increase in income is not to be considered in case of self-employed persons or persons working on a fixed salary and relied upon the judgment of this Court in the case of **HDFC Ergo General Insurance Co. Ltd. vs. Lalta Devi & Ors**, **Mac App. 189 and 640/2014** decided on 12.01.2015.

5. In this regard, this Court in **Pushpa Devi and Ors. Vs United India Insurance Co. Ltd.**, **ILR(2007)Supp.(11)Delhi178** by placing reliance on the Apex Court's decision in **Bijoy Kumar Dugar v. Bidya Dhar Dutta**, **AIR 2006 SC 1255** held that compensation would be granted on the basis of future increase in income only where documentary evidence has been placed on record "*as to how and in what manner the deceased would have got promotion in future and at what period of time*".

The Hon'ble Supreme Court in **Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr.** **(2009) 6 SCC 121** made the following observation:

*"11..... In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax']. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. **Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.**" (Emphasis Supplied)*

The Hon'ble Supreme Court in the abovementioned case therefore propounded the view that an addition of 50% of the annual salary shall be made in case of persons who were aged below 40 years, and an addition of 30% shall be made in case of persons aged between 40-50 years. No addition was to be made in case the person suffering the accident was aged more than 50 years. **Moreover, no addition on account of future increase in income was to be made where the persons were self-employed or was on a fixed salary.**

6. However, the Hon'ble Supreme Court overruled this principle laid down in *Sarla Verma's case (Supra)* that future increase in income was not to be considered in case of persons who were self-employed or was on a fixed salary.

The Hon'ble Supreme Court in the case titled as **Santosh Devi Vs. National Insurance Company Ltd. and Ors. (2012) 6 SCC 421**, made the following observation in Paras 14, 17, and 18:

*"14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma's case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.*

*17. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by*

*high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc.*

***18. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.”(Emphasis Supplied)***

7. Hence, the view that future increase in income will not be taken into account in case of persons who were self-employed or were on a fixed salary was not accepted in *Santosh Devi's* case (Supra).

Later, in **Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65**, a three Judge Bench of the Apex Court while deciding a reference made to it by a two Judge Bench of the Apex Court affirmed the principal laid down in *Salra Verma's* case and held that no addition towards future prospects shall be made where the deceased was self-employed or was getting a fixed salary. The three Judge Bench of the Hon'ble Supreme Court made the following observations:

*“In the cases where the deceased was self-employed or was on a fixed salary without provision for annual increments, the actual income at the time of death **without any addition to income for future prospects will be appropriate.** A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases.”*

8. However, in a subsequent case titled as **Rajesh and Ors v. Rajbir Singh, (2013) 9 SCC 54**, a three Judge Bench affirmed the principle laid down in *Santosh Devi's* case and extended the principle laid down in *Santosh Devi's* case to persons in the age group of 50-60 years. The addition to the annual income in case of persons aged between 50-60 years was held to be 15%. The three Judge Bench of the Apex Court made the following observations:

*“11. Since, the Court in Santosh Devi's case (supra) actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma's case (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.*

*12. In Sarla Verma's case (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.”*

9. It is apparent that there is an inconsistency in principles laid down by a three Judge Bench in *Rajesh v. Rajbir* (Supra) and the reference decided by a three Judge Bench in *Reshma Kumari's* case. There is no doubt that *Rajesh's* case (Supra) was subsequent to *Reshma Kumari's* case. However, a bare perusal of the judgment of *Rajesh v. Rajbir* makes it clear that the decision laid down in *Reshma Kumari's* case

was not brought to the knowledge of the Hon'ble Lordships in *Rajesh v. Rajbir's* case. This anomaly was brought to the notice of the two Judge Bench of the Hon'ble Supreme Court in the case titled as **National Insurance Co. Ltd. v. Pushpa & Ors.**, CC No. 8058/2014 decided on 02.07.2014.

The two Judge Bench referred the matter for an authoritative pronouncement to a larger bench which is still pending before the Hon'ble Supreme Court. The question which arises is, pending the decision of reference made in *National Insurance Co. Ltd. v. Pushpa & Ors.*, which of the two judgments i.e. *Rajesh v. Rajbir* or *Reshma Kumari* should be followed?

10. In **Union of India & Ors. v. S.K. Kapoor, 2011 4 SCC 589**, the Supreme Court made the following observations:

*“13. It may be noted that the decision in S.N. Narula's case (supra) was prior to the decision in T.V. Patel's case (supra). It is well settled that if a subsequent co-ordinate bench of equal strength wants to take a different view, it can only refer the matter to a larger bench, otherwise the prior decision of a co-ordinate bench is binding on the subsequent bench of equal strength. Since, the decision in S.N. Narula's case (supra) was not noticed in T.V. Patel's case (supra), the latter decision is a judgment per incuriam. The decision in S.N. Narula's case (supra) was binding on the subsequent bench of equal strength and hence, it could not take a contrary view, as is settled by a series of judgments of this Court.”*

11. In this regard, this Court in the case of **New India Assurance Co. Ltd. v. Harpal Singh & Ors.**, MAC APP. 138/2011 decided on 06.09.2013 took into account the divergence of opinion of the Hon'ble Supreme Court and relied upon the decision of the Court in **Union of India & Ors. v. S.K. Kapoor** (Supra) and held that the three Judge Bench decision in the case of *Reshma Kumari & Ors. (Supra)* shall be taken as a binding precedent. This Court made the following observation:

*“31. Of course, three Judge Bench of the Supreme Court in its later judgment in *Rajesh* relying on *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (6) SCC 421 observed that there would be addition of 30% and 50%, depending upon the age*

*of the deceased, towards future prospects even in the case of self-employed persons. It may, however, be noted that in Rajesh, the three Judge Bench decision in Reshma Kumari was not brought to the notice of their Lordships.*

***32. In view of Union of India & Ors. v. S.K. Kapoor (2011) 4 SCC 589, the three Judge Bench decision in Reshma Kumari shall be taken as binding precedent. Since the deceased was not in permanent or regular employment, he would not be entitled to any addition towards future prospects...”***

Hence, no future increase in income is awarded in favour of the appellant.

12. The learned counsel for the appellant, conceded, during the course of the arguments that the multiplier of 18 instead of 17 has wrongly been applied by the Ld. Tribunal and further this assertion is also put forth by the learned counsel for the respondent No. 3 in the written submissions. The relevant Para 3 of the written submissions is reproduced below:

*“..Further, the Ld. Tribunal....applied higher multiplier of 18 as the appellant was aged 29 years of age, which now ought to have been of 17 as per the ratio of law held by the Hon’ble Supreme Court in the matter of Sarla Verma vs. DTC & Ors.”*

In *Sarla Verma’s* case (Supra), the Apex Court made the following observations in Para 19 and 21:

| <i>Age of the Deceased</i> | <i>Multiplier scale as envisaged in Susamma Thomas</i> | <i>Multiplier scale as envisaged in Trilok Chandra</i> | <b><i>Multiplier scale in Trilok Chandra as clarified in Charlie.</i></b> | <i>Multiplier specified in second column in the table in II Schedule to MV Act</i> | <i>Multiplier actually used in Second Schedule to MV Act (as seen from the quantum of compensation)</i> |
|----------------------------|--------------------------------------------------------|--------------------------------------------------------|---------------------------------------------------------------------------|------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| <i>(1)</i>                 | <i>(2)</i>                                             | <i>(3)</i>                                             | <i>(4)</i>                                                                | <i>(5)</i>                                                                         | <i>(6)</i>                                                                                              |
| <i>Upto 15 yrs.</i>        |                                                        |                                                        | <b><i>15</i></b>                                                          | <i>20</i>                                                                          |                                                                                                         |
| <i>15-20 yrs.</i>          | <i>16</i>                                              | <i>18</i>                                              | <b><i>18</i></b>                                                          | <i>16</i>                                                                          | <i>19</i>                                                                                               |
| <i>21 to 25 yrs.</i>       | <i>15</i>                                              | <i>17</i>                                              | <b><i>18</i></b>                                                          | <i>17</i>                                                                          | <i>18</i>                                                                                               |
| <i>26-30 yrs.</i>          | <i>14</i>                                              | <i>16</i>                                              | <b><i>17</i></b>                                                          | <i>18</i>                                                                          | <i>17</i>                                                                                               |
| <i>31-35 yrs.</i>          | <i>13</i>                                              | <i>15</i>                                              | <b><i>16</i></b>                                                          | <i>17</i>                                                                          | <i>16</i>                                                                                               |
| <i>36-40 yrs.</i>          | <i>12</i>                                              | <i>14</i>                                              | <b><i>15</i></b>                                                          | <i>16</i>                                                                          | <i>15</i>                                                                                               |
| <i>41-45 yrs.</i>          | <i>11</i>                                              | <i>13</i>                                              | <b><i>14</i></b>                                                          | <i>15</i>                                                                          | <i>14</i>                                                                                               |
| <i>46-50 yrs.</i>          | <i>10</i>                                              | <i>12</i>                                              | <b><i>13</i></b>                                                          | <i>13</i>                                                                          | <i>12</i>                                                                                               |
| <i>51-55 yrs.</i>          | <i>9</i>                                               | <i>11</i>                                              | <b><i>11</i></b>                                                          | <i>11</i>                                                                          | <i>10</i>                                                                                               |
| <i>56-60 yrs.</i>          | <i>8</i>                                               | <i>10</i>                                              | <b><i>9</i></b>                                                           | <i>8</i>                                                                           | <i>8</i>                                                                                                |
| <i>61-65 yrs.</i>          | <i>6</i>                                               | <i>8</i>                                               | <b><i>7</i></b>                                                           | <i>5</i>                                                                           | <i>6</i>                                                                                                |

|               |    |   |   |   |   |   |
|---------------|----|---|---|---|---|---|
| Above<br>yrs. | 65 | 5 | 5 | 5 | 5 | 5 |
|---------------|----|---|---|---|---|---|

*“21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”(Emphasis Supplied)*

Hence, the multiplier should have been 17 and the Ld. Tribunal wrongly used the multiplier as 18. Hence, the amount awarded as compensation for loss of income is hereby reduced to Rs. 5,02,860/- (Rs. 34,800 X 17 X 85%).

13. The victim-appellant was hospitalised for a period of approximately 45 days in LNJP Hospital. This Court is completely in agreement with the decision of the Ld. Tribunal in so far as it held that the victim might not have been able undertake any gainful work for a period of six months. Accordingly, the compensation for his total loss of income for a period of six months after his accident has been rightly assessed by the Ld. Tribunal as Rs. 17,400/- and the same is upheld.

14. The learned counsel for the appellant further argued that the compensation of Rs. 30,000 awarded for pain and suffering is wholly inadequate considering the fact that the appellant-victim suffered disability to the extent of 85% from amputation of his leg above the knee. It was contended that a sum of at least Rs. 10,00,000/- (ten lakh) be granted for the pain and suffering inflicted upon the appellant-victim. There is no doubt that the injuries suffered are grave in nature resulting in amputation of the appellant's leg in addition to causing him mental trauma. The pain and suffering which was inflicted on him cannot be adequately compensated in terms of money.

However, an endeavour should be made award a just, fair and reasonable compensation in accordance with the facts and circumstances of each case. The appellant was in the hospital for a period of one and a half months and thereafter had to make regular visits to the hospital for post surgery treatment. He will continue to suffer hardships in his daily life after the amputation. The Hon'ble Supreme Court in **Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka & Ors., (2009) 6 SCC 1**, made the following observation:

*" We must emphasise that the court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the court must not be chary of awarding adequate compensation. The 'adequate compensation' that we speak of, must to some extent, be a rule of thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned.*

*90. At the same time we often find that a person injured in an accident leaves his family in greater distress vis-À-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity."*

The amount of Rs. 30,000/- (Rs. thirty thousand) awarded as compensation by the Ld. Tribunal taking into account the facts and circumstances of the present case is inadequate. This Court in the case of **Alok R. Maurya vs Naresh Chander Kapoor & Ors.** on 31 October, 2012 (MAC APP. 644/2011) confirmed the award of Tribunal wherein a sum of Rs 1,00,000 (Rs. one lakh) was awarded to a person who suffered

80% disability and amputation of the leg above knee. In the light of present facts and circumstances of this case, and also bearing in mind the 85% permanent disability suffered by the appellant, the Court is of the opinion that a sum of Rs. 1,00,000/- (Rs. one lakh) as compensation for pain and suffering caused to the appellant will be just, fair and reasonable and enable the court in securing justice. Accordingly, the compensation under the aforementioned head, i.e. for infliction of pain and suffering hereby stands enhanced to a sum of Rs. 1,00,000/- (Rs. one lakh).

15. The Ld. Tribunal has awarded Rs. 25,000/- on account of loss of amenities and enjoyment of life. The learned counsel for the appellant argued that the sum awarded as compensation under this head is meagre and Ld. Tribunal ought to have awarded a sum of at least Rs. 10,00,000/- (Rs. ten lakh). The appellant was a young man of 29 years at the time of the accident. He will continue to live the rest of his natural life without his leg which will interfere with the enjoyment of his life. The appellant PW. 3 had deposed that he has a family consisting of a young child. The appellant will be deprived of playing with his child in a way that fathers do in addition to missing out on other things in life which may be enjoyed only by able-bodied persons. The Ld. Tribunal has failed to reasonably compensate him for such loss of amenities and enjoyment of life by awarding a meagre compensation of Rs. 25,000/-. In **Govind Yadav v. New India Insurance Co. Ltd. (2011) 10 SCC 683**, the Hon'ble Supreme Court granted a compensation of Rs. 1,50,000 (Rs. one lakh and fifty thousand) towards loss of amenities and enjoyment of life where the case related to a victim aged 24 years who, like in the present case, also suffered above knee amputation.

In the same case, the Hon'ble Supreme Court made the following observation:

*20. The compensation awarded by the Tribunal for the loss of amenities was also meager. It can only be a matter of imagination as to how the appellant will have to live for the rest of life with one artificial leg. The appellant can be expected to live for at least 50*

*years. During this period he will not be able to live like normal human being and will not be able to enjoy the life. The prospects of his marriage have considerably reduced. Therefore, it would be just and reasonable to award him a sum of Rs.1,50,000/- for the loss of amenities and enjoyment of life.*

The injuries caused to the appellant in the present case being similar, warrants a compensation of Rs. 1,50,000/- (Rs. one lakh and fifty thousand) to the appellant for loss of amenities and enjoyment of life. The amount of Rs. 10,00,000/- (ten lakh) as is claimed by the appellant is too high considering the fact that the accident took place in 2005 and interest on the enhanced compensation is being awarded to the appellant. Accordingly, the compensation under the aforementioned head i.e. loss of amenities and enjoyment of life hereby stands enhanced to Rs. 1,50,000/- (Rs. one lakh and fifty thousand).

16. The appellant PW.3 deposed that he incurred a cost of Rs. 25,000/- towards medical treatment, albeit he could furnish bills which do not exceed Rs.2,000/-. The Ld. Tribunal in this regard awarded a compensation of Rs. 4000/- for medicines, which is largely inadequate in the light of present facts of the case where the resultant injury caused 85% disability from amputation of the left leg. The appellant being an illiterate person might not have been very meticulous in preserving the bills as has been observed by the Ld. Tribunal. The awarding of Rs. 4000/- by the Ld. Tribunal to the appellant in absence of the medical bills is a reasonable to meet the ends of justice.

17. In **Raj Kumar v. Ajay Kumar & Anr., 2011 (1) SCC 343**, the Hon'ble Supreme Court observed that the compensation should be awarded for inability to lead a full life, his inability to enjoy those normal amenities etc. in addition to compensation for physical injuries:

*"5. The provision of the Motor Vehicles Act, 1988 ('the Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. [See C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 SC 376, R.D. Hattangadi v. Pest Control (India) (P) Ltd., 1995 (1) SCC 551 and Baker v. Willoughby, 1970 AC 467.]"*

18. Hence, the object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The appellant having suffered amputation of his right leg on account of rash and negligent driving of the driver of the offending vehicle deserves to be compensated in such a manner as would enable him to procure an artificial limb. The High Court of Judicature at Madras in the case of **M/s.Cholamandalam MS General Insurance Co. Ltd vs. P. Kapil Chand Jain and Anr, (C.M.A. No.1038 of 2013 and M.P.No.1 of 2013)** confirmed the order of Tribunal whereby the Tribunal had awarded a sum of Rs. 4,86,000/- for artificial limbs in a case where the claimant had suffered amputation of both the legs. In the present case, the appellant has suffered amputation in one leg above the knee.

In the case titled as **Govind Yadav vs. The New India Insurance Company Limited, (Supra)**, the Tribunal had failed to grant any compensation for procurement

of artificial limbs to a victim whose leg had to be amputated. The Hon'ble Supreme Court enhanced the amount of compensation granted by the Tribunal and awarded as sum of Rs. 2,00,000/-. The Court in the aforementioned case made the *following observations*:

*“18. The award made by the Tribunal for future medical expenses was wholly inadequate. In **Nagappa v. Gurudayal Singh (2003) 2 SCC 274**, this Court considered whether it was permissible to award compensation in instalments or recurring compensation to meet the future medical expenses of the victim. After noticing the judgment of **M. Jagannadha Rao, J. (as he then was) in P. Satyanarayana v. I. Babu Rajendra Prasad, 1988 ACJ 88 (AP)**, the judgment of the Division Bench of the Kerala High Court in **Valiyakathodi Mohd. Koya v. Ayyappankadu Ramamoorthi Mohan, 1991 ACJ 140 (Kerala)**, this Court observed:*

*In this view of the matter, in our view, it would be difficult to hold that for future medical expenses which are required to be incurred by a victim, fresh award could be passed. However, for such medical treatment, the court has to arrive at a reasonable estimate on the basis of the evidence brought on record. In the present case, it has been pointed out that for replacing the artificial leg every two to three years, the Appellant would be required to have some sort of operation and also change the artificial leg. At that time, the estimated expenses for this were Rs. 18,000 and the High Court has awarded the said amount. For change of the artificial leg every two or three years no compensation is awarded. Considering this aspect, if Rs. one lakh is awarded as an additional compensation, the Appellant would be in a position to meet the said expenses from the interest of the said amount.*

***After the aforesaid judgment, the cost of living as also the cost of artificial limbs and expenses likely to be incurred for periodical replacement of such limb has substantially increased. Therefore, it will be just and proper to award a sum of Rs. 2,00,000/- to the Appellant for future treatment.** If this amount is deposited in fixed deposit, the interest accruing on it will take care of the cost of artificial limb, fees of the doctor and other ancillary expenses. (Emphasis Supplied)*

The facts on record in the present case indicate that his leg was amputated from above the knee joint. The Court feels this is fit case for granting compensation for procurement of artificial limb and the appellant is hereby awarded a compensation of Rs. 2,00,000/- for procuring an artificial limb and a sum of Rs. 2,00,000/- for future

medical expenses such as procurement of a new artificial limb after the previous one wears out.

19. However, interest shall not be payable on the amount which is directed to be paid to the appellant for future expenses i.e. in this case, on an amount of Rs. 4,00,000/- (Rs. 2,00,000/- for purchase of artificial limb + Rs. 2,00,000/- for future medical expenses) in light of Hon'ble Supreme Court's observation in the case of **R.D.Hattangudi vs. Messrs. Pest Control India Private Limited (1995 ACJ 3666)** wherein the Apex Court stated as follows:

*"18. So far the direction of the High Court regarding payment of interest at the rate of 6% over the total amount held to be payable to the appellant is concerned, it has to be modified. The High Court should have clarified that the interest shall not be payable over the amount directed to be paid to the appellant in respect of future expenditures under different heads. **It need not be pointed out that interest is to be paid over the amount which has become payable on the date of award and not which is to be paid for expenditures to be incurred in future.** As such we direct that appellant shall not be entitled to interest over such amount."*

20. In **Arvind Kumar Mishra v. New India Assurance Company Limited, (2010) 10 SCC 254**, the Hon'ble Supreme Court observed that compensation should be such that the injured person is, as far as possible in the same position as he was in prior to the accident in the following terms:

*"9. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered."*

The Ld. Tribunal has failed to adequately compensate the appellant for Damages of Amputation of Leg and Disfigurement. This Court in the case of **Alok R. Maurya vs Naresh Chander Kapoor & Ors.** on 31 October, 2012 (MAC APP. 644/2011) confirmed the award of Tribunal granting compensation of Rs. 1,75,000/- for damages of amputation of leg and disfigurement . Accordingly, the same amount is hereby granted to the appellant for damages on account of amputation of leg and disfigurement.

21. In view of the fact, that the appellant has not been able to work for a period of six months after the accident, and would have required a constant attendant in order to carry-out his daily chores, this Court feels that the present case is a fit one for awarding of attendant charges. It may be true that such care may have been provided by the immediate family members of the Appellant. However, the appellant cannot be deprived of attendant charges owing to the fact that such care was provided gratuitously by family members. In Alok R. Maurya's case (supra), this Court placed reliance on the observations of the division bench of this Court in **Delhi Transport Corporation and Anr. v. Lalita AIR 1981 Delhi 558**, and reiterated that "victim cannot be deprived of compensation towards gratuitous services rendered by some family members for the benefit of the tortfeasor". On the same lines, compensation for attendant charges of Rs. 17,400/- awarded on the basis of minimum wages applicable in the year 2005 for unskilled worker is awarded to the appellant.

22. The learned counsel for the appellant has contended that the sum of Rs. 5000/- awarded as compensation for special diet and conveyance is not sufficient as the appellant had to make innumerable trips to the Hospital and had to follow a strict

prescribed diet and the Ld. Tribunal ought to have awarded a sum of at least Rs. 50,000/- under this head. On the other hand, the learned counsel for the respondent No. 3 has argued that the sum awarded is sufficient bearing in mind that the accident took place in 2005 when the value of such a sum was adequate to cover the expensed under this head. However, the Court is of the firm opinion that compensation awarded in this head, keeping in view, the nature of injuries, is on the lower side and is accordingly enhanced to Rs. 10,000/- which is adequate, just and reasonable keeping in view the post discharge visits to the hospital.

23. In the present case, the driver of the offending vehicle and the owner of the vehicle did not appear before the Ld. Tribunal despite receipt of notice u/o 12 R8 CPC and therefore did not rebut the evidence put forth by the Respondent No. 3 (Oriental Insurance Co. Ltd) that the driver (Respondent No. 1) did not have any valid and effective driving license. As a result, an adverse inference was drawn against Respondents 1 (driver of the offending vehicle) & 2 (owner of offending vehicle) and the Ld. Tribunal held that the insured i.e. owner of the offending vehicle has violated the terms of the insurance policy. The Ld. Tribunal therefore entitled the Respondent No. 3 to recover the award amount from Respondent No. 1 and 2.

24. However, in an appeal filed by the Respondent No.1 (Driver) before this Court in case titled as **Arun Chaudhary & Ors. vs. The Oriental Insurance Co. Ltd. & Ors. (MAC. APP. 126/2009)**, the Court vide its order dated. 16.12.2009 modified the order of the Ld. Tribunal to the extent that the Respondent No. 3 in the present appeal was **not** entitled to recover the award amount from the Respondents No. 1 & 2.

Hence, Respondent No. 3, i.e. Oriental Insurance Co. Ltd. is liable to pay the re-computed compensation as is detailed hereinunder:

25. The compensation awarded is re-computed as under:-

| S.No. | Compensation under Various Heads                                 | Awarded by the Claims Tribunal                                                   | Awarded by this Court          | Remarks                                         |
|-------|------------------------------------------------------------------|----------------------------------------------------------------------------------|--------------------------------|-------------------------------------------------|
| 1.    | Loss of Income                                                   | 5,32,440/-                                                                       | Rs. 5,02,860/-                 | Wrong multiplicand applied by the Ld. Tribunal. |
| 2.    | Loss of whole Income for 6 months post the accident              | Rs 17,400/- (2900 X 6)                                                           | Rs. 17,400/-                   |                                                 |
| 3.    | Pain and Suffering                                               | Rs. 30,000/-                                                                     | Rs 1,00,000/-                  |                                                 |
| 4.    | Conveyance and Special Diet                                      | Rs. 5,000/-                                                                      | Rs. 10,000/-                   |                                                 |
| 5.    | Medicines                                                        | Rs. 4,000/-                                                                      | Rs. 4,000/-                    |                                                 |
| 6.    | Loss of amenities and Enjoyment of Life                          | Rs. 25,000/-                                                                     | Rs. 1,50,000/-                 |                                                 |
| 7.    | Damages of amputation of Leg and Disfigurement                   | Rs. 0/-                                                                          | Rs. 1,75,000/-                 |                                                 |
| 8.    | Artificial Limb                                                  | Rs. 0/-                                                                          | Rs. 2,00,000/-                 | Interest not payable.                           |
| 9.    | Future Medical Expenses such as purchase of artificial limb etc. | Rs. 0/-                                                                          | Rs. 2,00,000/-                 | Interest not payable.                           |
| 10.   | Attendant Charges                                                | Rs. 0/-                                                                          | Rs. 17,400/-                   |                                                 |
|       | <b>Total</b>                                                     | Rs. 6,13,840 @ 6% interest p.a from date of filing of petition till realization. | Rs. 13,76,660/- @ 8% interest. |                                                 |

26. The compensation is thus enhanced from Rs. 6,13,840/- to Rs. 13,76,660/- making the appellant entitled to further receive amount of Rs. 7,62,820/-.

27. The contentions of the learned counsel for the appellant with regard to the interest rate are accepted in terms of the judgment of the Hon'ble Supreme Court in **Sanjay Kumar vs. Ashok Kumar & Anr., (2014) 5 SCC 330**. The facts of the

above mentioned case are similar in so far as the accident occurred on account of rash and negligent driving by the driver of the offending vehicle in the same year i.e. 2005 and the both victims had one leg amputated above the knee. The Hon'ble Supreme Court made the following observation in Para 15:

*“15. Further, as per the case of Municipal Corporation of Delhi v. Uphaar Tragedy Victims Association and Ors. (2011) 14 SCC 481, we find it just and proper to increase the interest awarded from 7% to 9% per annum. Hence, the total compensation the Appellant is entitled to is ` 14,59,100/- along with 9% interest per annum from the date of the accident till the date of realization”.*

|                                                                                                           |                                                 |
|-----------------------------------------------------------------------------------------------------------|-------------------------------------------------|
| Total Enhanced Compensation                                                                               | Rs. 7,62,820/-                                  |
| Amount at which interest @ 8% p.a. is calculated from the <b>date of this order until payment.</b>        | Rs. 4,00,000/-                                  |
| Amount at which interest @ 8% p.a is calculated from the <b>date of filing of petition until payment.</b> | Rs. 3,62,820/-<br>(Rs. 7,62,820 – Rs. 4,00,000) |

28. The sum of Rs. 4,00,000/- awarded for future medical expenses/procurement of artificial limb shall carry an interest of 8% p.a date of this order until payment. The remaining amount of Rs. 3,62,800/- shall carry an interest of 8% p.a. from the date of filing of petition till its payment excluding a period of six months as the appellant has already been awarded a compensation for loss of income for six months.
29. Respondent No.3 i.e. Oriental Insurance Co. Ltd. is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks. Sixty percent of the enhanced compensation shall be held in fixed deposit for a period of two years, four years, six years, eight years and ten years in equal proportion. Rest 40% shall be released on deposit. The Appellant shall be entitled to

approach the Claims Tribunal for premature withdrawal of any amount in case of any need.

30. The Appeal is allowed in the above terms. No costs.

**I.S.MEHTA, J**

**FEBRUARY 24, 2015**

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