

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1800 OF 2010

Union of India ... Appellant
V/s.
Smt. Reeta Rani Bhagendra Singh & Anr. ... Respondents

Ms. Purnima Awasthi alongwith Mr. Upendra Lokegaonkar i/b.
Mr. Y. R. Mishra for Appellant.

Mr. Jaswant Singh for the Respondents.

CORAM: M.S. SONAK, J.

DATE: 3 APRIL, 2017

ORAL JUDGMENT :

1. Heard Ms. Purnima Awasthi alongwith Mr. Upendra Lokegaonkar instructed by Mr. Y. R. Mishra for the appellant and Mr. Jaswant Singh for the respondents.

2. The appellant-Union of India, challenges the judgment and award dated 28.04.2009 made by the Motor Accident Claims Tribunal, Pune (MACT), awarding the respondents-claimants total compensation of Rs.13,09,500/- on account of demise of Bhagendra Singh, a non-commissioned officer with the Indian Army in a road accident on 17.10.1991. There is no dispute that on account of the accident, Bhagendra suffered serious

injuries, *inter alia* to his spinal cord, resulting in Tetraplegia, which means paralysis of all four limbs with loss of bladder and bowel control. Bhagendra survived as a cripple and a tetraplegic from 17.10.1991 till 2006, when, he expired under tragic circumstances.

3. The Claim Petition in which, the impugned award has been made was instituted by Bhagendra while he was living. However, during the pendency, Bhagendra expired and the Claim Petition was pursued by his widow-Reeta, daughter-Reema and son-Shersingh. Bhagendra was 33 years on the date of the accident Reeta 30 years, Reema 1 year and Shersingh 7 years. The Claim Petition was initially instituted by Bhagendra at Tezpur, Assam. After treatment at Base Hospital at Tezpur, Assam, Bhagendra was Shifted to the Military Hospital at Kirkee (Pune). The Hon'ble Supreme Court, transferred the Claim Petition from Assam to Pune. The MACT, Pune, by impugned award, has granted compensation of Rs.13,09,500/- to the respondents-claimants.

4. Ms. Awasthi, the learned counsel for the Union of India (UOI) has not disputed the factum of the accident and the

liability to pay the compensation, but, she submits that the quantum of compensation awarded by the MACT is excessive and therefore, is required to be scaled down. She has made the following submissions in support of this Appeal:-

(a) She submits that the MACT has committed a gross error in determining compensation on the basis that Bhagendra died as a result of the accident dated 17.10.1991. She submits that Bhagendra died in the year 2006 i.e. almost 15 years after the date of the accident. She submits that this is sufficient to hold that there was no nexus or in any case, no direct nexus between the accident and Bhagendra's demise. As such, she submits that the determination of the compensation on the basis of demise of Bhagendra in a road accident is quite illegal and warrants interference.

(b) She submits that the compensation in the present case, could have been determined on the basis of the injuries suffered by Bhagendra on account of the road accident, which took place on 17.10.1991. Such compensation would be far less than Rs.13,09,500/- as now determined by the MACT.

(c) The MACT, Pune has ignored the material evidence on record, which establishes without doubt that despite being tetraplegic, Bhagendra was continued in service from 17.10.1991 to 04.02.1994 and it is Bhagendra, who opted for retirement on medical grounds. She submits that Bhagendra was paid full salary and allowances for the period between 1991 to 1994 and further, Bhagendra was also awarded the pension and other terminal benefits due and payable to him, consequent upon his retirement in 1994. If this were to be taken into serious consideration by the MACT, the compensation amount would have to be scaled down substantially.

(d) The MACT, Pune also failed to take into consideration the material evidence on record, which establishes that all expenses for the treatment of Bhagendra were borne by the appellant, since, the Bhagendra was initially admitted to the Base Hospital at Tezpur, Assam and thereafter, at the Military Hospital at Kirkee (Pune). Upon consideration of such material evidence, it is necessary that the compensation amount

awarded by the MACT is scaled down substantially.

(e) Ms. Awasthi, has tendered a calculation sheet, which, according to her, determines "just and reasonable compensation", in the facts and circumstances of the present case. As per this calculation sheet, the total compensation assessed is Rs.3,81,500/-. Ms. Awasthi, submits that the annual income of Bhagendra on 17.10.1991 was Rs.18,000/-. Upon a deduction of 1/3rd towards personal expense, the annual income available to the respondents-claimants would be Rs.12,000/-. Even upon, application of conservative multiplier of 16, the dependency comes to Rs.1,92,000/-. She submits that Bhagendra was 33 years on the date of the accident and he continued in service until he was 36. Bhagendra had maximum of 8 years of service left in the Indian Army. Therefore, the maximum amount of Rs.1,44,000/- could have been awarded to Bhagendra towards loss of salary and other emoluments, even though, strictly speaking, Bhagendra is not entitled to this amount since he opted for retirement on medical grounds. To this amount, even if,

a 25% of increase is added, the compensation comes to Rs.1,80,000/- towards loss of pay. Upon maintaining the award of Rs.5,000/- towards loss of consortium, Rs.2,000/- towards funeral expense and Rs.2,500/- towards loss of estate, Ms. Awasthi submits that compensation cannot exceed Rs.3,81,500/-. She submits that the compensation awarded by the MACT is virtually a bonanza and does not represent even just and reasonable compensation in the facts and circumstances of the present case. For all the aforesaid grounds, Ms. Awasthi submits that the impugned award may be interfered with and the compensation amount determined by the MACT be scaled down from Rs.13,09,500/- to Rs.3,81,500/-.

5. Mr. Jaswant Singh, the learned Counsel for the respondents submitted that Bhagendra suffered very serious injuries on account of the accident dated 17.10.1991 and Bhagendra was rendered a crippled tetraplegic for 15 years during which, he barely survived. Mr. Singh, submits that Bhagendra was bedridden or at best wheelchair bound for 15 years, during which period, not just Bhagendra's life, but, the life of his widow

and minor children were also destroyed. He submits that the demise of Bhagendra, in the present case, has a very direct nexus to the accident, which took place on 17.10.1991. He submits that the compensation determined by the MACT is totally inadequate and hardly constitutes "just and reasonable compensation" which it is the duty of the MACT to award.

6. Mr. Singh, submits that Bhagendra was forced to retire on medical grounds, since, the accident had resulted into injuries, which rendered him unfit to take care of himself or his personal day to day chores, leave alone discharge duties as a non-commissioned officer in the Indian Army. Substantial retiral benefits were denied to Bhagendra on a specious plea that Bhagendra was on "annual leave" at the time when the accident took place on 17.10.1991. He submits that Bhagendra and his family members pursued the matter departmentally, but had neither the strength nor the finances to secure the full pension on account of forced retirement of Bhagendra.

7. Mr. Singh, submits that the Tribunal has awarded niggardly compensation towards loss of consortium, loss of estate and funeral expense. There is no award made to the children

towards loss of love and affection. There is no award made for the immense pain and suffering, which Bhagendra suffered for 15 long years. There is no award made for attendant's expenses. There is no award made for rehabilitation, physiotherapy, medicines, medical equipments etc. There is no award towards non-pecuniary damages. The award made towards pecuniary damages is also totally inadequate in the facts and circumstances of the present case.

8. Mr. Singh, submits that even if, compensation is to be determined, not on the basis of demise of Bhagendra, but, on the basis of the injuries sustained by Bhagendra, resulting into 100% disability, the just and reasonable compensation, in the facts and circumstances of the present case, would in fact exceed the amount determined by the MACT, Pune. Mr. Singh, submits that it is the duty not only of the MACT, but, also of the Appeal Court to award just and reasonable compensation, irrespective of the claim made by the respondents.

9. Mr. Singh, accordingly, submits that the Appeal instituted by the Union of India may be dismissed with exemplary costs and further, the amount of compensation determined by the

MACT be enhanced substantially so that the claimants receive “just and reasonable compensation”.

10. The rival contentions now fall for my determination.

11. The basic facts in the present case, are really not in dispute. Bhagendra, on 17.10.1991 at about 12:00 noon, while he was cycling was struck down by a Government vehicle. Bhagendra sustained very serious injuries *inter alia* to disc 5-6 of the spinal cord, as a result of which, he was rendered crippled with tetraplegia (paralysis) of all the four limbs and his bladder. The medical certificate issued by the Medical Board certifies his disability at 100%. Apart from other medical evidence on record, Bhagendra's medical status is best described in the Memorandum issued by the Paraplegic Rehabilitation Centre, Kirkee. This certificate is under the signature and the authority of a Deputy Lieutenant Colonel, having qualification of M.S. in both general surgery as well as orthopedic. The signatory/authority is the Medical Director, Paraplegic Rehabilitation Centre, Kirkee.

12. The Memorandum of the medical status dated 01.10.2002

reads thus:

*"Paraplegic Rehabilitation Centre
Park Road, Kirkee,
Pune – 411 020.
Maharashtra State.*

*MEMORANDUM OF MEDICAL STATUS OF NO. 14298562_
EX-NK BK SINGHA OF SIGNAL REGTL*

No. 14298562 Ex-Nk BK Singha sustained injury to his neck on 17 Oct 1991 while working in Tezpur which resulted in Tetraplegia which means paralysis of all the four limbs with loss of bladder and bowel control. He remained hospitalized in Military Hospital, Kirkee before he was admitted to Paraplegic Rehabilitation Centre on 23 Feb 1994 for extended rehabilitation after his hospitalization and treatment in MH Kirkee. As he has no power in upper or lower limbs with loss of sensations, he is carried on a wheel chair by an attendant. His health is frail and he suffers from frequent episodes of fever due to Urinary tract infection as his bladder is paralyzed. His journey over long distance can be hazardous to his health and therefore since his admission in this Centre, he has not left the Centre.

*Sd/-
Dy. (Lt. Col.)
M.S. (Gen.Surg.) M.S. (Ortho.)
Orthopaedic Surgeon,
Medical Director,
Paraplegic Rehabilitation Centre,
Kirkee.
01.10.2002".*

13. Upon due consideration of the submissions of the learned Counsel for the parties, in this case, compensation will have to be determined on the following alternate basis:-

(i) On the basis that Bhagendra died on account of

the road accident dated 17.10.1991, by applying the principles in several decisions, including, but not restricted to **Smt. Sarla Verma & Others Vs. Delhi Transport Corporation & Another, (2009) 6 SCC 121;**

(ii) That Bhagendra sustained several injuries, which left him a crippled quadriplegic for almost 15 years and therefore, Bhagendra and thereafter, his legal representatives are entitled to both pecuniary as well as non-pecuniary damages as held by the Hon'ble Supreme Court in several decisions, including, but not restricted to **K. Suresh Vs. New India Assurance Company Limited and Another, (2012) 12 SCC 274** and **Jai Bhagwan Vs. Laxman Singh, (1994) 5 SCC 5.**

14. The MACT has determined compensation at Rs.13,09,500/- on the basis that Bhagendra died as a result of the accident. The reasoning and the heads of the compensation determined by the MACT can be summarised in the following manner:

(a)	Monthly income at the time of retirement	Rs. 6,500
(b)	Annual income	Rs. 6,500x12=78,000
(c)	Less 1/3 rd personal expenses required for deceased Bhagendra Kumar had been alive	Rs. 26,000
(d)	Dependency of the family	Rs. 52,000
(e)	Compensation by applying multiplier 13	Rs. 52,000x13=6,76,000
(f)	Towards loss of pay	Rs. 624,000
(g)	Towards consortium	Rs. 5,000
(h)	Towards funeral	Rs. 2,000
(i)	Towards loss of estate	Rs. 2,500
(j)	Total compensation (e to i)	Rs. 1,309,500

15. Assuming that in the present case the compensation was required to be determined on the basis that Bhagendra died in the accident or that there was direct nexus between the accident and Bhagendra's death, the assessment of compensation as aforesaid, is on the lower side and does not represent just or reasonable compensation in the facts and circumstances of the present case.

16. The MACT has taken Bhagendra's income at Rs.6,500/- per month or his annual income at Rs.78,000/-. This was on the basis that Bhagendra, on the date of the accident i.e. 17.10.1991 was drawing salary of Rs.6,500/- per month. Admittedly, Bhagendra died in the year 2006. For the purposes

of determining the multiplier, the MACT has referred to the age of Bhagendra at the time of his death in the year 2006. However, when it comes to income, the MACT has made reference to the income which Bhagendra was drawing in the year 1991. Further, the MACT has made no addition whatsoever towards future prospects. In the facts and circumstances of the present case, the compensation towards dependency, was required to be assessed in excess of Rs.6,76,000/-.

17. The income of Bhagendra in the year 1991 i.e. on the date of the accident was Rs.78,000/- per annum. In addition, judicial notice can be taken of the fact that non-commissioned officers in the Indian Army are entitled to various perquisites like rations, etc., which, enure for the benefit of the family. On 17.10.1991 Bhagendra was aged 33 years and therefore , addition to the extent of 50% is due towards future prospects. This takes the annual income to Rs.1,17,000/-. Upon consideration of the perks, this figure can be rounded to Rs.1,20,000/- per annum. Even upon deduction of 1/3rd towards personal expenses, the annual income would come to Rs.80,000/- per annum.

18. The MACT, in the present case, has taken the multiplier at

13 on the basis that Bhagendra was 48 years of age in 2006 when he actually died. However, from the evidence on record, it is quite clear that Bhagendra from 17.10.1991 i.e. from the time he was 33 years of age, was rendered a crippled tetraplegic suffering from 100% disability. On this basis, the multiplier would come to 16. Considering the peculiar facts of the present case, however, the multiplier can be taken as at least 14 on a conservative basis. This means that the compensation towards dependency would come to Rs.80,000/- x 14 = Rs.11,20,000/-.

19. The MACT, has awarded compensation of Rs.6,24,000/- towards loss of salary. This is proper in the facts and circumstances of the present case. This is because Bhagendra was forced to prematurely retire in the year 1994 being rendered a crippled tetraplegic suffering with 100% disabilities. There was nothing voluntary in the retirement which, Bhagendra, was forced to proceed on. As if this trauma was insufficient, the appellant, denied Bhagendra the full retirement benefits on the spurious plea that Bhagendra was on "annual leave" on the date of the accident i.e. 17.10.1991. Bhagendra, did lodge departmental appeals and representations protesting against the denial of full retirement benefits. However, the

same were turned down and there is no reason not to accept the contention raised on behalf of Bhagendra or his dependents that they had no further means to pursue the matter of full retirement benefits before Courts of law, both, for want of physical and monetary resources. The MACT has held if not for the accident and the resulted injury, Bhagendra would have been in service for additional 8 years. The MACT has however, ignored the circumstance that ex-serviceman normally obtain further employment as ex-serviceman, taking into consideration the age at which they retire and their qualifications and invaluable experience. Accordingly, there is no reason to disturb the finding that Bhagendra was entitled to an amount of Rs.6,24,000/- towards loss of salary. Incidentally, no specific challenge was even raised of this finding/award.

20. The award of compensation towards consortium to Bhagendra's widow of Rs.5,000/- is a mere pittance. Reeta, Bhagendra's widow was 30 years old on the date of the accident. The accident rendered Bhagendra a crippled tetraplegic with 100% disabilities. Reeta was forced to witness her husband's suffering in that state for 15 long years. There is no evidence that any attendant was engaged to look after

Bhagendra, even though, Bhagendra was forced to remain bedridden or wheelchair bound during the course of such 15 years. It is obvious therefore, that it is Reeta and the children, who have taken care of Bhagendra for 15 long years. In these circumstances, compensation of at least Rs.2,00,000/- is due towards loss of consortium to Reeta. Besides, the children are also entitled to compensation of Rs.1,00,000/- each towards loss of love and affection. Therefore, on these counts, further compensation of Rs.4,00,000/- is due and payable. Towards loss of estate, further compensation of Rs.1,00,000/- is due and payable and towards funeral expenses compensation of Rs.25,000/- is payable. This means that the total compensation payable would come to Rs.22,69,000/- which can be safely rounded to Rs.22,70,000/-. This is on the basis that the compensation is required to be assessed for the death of Bhagendra on account of the accident.

21. If, the contention of the appellant-Union of India is to be accepted and compensation is required to be assessed not on the basis that Bhagendra died in the accident dated 17.10.1991, but, on the basis of the injuries sustained by Bhagendra on account of the accident, then the compensation amount would

be even greater, as shall be discussed hereafter.

22. The law on the subject has been summarised by the Hon'ble Supreme Court in the case of **K. Suresh Vs. New India Assurance Company Limited & Anr., (2012) 12 SCC 274** by reference to several previous decisions and commentaries. In paras 2, 6 to 10, this is what the Hon'ble Supreme Court has observed:

*"2. Despite many a pronouncement in the field, it still remains a challenging situation warranting sensitive as well as dispassionate exercise how to determine the incalculable sum in calculable terms of money in cases of personal injuries. In such assessment neither sentiments nor emotions have any role. It has been stated in **Davies Vs. Powell Duffryn Associate Collieries Ltd.** that it is a matter of pounds, shillings and pence. There cannot be actual compensation for anguish of the heart or for mental tribulations. The quintessentiality lies in the pragmatic computation of the loss sustained which has to be in the realm of realistic approximation. Therefore, Section 168 of the Motor Vehicles Act, 1988 (for brevity 'the Act') stipulates that there should be grant of "just compensation". Thus, it becomes a challenge for a Court of law to determine "just compensation" which is neither a bonanza nor a windfall, and simultaneously, should not be a pittance."*

*"6. While having respect for the conventional determination there has been evolution of a pattern and the same, from time to time, has been kept in accord with the changes in the value of money. Therefore, in **Ward Vs. James, (1966) 1 QB 273**, it has been expressed thus: -*

"(iii) Loss during his shortened span-Although you cannot give a man so gravely injured much for his 'lost years', you can, however, compensate him for his loss during his shortened span, that is, during his expected 'years of survival'. You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to a back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet Judges and Juries have to do the best they can and give him what they think is fair. No wonder they find it well nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The Judges have worked out a pattern, and they keep it in line with the changes in the value of money."

7. While assessing the damages there is a command to exclude considerations which are in the realm of speculation or fancy though some guess work or some conjecture to a limited extent is inevitable. That is what has been stated in **C.K. Subramania Iyer Vs. T. Kunhikuttan Nair, (1969) 3 SCC 64**. Thus, some guesswork, some hypothetical considerations and some sympathy come into play but, a significant one, the ultimate determination is to be viewed with some objective standards. To elaborate, neither the Tribunal nor a Court can take a flight in fancy and award an exorbitant sum, for the concept of conventional sum, fall of money value and reasonableness are to be kept in view. Ergo, in conceptual eventuality "just compensation" plays a dominant role.

8. The conception of "just compensation" is fundamentally concretized on certain well established

*principles and accepted legal parameters as well as principles of equity and good conscience. In **Yadava Kumar Vs. National Insurance Company Limited, (2010) 10 SCC 341**, a two-Judge Bench, while dealing with the facet of "just compensation", has stated thus: -*

"It goes without saying that in matters of determination of compensation both the Tribunal and the Court are statutorily charged with a responsibility of fixing a "just compensation". It is obviously true that determination of just compensation cannot be equated to a bonanza. At the same time the concept of "just compensation" obviously suggests application of fair and equitable principles and a reasonable approach on the part of the Tribunals and the Courts. This reasonableness on the part of the Tribunal and the Court must be on a large peripheral field."

In **Concord of India Insurance Co. Ltd. Vs. Nirmala Devi, (1979) 4 SCC 365**, this Court has expressed thus:

"2. The determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales."

9. In **Helen C. Rebello Vs. Maharashtra SRTC, (1999) 1 SCC 90**, while dealing with concept of "just compensation", it has been ruled that:

"28. The word 'just', as its nomenclature, denotes equitability, fairness and reasonableness having a large peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable, if it exceeds; it is termed as unfair, unreasonable, unequitable, not just."

The field of wider discretion of the Tribunal has to be

*within the said limitations. It is required to make an award determining the amount of compensation which in turn appears to be "just and reasonable", for compensation for loss of limbs or life can hardly be weighed in golden scales as has been stated in **State of Haryana Vs. Jasbir Kaur, (2003) 7 SCC 484.**"*

10. It is noteworthy to state that an adjudicating authority, while determining quantum of compensation, has to keep in view the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. Hence, while computing compensation the approach of the Tribunal or a Court has to be broad based. Needless to say, it would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the fundamental criterion of "just compensation" should be inhered."

23. Similarly, the Hon'ble Supreme Court in the case of **Jai Bhagwan Vs. Laxman Singh, (1994) 5 SCC 5** has quoted with approval the following passage from the decision of the House of Lords in **H. West & Son Ltd. Vs. Shephard, 1964 AC 326**, which reads thus:

"My Lords, the damages which are to be awarded for a tort are those which 'so far as money can compensate, will give the injured party reparation for the wrongful act and for all the natural and direct consequences of the wrongful act' [Admiralty Commissioners Vs. Susquehanna (Owners), 1926 AC 655]. The words 'so far as money can compensate' point to the impossibility of equating money with human suffering or personal deprivations. A money award can be

calculated so as to make good a financial loss. Money may be awarded so that something tangible may be procured to replace something else of like nature which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that Judges and Courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional."

24. Further, in the case of **Jai Bhagwan** (supra), reference was made to a passage from Clerk and Lindsell on Torts (16th Edition) which is apposite to reproduce as it relates to the awards for non-pecuniary losses:

"10. In all but a few exceptional cases the victim of personal injury suffers two distinct kinds of damage which may be classed respectively as pecuniary and non-pecuniary. By pecuniary damage is meant that which is susceptible of direct translation into money terms and includes such matters as loss of earnings, actual and prospective, and out-of-pocket expenses, while non-pecuniary damage includes such immeasurable elements as pain and suffering and loss of amenity or enjoyment of life. In respect of the former, it is submitted, the Court should and usually does seek to achieve restitutio in integrum in the sense described above, while for the latter it seeks to award 'fair compensation'. This distinction between pecuniary and non-pecuniary damage by no means corresponds to the traditional pleading distinction

between 'special' and 'general' damages, for while the former is necessarily concerned solely with pecuniary losses—notably accrued loss of earnings and out-of-pocket expenses—the latter comprises not only non-pecuniary losses but also prospective loss of earnings and other future pecuniary damage."

25. In **Nagappa Vs. Gurudayal Singh, (2003) 2 SCC 274**

the Hon'ble Supreme Court has quoted the observations of Lord

Denning M.R. in **Lim Poh Choo Vs. Camden and Islington**

Area Health Authority, 1979 QB 196. They read thus:

"25. The practice is now established and cannot be gainsaid that, in personal injury cases, the award of damages is assessed under four main heads: first, special damages in the shape of money actually expended; second, cost of future nursing and attendance and medical expenses; third, pain and suffering and loss of amenities; fourth, loss of future earnings."

26. If compensation is to be determined with reference to the injuries sustained by Bhagendra as is urged by the Union of India and not with reference to the ultimate demise of Bhagendra, then, the compensation is required to be awarded for both pecuniary as well as non-pecuniary damages.

27. The pecuniary damages in such cases will extend to the following:

(i) Expenses relating to treatment, hospitalization,

medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

28. The non pecuniary damages in such case will extend to the following:

(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).

29. There is evidence that Bhagendra sustained very serious injuries on account of the accident dated 17.10.1991. Bhagendra was rendered a tetraplegic with 100% disability. As a result of the accident and the injury sustained therein, Bhagendra not only lost control of the movement of limbs but

retained no control over his bowel movements on account of the paralysis of his bladder. Bhagendra was bed ridden or wheelchair bound from 1981 till 2006. In 1991, Bhagendra was 33 years old and in 2006 at the time of his demise he was 48 years old.

30. There is evidence that the expenses relating to his treatment and hospitalization soon after the accident, were to a great extent, borne by the appellant. Bhagendra was admitted in military hospital and also received treatment at Military Rehabilitation Centres. This is continued till the year 1994, when Bhagendra, was virtually forced to retire on medical grounds. Bhagendra, undoubtedly, had to incur substantial expenditure towards treatment, physiotherapy, medicines, transportation, diet etc. for the period after 1994 and upto 2006, because, during the said period, Bhagendra was no longer in service with the appellant. Although, there is no evidence that services of some attendant were actually engaged by Bhagendra, some compensation, is due and payable on this count, considering the circumstance that Bhagendra was either bedridden or wheelchair bound on account of 100% disability suffered by him. In such circumstances, it is reasonable to

proceed on the basis that Bhagendra's wife Reeta and his two minor children had to take care of Bhagendra for the period of 15 long years from the date of the accident in 1991 until the date of his demise in 2006. Upon cumulative consideration of the material on record, compensation of Rs.5,00,000/- is due and payable towards treatment, hospitalization, medicines, transportation, diet, attendant's charges and miscellaneous expenses.

31. There is no necessity to make any award for loss of earning during the period of treatment i.e. from 1991 to 1994. This is because, Bhagendra, continued in service from the date of accident till the year 1994. However, there is evidence on record which establishes that in the year 1994, Bhagendra, was virtually forced to retire on medical grounds, since, he was incapable of discharging any duties on account of 100% disability suffered by him. The MACT, has itself, awarded a sum of Rs.6,24,000/- towards loss of future earnings on account of permanent disability. This is on the basis that Bhagendra, would have continued in service for an additional term of 8 years and compensation of Rs.6,24,000/- determined by the MACT, represents a loss of earning during the said period. There is no

reason to disturb this award, except that some additions are necessary towards loss of future earnings on account of the permanent disability of 100% suffered by Bhagendra and the loss on account of deprivation of complete retiral benefits which Bhagendra would have entitled to, but for accident.

32. There is evidence on record that Bhagendra was deprived full retiral benefits on the spurious plea that Bhagendra was on 'annual leave' on the date of the accident i.e. 17.10.1991. Bhagendra and his dependents pursued the matter of denial of full retiral benefits by instituting appeals and departmental representations. After the same were turned down, it is the case of the claimants that they had neither a physical means nor financial resources to pursue the matter for denial of full retiral benefits in the courts of law. The cumulative loss incurred by Bhagendra and his dependents on account of denial of full retiral benefits can be assessed conservatively at Rs.2,50,000/-. The appellants are due and payable the said amount to Bhagendra and his dependents, because, such loss is directly relatable to the accident dated 17.10.1991. Assuming that the appellants were justified in declining complete retiral benefits under the service rules simply because Bhagendra was on 'annual leave'

on the date of the accident, that does not mean that the appellants can escape the liability of making good the loss incurred by Bhagendra and his dependents in the matter of full retiral benefits, particularly when, there is no dispute that the accident dated 17.10.1991 was on account of the appellants vehicle, which struck down Bhagendra and rendered him a tetraplegic with 100% disabilities.

33. Further, some additional compensation of at least Rs.2,50,000/- is due and payable on account of loss of earnings due to the permanent disability incurred by Bhagendra. As noted earlier, Bhagendra was forced to retire in the year 1994 on account of his medical condition. Bhagendra, was obviously, in no position to secure any alternate employment which, normally, ex-servicemen with qualifications as held by Bhagendra, normally secure. There are some reservations in matters of employment for ex-servicemen. There are some specialized employments where ex-servicemen are preferred. The MACT, has also not taken into consideration that Bhagendra, would have secured promotions or revisions in pay-scales during the period of 8 years, which he would have normally served, but for the unfortunate accident. On

conservative basis therefore compensation of at least Rs.2,50,000/- is due and payable.

34. Thus, towards pecuniary damages, compensation is required to be assessed as follows:

A (i)	Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.	
(ii)	Future medical expenses i.e. Between 1991 and 2006.	Rs.05,00,000/-
B (i)	Loss of damages (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.	Rs.11,24,000/-
	Total	Rs.16,24,000/-

35. Bhagendra, was entitled to compensation of at least Rs.3,00,000/- towards damages for pain, suffering and trauma as a consequence of the injuries. This compensation is in fact much on the lower side considering the nature of pain, suffering and trauma which Bhagendra must have suffered as a consequence of the injuries suffered by him. However, considering that such compensation was payable in the context of the years 1991 to 2006, the compensation is determined at Rs. 3,00,000/- on this count.

36. For loss of amenities, further compensation of at least Rs.3,00,000/- is due. This is because Bhagendra on account of the accident was rendered crippled tetraplegic. Bhagendra was bedridden or wheelchair bound. Bhagendra had paralysis of the bladder and did not have control over his bowel movements. In such circumstances, the minimum compensation of Rs.3,00,000/- was due and payable towards loss of amenities.

37. Bhagendra was 33 years of age on the date of the accident and 48 years old at the time of his demise in the year 2006. This is a clear case where the life and not just love and affection of Bhagendra was cut short on account of the accident. Clearly, therefore, compensation of at least Rs.3,00,000/- is due to Bhagendra on this count.

38. Thus, towards Non-pecuniary damages (General damages)

(iv)	Damages for pain, suffering and trauma as a consequence of the injuries.	Rs.3,00,000/-
(v)	Loss of amenities (and/or loss of prospects of marriage).	Rs.3,00,000/-
(vi)	Loss of expectation of life (shortening of normal longevity).	Rs.3,00,000/-
	i.e.	Rs.9,00,000/-

39. This means that total compensation of Rs.25,24,000/- is due and payable towards pecuniary and non pecuniary loss suffered by Bhagendra on account of the accident dated 17/10/1991 which rendered him a tetraplegic with 100% disability.

40. In assessing compensation at Rs.25,24,000/-, it is required to be noted that Bhagendra, lived for a period of at least 15 years after the accident dated 17.10.1991. During this period, Bhagendra was bedridden and wheelchair bound, on account of 100% disabilities suffered by him. Since, Bhagendra's bladder was also paralyzed, Bhagendra, retained no control even over his bowler movements. Reeta was hardly 30 years of age on 17.10.1991 and the two children Reema and Shersingh were 1 and 7 years respectively in the year 1991. For the period of 15 years during which Bhagendra barely managed to stay alive, not only Bhagendra, but the family members must have suffered a trauma both physical as well as psychological. Upon cumulative consideration of all such circumstances, compensation, is required to be assessed at Rs.25,24,000/- even on the basis suggested by the appellants – Union of India.

41. This means that compensation is required to be assessed at Rs.22,70,000/- on the basis that Bhagendra died on account of the accident dated 17.10.1991, though, after 15 years i.e. in the year 2006. However, if the submission on behalf of the appellants is to be accepted and compensation is to be determined on the basis of the injuries sustained by Bhagendra, the same will have to be assessed at Rs.25,24,000/-. In the facts and circumstances of the present case, just and reasonable compensation will be Rs.25,24,000/-. As held by the Hon'ble Supreme Court in the case of **Nagappa** (supra) and other subsequent decisions, it is the duty of the MACT and the appeal court to determine and award 'just and reasonable' compensation.

42. In **Nagappa** (supra), the Hon'ble Supreme Court after reference to several provisions of the Motor Vehicles Act 1988 has held that it is the duty of the Tribunals and the Courts to award just and reasonable compensation to the claimants. In this regard reference can usefully be made to the observations in paragraphs 9 to 21 which read thus:

"9. It appears that due importance is not given to sub-section (4) of [Section 166](#) which provides that

the Tribunal shall treat any report of the accidents forwarded to it under sub-section (6) of [Section 158](#), as an application for compensation under this Act.

10. Thereafter, [Section 168](#) empowers the Claims Tribunal to "make an award determining the amount of compensation which appears to it to be just". Therefore, only requirement for determining the compensation is that it must be 'just'. There is no other limitation or restriction on its power for awarding just compensation.

11. Secondly, under [Section 169](#), the Claims Tribunal in holding any inquiry under [Section 168](#) is required to follow the rules that are made in this behalf and follow such summary procedure as it thinks fit. In the present case, it has been pointed out that Rule 253 of Karnataka Motor Vehicles Rules, 1989 empowers the Claims Tribunal to exercise all or any of the powers vested in a Civil Court under the provisions of Code of Civil Procedure, 1908. Rule 254 inter alia makes specific provision that Order 6 Rule 17 CPC is applicable to such proceedings. In this view of the matter, in an appropriate case, depending upon the facts and the evidence which has been brought on record and in the interest of justice, Court may permit amendment of claim petition so as to award enhanced compensation. Further, for amendment of the pleadings, it is settled law that unless it causes injustice to other side or it is not necessary for the purpose of determining real issue between the parties, Court would grant amendment. It is also to be stated that under the M. V. Act there is no time limit prescribed for claiming compensation. Therefore, there is no question of enhanced claim being barred by limitation.

12. This Court in [Sheikhupura Transport Co. Ltd. v. Northern Indian Transport Insurance Co.](#) [(1971) Suppl. SCR 20] observed as under: -

"The pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must necessarily be an estimate or even partly a conjecture The determination of the

question of compensation depends on several imponderables. In the assessment of those imponderables, there is likely to be a margin of error."

13. Hence, as stated earlier, it is for the Tribunal to determine just compensation from the evidence which is brought on record despite the fact that claimant has not precisely stated the amount of damages of compensation which he is entitled to. If evidence on record justifies passing of such award, the claim cannot be rejected solely on the ground that claimant has restricted his claim. Form 63 of the Karnataka Motor Vehicles Rules, 1989, which is for filing an application for compensation, does not provide that claimant should specify his claim amount. It inter alia provides that he should mention his monthly income as well as the nature of injury sustained and medical certificates.

14. In case, where there is evidence on record justifying the enhanced compensation for the medical treatment which is required because of the injury caused to a claimant due to the accident, there is no reason why such amendment or enhanced compensation should not be granted. In such cases, there is no question of introducing a new or inconsistent cause of action. Cause of action and evidence remain the same. Only Question is application of law as it stands.

15. Mr. P.K. Chakravarty, learned counsel appearing for the Insurance Company, in support of his contention that the Tribunal has no jurisdiction to award higher amount of compensation than what is claimed even though it is not likely to cause prejudice to the Insurance Company, heavily relied upon the decision rendered by the Full Bench of the High Court of Gujarat in [Dr. Urmila J. Sangani v. Pragjibhai Mohanlal Luvana and others](#) [AIR 2000 Gujarat 211]. In that case, the High Court after considering relevant decisions on the subject observed thus:

"We may mention that when the claimant feels that he is entitled to more compensation than what is claimed in the petition, it is always open to him/her

to amend the claim petition and if the same is in consonance with the equity, justice and good conscience, there is no reason why the Claims Tribunal should not grant amendment. Before compensation more than claimed is awarded, the opposite parties should be put to notice, the requisite additional issue/issues should be raised and the parties should be permitted to adduce their evidence on the additional issues, but if no such opportunity is given, the procedure would obviously suffer from material irregularity affecting the decision."

16. From the aforesaid observations it cannot be held that there is a bar for the Claims Tribunal to award the compensation in excess of what is claimed, particularly when the evidence which is brought on record is sufficient to pass such award. In cases where there is no evidence on record, the Court may permit such amendment and allow to raise additional issue and give an opportunity to the parties to produce relevant evidence.

17. In support of her contention, the learned counsel for the appellant Mrs. Kiran Suri referred to the decision of Bombay High Court in *Municipal Corporation of Greater Bombay and another v. Kisan Gangaram Hire and others* [1987 ACJ 311] wherein the Court dealt with similar contention and observed thus: "8. What is further necessary to note is that what gives a cause of action for preferring an application for claim for compensation is the accident by motor vehicle or vehicles and not a particular monetary loss occasioned by such accident. While the compensation in all no fault claim cases is fixed and uniform, in fault claim cases the losses may vary from case to case. The particular losses are merely the consequence of the accident which is the cause of action. This being so, the amounts of compensation claimed are nothing but the particulars of the claim made. By its very nature, further the amount of compensation claimed cannot always be calculated precisely. In many cases it can at best be a fair estimate..."

18. The High Court observed that in all such cases,

it is necessary to keep the doors open for the claimant to make the claims, on grounds not stated earlier or for more amounts under heads already specified in the application.

19. The aforesaid decision of the Bombay High Court was relied upon and referred to by the Orissa High Court in [Mulla Md. Abdul Wahib v. Abdul Rahim and another](#) [1994 ACJ 348] and G.B. Patnaik, J. (as he then was) observed that the expression "just compensation" would obviously mean what is fair, moderate and reasonable and awardable in the proved circumstances of a particular case and the expression "which appears to it to be just" vests a wide discretion in the Tribunal in the matter of determining of compensation. Thereafter, the Court referred to the decision in Sheikhupura Transport Co. Ltd (supra) and held that the pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must necessarily be an estimate or even partly a conjecture, and if this is so, then it will be unreasonable to expect the party to state precisely the amount of damages or compensation that it would be entitled to. The Court also held that there are no fetters on the power of the Tribunal to award compensation in excess of the amount which is claimed in the application.

20. Similarly, the High Court of Punjab and Haryana in *Devki Nandan Bangur and others v. State of Haryana and others* [1995 ACJ 1288] observed that the grant of just and fair compensation is statutory responsibility of the Court and if, on the facts, the Court finds that the claimant is entitled to higher compensation, the Court should allow the claimant to amend his prayer and allow proper compensation.

21. For the reasons discussed above, in our view, under the [M.V. Act](#), there is no restriction that Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award 'Just' compensation which is reasonable on the basis of evidence

produced on record. Further, in such cases there is no question of claim becoming time barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-section (4) to [Section 166](#), even report submitted to the Claims Tribunal under sub-section (6) of [Section 158](#) can be treated as an application for compensation under the [M.V. Act](#). If required, in appropriate cases, Court may permit amendment to the Claim Petition.

43. In **Sanobanu Nazirbhai Mirza & Ors. V/s. Ahmedabad Municipal Transport Service (2013) 9 SCR 882**, it is held as follows:

“The legal representatives of the deceased Nazirbhai, who died in a road accident on 30 May 1998 were awarded compensation of Rs.3,51,300/- by the MACT. In the appeal instituted by the Insurance Company, the Gujarat High Court, reduced this compensation from Rs.3,51,300/- to Rs.2,51,800/-. The claimants were directed to refund the excess amount of Rs.99,500/- along with interest at the rate of 9% per annum. The claimants, who had never instituted any appeal against the award of Rs.3,51,300/- made by the MACT, appealed to the Hon’ble Supreme Court against the order of the Gujarat High Court. In the appeal, the Hon’ble Supreme Court, applying the law laid down in **Santosh Devi vs. National Insurance Company Ltd. and ors - 2012 (6) SCC 421** and **Rajesh Vs. Rajbir Singh - 2013 (6) Scale 563** determined “just compensation” at Rs.16,96,000/- as against the determination of Rs.3,51,300/- by the MACT and Rs.2,51,800/- by the Gujarat High Court. The question naturally arose as to whether it was permissible to award this amount of Rs.16,96,000/-, in the absence of any appeal by the claimants to the award of compensation at the rate of Rs.3,51,300/- by the MACT before the Gujarat High Court. This was answered by the Hon’ble Supreme Court by the following observations :

(8)

The amount of Rs.16,96,000/- as calculated above, under the various heads of losses, should be awarded in favour of appellants-claimants, though there is no specific mention regarding enhancing of compensation as in the appeal it has been basically requested by the appellants to set aside the judgment and order passed by the High Court in the appeal filed by the respondent. We must follow the legal principles of Nagappa Vs. Gurudayal Singh & Ors., 2003 2 SCC 274 at para 7, wherein with respect to the provisions of the M.V. Act, this Court has observed as under:

"There is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is — it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the MV Act. Section 166 provides that an application for compensation arising out of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be."

(9) In view of the aforesaid decision of this Court, we are of the view that the legal representatives of the deceased are entitled to the compensation as mentioned under the various heads in the table as provided above in this judgment even though certain claims were not preferred by them as we are of the view that they are legally and legitimately entitled for the said claims. **Accordingly we award the compensation, more than what was claimed by them as it is the statutory duty of the Tribunal and the appellate court to award just and reasonable compensation to the legal representatives of the deceased to mitigate their**

hardship and agony as held by this Court in a catena of cases. Therefore, this Court has awarded just and reasonable compensation in favour of the appellants as they filed application claiming compensation under Section 166 of the M.V. Act. Keeping in view the aforesaid relevant facts and legal evidence on record and in the absence of rebuttal evidence adduced by the respondent, we determine just and reasonable compensation by awarding a total sum of Rs.16,96,000/- with interest @ 7.5% from the date of filing the claim petition till the date payment is made to the appellants.”

(emphasis supplied)

44. Applying the aforesaid principles, this appeal is dismissed. Appellants are directed to pay to the respondents compensation of Rs.25,24,000/- together with interest at the rate of 7.5% per annum from the date of the application till the date the amount is paid in full. The appellants shall be entitled to credit for the amounts already paid by them towards no fault liability or in pursuance of interim directions that may have been issued by this Court. The balance amount shall be paid or deposited before the MACT within a period of three months from today alongwith proportionate interest. Upon deposit, the claimants shall be entitled to withdraw the same. The claimant Reeta i.e. widow of Bhagendra shall be entitled to 50% of the compensation amount and the two children, Reema and Shersingh shall be entitled to 25% compensation amount each. This shall be alongwith the proportionate interest upon the said

amounts. Since by now, the two children have attained majority the directions for investment will not be applicable any longer.

45. This appeal is accordingly disposed off in the aforesaid terms. There shall however be no order as to costs.

(M.S. SONAK, J.)

skc/dss