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

% **Date of Decision:17th August, 2017**

\+ MAC.APP.602/2015

A. RUPIN MANOHAR
THROUGH SH. S. ANANDHA KUMAR ..... Appellant
Through: Mr.M.K. Sinha, Ms.Vimal Sinha, Advocates

versus

MOHD. ANSARI & ORS. ..... Respondents
Through: Mr.P. Acharya, Advocate for respondent no.3/United India Insurance Co. Ltd.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the award dated 27th April, 2015 whereby compensation of Rs.7,30,000/- has been awarded to her. The appellant seeks enhancement of the award amount.

2. On 27th February, 2014, the appellant, aged about two years at that time, was going with his parents on motor cycle No.DL-6SAL-7409 from Sarojini Nagar to Sagar Pur. At about 4.35 P.M., the truck bearing No.DL-

1GB-7138 hit the aforesaid motor cycle on the Ring Road near Nanakpura Gurudwara, Dhaula Kuan which resulted in grevious injuries to the appellant as well as her mother. The appellant's mother succumbed to the injuries whereas the appellant suffered 100% disability relating to whole body as per the disability certificate Ex.PW-2/A.

3. The Claims Tribunal awarded Rs.6 lakh towards pain and suffering and loss of amenities, Rs.10,000/- towards conveyance, Rs.20,000/- towards special diet and Rs.1 lakh towards attendant charges. The total compensation awarded is Rs.7,30,000/-.

4. Learned counsel for the appellant urged at the time of the hearing that the Claims Tribunal has not awarded any compensation towards the loss of earning capacity, future treatment, disfiguration, loss of matrimonial prospects and loss of education. It is submitted that the compensation awarded under the heads of pain and suffering, loss of amenities, conveyance, special diet and attendant charges is on a lower side and be enhanced.

Law with respect to Grant of Compensation in Injury cases

5. The law with respect to the grant of compensation in injury cases is well-settled. The injured is entitled to pecuniary as well as non-pecuniary damages. Pecuniary damages also known as special damages are generally designed to make good the pecuniary loss which is capable of being calculated in terms of money whereas non-pecuniary damages are incapable of being assessed by arithmetical calculations. The pecuniary or special damages, generally include the expenses incurred by the claimants on his treatment, special diet, conveyance, cost of nursing/attending, loss of income, loss of earning capacity and other material loss, which may require

any special treatment or aid to the insured for the rest of his life. The general damages or the non-pecuniary loss include the compensation for mental or physical shock, pain, suffering, loss of amenities of life, disfiguration, loss of marriage prospects, loss of expected or earning of life, inconvenience, hardship, disappointment, frustration, mental stress, dejectment and unhappiness in future life, etc. The above list is not exhaustive and there may be special or additional circumstances depending on the facts in each case.

6. In ***R.D. Hattangadi v. Pest Control (India) Pvt. Ltd***., (1995) 1 SCC 551, a road accident resulted in 100% disability due to paraplegia below waist to a lawyer (retired Judge). The Supreme Court observed that no amount of compensation can restore the physical frame of the appellant. That is why it has been said by Courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame. In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards. When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life.

7. In ***Common Cause, A Registered Society v. Union of India,*** (1999) 6 SCC 667, the Supreme Court held that the object of an award of damages is to give the plaintiff compensation for damage, loss or injury he has suffered. The Court further held that the elements of damage recognized by law are divisible into two main groups: pecuniary and non-pecuniary loss. While the pecuniary loss is capable of being arithmetically worked out, the non-pecuniary loss is not so calculable. Non-pecuniary loss is compensated in terms of money, not as a substitute or replacement for other money, but as a substitute, what McGregor says, is generally more important than money: it is the best that a court can do.

8. In ***Nagappa v. Gurudayal Singh***, (2003) 2 SCC 274, the Supreme Court held that if a collection of cases on the quantum of damages is to be useful, it must necessarily be classified in such a way that comparable cases can be grouped together. No doubt, no two cases are alike but still, it is possible to make a broad classification which enables one to bring comparable awards together. Inflation should be taken into account while calculating damages.

9. In ***Divisional Controller, KSRTC v. Mahadeva Shetty***, (2003) 7 SCC 197, the road accident resulted in paraplegia due to serious injury to the spinal cord. The Supreme Court held that the object of providing compensation is to mitigate the hardship and place the claimant as far as possible in the same position financially as he was before the accident. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may

have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. The compensation awarded has to be "just" and not a bonanza. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just", a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrariness. A person not only suffers injuries on account of accident but also suffers in mind and body on account of the accident throughout his life and a feeling is developed that he is no more a normal man and cannot enjoy the amenities of life as another normal person can. The Supreme Court further held that while fixing compensation, suffering of the mind, shortening of life expectancy, loss of earning capacity, permanence of the disability, loss of amenities of life etc. are to be considered against the backdrop of age, marital status, unusual deprivation one has undertaken in one's life etc.

10. In ***Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka***, (2009) 6 SCC 1, the Supreme Court held that adequate compensation must 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. The Supreme Court further held that 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

not only on the victim but even more so on the injured's family and attendants and the stress saps their energy and destroys their equanimity. The Apex Court further held that compensation has been computed keeping in mind that the brilliant career of the claimant has been cut short and there is, as of now, no possibility of improvement in the claimant's condition, the compensation will ensure a steady and reasonable income to the claimant for a time when the claimant is unable to earn for himself.

11. In ***Arvind Kumar Mishra v. New India Assurance Co. Ltd.,*** (2010) 10 SCC 254, the road accident resulted in 100% permanent disability to a final year engineering student. The Supreme Court held the functional disability to be 70% to compute the loss of earning capacity according to the multiplier method. The Supreme Court further held that the whole idea of compensation 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 what he had suffered.

12. In ***Raj Kumar v. Ajay Kumar***, (2011) 1 SCC 343, the Supreme Court considered a large number of precedents and laid down the following principles for computation of compensation in injury cases:-

> *"General principles relating to compensation in injury cases*
> *4. The provision of the Motor Vehicles Act, 1988 ('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) Ltd. - 1995 (1) SCC 551 and Baker v. Willoughby – 1970 AC 467).

5. The heads under which compensation is awarded in personal injury cases are the following:-
Pecuniary damages (Special Damages)
(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.
Non-pecuniary damages (General Damages)
(iv) Damages for pain, suffering and trauma as a consequence of the injuries.
(v) Loss of amenities (and/or loss of prospects of marriage).
(vi) Loss of expectation of life (shortening of normal longevity).
In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses – item (iii)

– depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages – items (iv), (v) and (vi) –involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case.

Computation of Compensation in cases of Paraplegia

13. In ***Nizam's Institute of Medical Sciences* v. *Prasanth S. Dhananka*** (supra), the Supreme Court was dealing with the case of a 20 year old engineering student who became paraplegic due to negligence in a surgical operation. When the case came up for hearing, the claimant was aged 40 years and was working as an IT Engineer earning Rs.28,00,000/- per annum but was confined to a wheelchair and required an attendant –cum- driver due to the nature of his work. The Supreme Court awarded a compensation of Rs.1,00,00,000/-. The break-up of the compensation of Rs.1,00,00,000/- awarded by the Supreme Court is as under:-

Driver-cum-attendant Charges	:	Rs.7,20,000/-
Nursing Care	:	Rs.14,40,000/-
Physiotherapy	:	Rs.10,80,000/-
Future continuous medical aid	:	Rs.25,00,000/-
Loss of future earnings	:	Rs.25,00,000/-
Pain and suffering	:	Rs.10,00,000/-

14. In ***Kavita v. Deepak*** (supra), the Supreme Court enhanced the

compensation from Rs.12,76,480/- to Rs.34,38,747/- relating to a businessman aged 30 years who suffered 75% disability relating to hearing, understanding, speaking and was reduced to a vegetative state. The break-up of the compensation of Rs.34,38,747/- is as under:-

Medical treatment	:	Rs.7,76,480/-
Medical expenses during the pendency of the appeal	:	Rs.50,000/-
Attendant Charges	:	Rs.6,00,000/-
Future medical expenses (Physiotherapy)	:	Rs.9,00,000/-
Loss of earning during the period of treatment	:	Rs.1,45,067/-
Loss of future earnings on account of permanent disability	:	Rs.3,67,200/-
Physical and mental pains	:	Rs.3,00,000/-
Loss of amenities and loss of expectation of life	:	Rs.3,00,000/-

15. In ***K. Suresh v. New India Assurance Co. Ltd.,*** 2012 (10) SCALE 16, a road accident resulted in triple fracture in spinal cord, fracture in left leg and right hand shoulder, deep cut and degloving injury over right left thigh bone and multiple injuries all over the body which resulted in 75% permanent disability. The Supreme Court examined the catena of judgments and held that the victim was entitled to compensation for loss of earning capacity as well as for permanent disability. The Supreme Court awarded compensation of Rs.13,48,000/- to the victim of the road accident. The relevant portion of the judgment is as under:-

> *"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. ...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 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…Thus, some guess work, 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.*

* * *

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.*

* * *

19. ...it is true that compensation for loss of earning power/capacity has to be determined based on various aspects including permanent injury/disability, but at the same time, it cannot be construed that that compensation cannot be granted for permanent disability of any nature. It has been mentioned by way of an example that in a case of a non-earning member of a family who has been injured in an accident and sustained permanent disability due to amputation of leg or hand, it cannot be construed that no amount needs to be granted for permanent disability. ***It cannot be disputed that apart from the fact that the permanent disability affects the earning capacity of the person concerned, undoubtedly, one has to forego other personal comforts and even for normal avocation they have to depend on others.***

* * *

28...this Court has expressed the view that grant of compensation towards permanent disability is permissible. Regard been had to the totality of the facts and circumstances, we are inclined to think that compensation of Rs. 2,50,000/- should be granted towards permanent disability and Rs. 2,00,000/- towards pain and suffering. We have so held as the injury is of serious nature and under the heading of non-pecuniary damages compensation is awardable under the headings of pain and suffering and damages for loss of amenities of life on account of injury. In the case of R.D. Hattangadi (supra) this Court has granted compensation under two heads, namely, "pain and suffering" and "loss of amenities of life". Quite apart from that compensation was granted towards future earnings. In Laxman v. Divisional Manager, Oriental Insurance Co. Ltd., 2012 ACJ 191 it has been ruled thus: -

> *"The ratio of the above noted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to accident, loss of earnings and victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."*

* * *

32. Calculated on the aforesaid base, the compensation would be payable on the headings, namely, transport charges, extra-nourishment, medical expenses, additional medical expenses, additional transport charges, pain and suffering, loss of earning capacity and permanent disability and the amount on the aforesaid scores would be, in toto, Rs. 13,48,000/-…"

(Emphasis supplied)

16. In ***New India Assurance Co. Ltd. v. Shweta Dilip Mehta***, I (2010) ACC 318 (DB), the Division Bench of the Bombay High Court enhanced the compensation from Rs.21,23,848/- to Rs.49,48,848/- relating to a child aged 11 years, rendered paraplegic in respect of her entire body from waist down resulting in permanent disablement of 80% to 90%. The Court held that the appellant had lost out on several pleasures of her childhood and adolescence, including the ability to move, run and play freely as other children do. The Court further held that her condition would be an impediment to not only her success but also her everyday ordinary living. Added to this, are the physical and mental suffering caused by her mental condition itself, its treatment and the knowledge that she will be never able to lead a normal life. The Court held that the multiplier method ensures the just compensation while making for uniformity and certainty of awards. The relevant portion of the judgment is reproduced hereunder:-

"4. ***The process of determining compensation by the Court is an essentially practical task and can never be an exact science.*** *Perfect compensation is hardly possible, more so in claims of injury and disability. As rightly pointed out in H. West & Sons Ltd. v. Shepherd (1958) ACJ 504 (H. L):*

"...money cannot renew a physical frame that has been battered."

However, making a monetary assessment of the injury suffered is the only process devised to compensate the victim. The process of making such an assessment, whether in case of death or injury, is provided in Section 168 of the Motor Vehicles Act, 1988, which

***requires that the Tribunals constituted under the Act determine compensation, which appears to be 'just.'** Thus the Act vests a wide discretion upon the Tribunals. The decision of the Hon'ble Apex Court, in Divisional Controller, KSRTC v. Mahadeva Shetty : 2003 ACJ 1775 (SC) needs mention here:*

It has to be borne in mind that compensation for life and limb can hardly be weighed in golden scales.... The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for the mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life which has been curtailed because of physical handicap. The normal expectation of life is impaired....

* * *

*6. ...**Every method or mode adopted for assessing compensation has to be considered in the background of 'just' compensation, which is the pivotal consideration. Though by the use of the expression, 'which appears to be just', a wide discretion is vested on the tribunal, the determination has to be rational, to be done with a judicious approach, and not the outcome of whims, wild guesses, and arbitrariness.**(para 15)*

We proceed to deal with the amount awarded under each head and examine whether the amount thereby awarded is 'just' as hereunder:

(1) The amount already spent by claimant till date of Tribunal award

7. The Tribunal in paragraph 25 of its order has provided the split up of the amount of Rs. 1,23,848/-awarded to the claimant. The Learned Tribunal arrived at this amount based on the receipts of medical and other inevitable expenses, incurred by the claimant, until the date of its award. We find that the Learned Tribunal has arrived at this figure in a proper and reasoned manner, based on evidence. The amount awarded under this head does not call for any interference.

* * *

(2) Towards Physical Pains and Mental Shock

10. As regards enhancement of the amount of Rs.2,00,000/-awarded under this head, two important points from the above mentioned cases emerge, which ought to be followed in determining compensation. In Mahadeva Shetty's case [supra]:

A person not only suffers injuries on account of the accident, but also suffers in mind and body on account of the accident throughout his life and a feeling is developed that he is no more a normal man and cannot enjoy the amenities of life as a normal person can. (Para 18)

In R. D. Hattangadi's case [supra], the Hon'ble Apex Court laid down that:

when compensation is to be awarded for pain and sufferings and loss of amenities of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered and the effect thereof on his future life.

11. ***In the present case, the Appellant was only 11 years old at the time of the accident. It needs no mention that on account of the accident, the Appellant has lost out on several pleasures of her childhood and adolescence, including the ability to move, run and play freely, as other children do. She was a bright and promising student, yet her condition may now be an impediment to not only her success, but also everyday ordinary living. Added to this are the physical and mental suffering caused by her medical condition itself, its treatment and the knowledge that she will never be able to lead a normal life. Even looking after personal hygiene has become difficult for her, as the evidence shows. There is also the loss of expectation of life i.e. the normal lifespan of the person being shortened due to the injury, which causes disappointment and stress. We also bear in mind that if her life expectancy is now 55 years, she must endure this inconvenience, disappointment and suffering for as much as 28 years from now.*** *Keeping in mind the awards under this head to the claimants in the aforementioned cases by the Hon'ble Apex Court, we find it proper to increase the compensation awarded 'towards physical pains and mental shock', to the appellant to Rs. 4,00,000/-due to the special circumstances of the case.*

(3) Towards Loss of Amenities of Life

12. The Tribunal awarded Rs.1,00,000/-under this head against the claim of Rs.5,00,000/-made by the appellant. The Learned Tribunal referred to the aforementioned principle in R. D. Hattangadi's case [supra], and felt this amount was proper considering these aspects. We find that this amount is inadequate. ***This head must take into account all aspects of a normal life that have been lost due to the injury caused. As per R. D. Hattangadi's case [supra], this includes a variety of matters such as the inability to walk, run or sit etc. We include here too the loss of childhood pleasures such as the free ability to play, dance, run etc, the loss of ability to freely move or travel without assistance. Then, there is the virtual impossibility of marriage as well as a complete loss of the ability to have sex and to have and nurture children.*** *On this count alone, in Mahadeva Shetty's case [supra], the Hon'ble Apex Court had awarded Rs.50,000/- where the claimant was a bachelor. In the present case, keeping in mind these factors, and the age and deprivation of the appellant, we increase the sum awarded under this head to Rs.3,00,000/-.*

* * *

(4) Towards Inevitable Expenses

21. We feel that objective of the Motor Vehicles Act laying down a structured formula and utilizing the Multiplier Method is to bring about uniformity in the compensation amounts awarded by Courts. This Court has earlier recognized this method to be logically and legally well established in United India Insurance Co. Ltd. v. Mandatai 1995 (1) TAC 68 (Bom). We distinguish the judgment in Nizam's case [supra] from the present matter before us, based on the fact that this is a case of disability caused by motor accident and not medical negligence. The circumstances of a case of medical negligence where a doctor did not do things which he ought to have done or did things he ought not to have done and the circumstances of a road accident are very different. It must be remembered that the legislature has enacted the Motor Vehicles Act, 1988, with the object of recognizing the principles of fault and no - fault liability with respect to motor accidents and bringing uniformity in compensation awards for such cases. However, it is not so with medical negligence cases, where liability and compensation has always been determined by the Courts themselves, having regard to *the peculiar facts of each case. We therefore cannot accept the argument that the Multiplier Method need not be applied in this case, based on the decision in Nizam's case [supra].*

* * *

24…As per this progression, the multiplier in the present case, for a victim below 15 years of age ought to have been 19. However, we are also bound by the judgment in Trilok Chandra's case [supra], where the Hon'ble Apex Court held that even in cases under Section 166 of the Act, the maximum multiplier to be applied is 18, which was an increase from the existing maximum value of 16 that was laid down earlier in Susamma Thomas's case [supra]. The cap of '18' as the maximum multiplier that may be applied in any case has been reiterated in Sarla's case [supra] as well. Hence we conclude that irrespective of the mathematical progression in the schedule, the maximum multiplier that may be applied is 18, even if the victim is below 15 years. Thus, in the present case, the multiplier to be applied for computing 'loss of future income' for the victim is 18.

25. To compute the compensation, we will have to assume an annual income in this case, as the appellant did not work at the time of the accident, being only 11 years old. The Second Schedule specifies Rs.15,000/-per annum to be assumed as income in case of non - earning victims. However, we find this sum wholly inadequate in the present time. Moreover, the appellant was a bright student who seemed to be set for a successful future, prior to the accident. In fact, inspite of the accident, the appellant has managed to complete her M. Com. which itself is testimony to her potential. We feel that taking all contingencies, calamities and disadvantages that may have occurred in the appellant's normal future into account, to consider an annual income of 1,00,000/is reasonable. Applying the multiplier of 18 to this amount, the appellant is entitled to Rs.18,00,000/-as compensation towards loss of future income, which, if deposited at standard interest rates, would accrue an interest approximately equal to the assumed annual income.

26. To sum up, the appellant is entitled to compensation as follows:

Expense	Amount (Rs.)

1)	Amount spent by claimant till date of Tribunal award	1,23,848/-
2)	Towards physical pains and mental shock	4,00,000/-
3)	Towards loss of amenities of life	3,00,000/-
4)	Towards inevitable expenses	23,25,000/-
5)	Towards loss of future income	18,00,000/-
	TOTAL	49,48,848/-”

17. In ***Oriental Insurance Co. Ltd. v. Naynaben Harshadkumar Kotech,*** 2012 Indlaw Guj 549, the Division Bench of the Gujarat High Court enhanced the compensation from Rs.11,50,000/- to Rs.26,86,400/- in the case of 100% permanent disability due to paraplegia with respect to the entire lower part of the body. The victim was working in Indian Oil Corporation and he could not walk and sit on his own and needed help/assistance. His left leg was amputated and the right leg and the portion below the lower part of the body became non-functional. The break-up of the compensation awarded by the Gujarat High Court is as under:-

Medical Expenses	:	Rs.5,00,000/-
Pain, Shock and Suffering	:	Rs.3,00,000/-
Actual loss of income	:	Rs.3,50,000/-
Damages to Scooter	:	Rs.10, 000/-
Loss of future Income	:	Rs.15,26,400/-

18. In ***Lopaben Saumilbhai Bhavnagari* v. *Sandip Suryakant Shah*,** First Appeal No.2091/2011 decided on 17th February, 2012, a victim of a road accident aged 32 years suffered paraplegia due to the road accident which resulted in 100% permanent disability. The claimant was married having

two children. She was rendered completely bed-ridden. She was unable to pursue even day to day activities and needed continuous attention. The Gujarat High Court held that a higher amount should have been awarded towards pain, shock and suffering and enhanced the compensation from Rs.20,66,300/- to Rs.25,66,300/-.

19. In ***Arun Sondhi* v. *DTC*,** I (2001) ACC 615, a final year student aged 21 years pursuing B.A. course from St. Stephen's College, Delhi suffered leg amputation and paralysis in a road accident which resulted in 100% permanent disability. This Court enhanced compensation from Rs.8,68,781/- to Rs.19,16,781/-. The relevant portion of the judgment is reproduced hereunder:-

> *"4. It goes without saying that* ***Appellant had become crippled and permanently disabled forever. His permanent disability was 100% and he was living his life, whatever its worth, in a wheelchair. It is also the admitted position that he had become paraplegic and had lost control even over his urine and stool. He required assistance of an attendant and medical treatment all the time which involved a recurring expenditure. His plight would not be described in words, nor could his pain and suffering, frustration and disappointments be gathered or gauged. An athlete of yester-year must be ruing his survival which had plunged him in a veritable hell.***
> *5. No money could obviously compensate him for all this and consequently no reasonable compensation could be determined for what he had and must be going through. But all the same the Courts had to undertake the exercise in the discharge of their duty if only to compensate him to the extent payment of money could. As was aptly observed in Ward V James 1965 (1) APPER 56:-*
> *"Although you cannot give a man so gravely injured much for his lost year, loss during his shortened span, that is, during his expected "years of survival". You can compensate him for loss of earnings during that time and for the cost of nursing treatment and attendance. But how can you compensate him for being rendered a helpless invalid. He has lost everything that makes life worthwhile. Money is*

no good to him. Yet Judges and Jurisdiction have to do the best they can and give him what they think is fair. No wonder they find it well neigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part of converted sum."

*6. **Given regard to all this, it becomes difficult to assess the non-pecuniary damages in the present case because whatever amount was awarded to the incapacitated and crippled Appellant, it would not restore his broken body and shattered life. But all the same an effort was required to be made to grant him a reasonable compensation that could at least mitigate his suffering and hardship had reduce the intensity of his pain, if not provide him bare minimum amenities and enjoyment of life.***

* * *

*9. At this stage, we noticed Supreme Court judgment in A.K.Mishra Vs. Muniam Babu : [1999]2SCR518 awarding Rs. 5 lacs to a 23 year old youngman whose special cord was damaged in the road accident, by and large in similar circumstances. But this judgment, in over view, does not lay down any generalised principle or guideline for award of non-pecuniary damages in serious accident injury case. The determination of compensation in such cases would depend on the facts and circumstances of each case and notwithstanding the element of sympathy involved with the accident victim. **We are also conscious of the fact that assessment of compensation in such cases had to be on objective standards and not based on any fanciful or whimsical calculations.** But since a bit of conjecture was permissible, it presented no difficulty to make provision for the recurring medical expenditure and attendance for the Appellant and we feel that estimated compensation for this was based on a conservative estimate."*

(Emphasis Supplied)

20. In ***New India Assurance Co. Ltd. v. Senthil Kumar***, (2009) 2 LW 767, the victim of a road accident suffered fracture, compression of spinal cord and paraplegia resulting in 100% disability. The Madras High Court enhanced the compensation from Rs.8,53,000/- to Rs.9,60,000/-. The relevant portion of the judgment is as under:-

"11. In this case, the injured claimant suffered fracture and compression of the spinal cord and has been diagnosed as a paraplegic injury. ***According to Webster Dictionary paraplegic means "complete paralysis of the lower half of the body usually resulting from damage to the spinal cord".*** *The disability assessed in this case under Ex.A-12 is 100% and that is not in dispute. Therefore, adopting multiplier method will be appropriate. In view of the Full Bench decision in Cholan Roadways Corporation, compensation under two heads, viz., loss of earning power and for disability cannot be granted.*

* * *

16. The Division Bench of this Court in United India Insurance Co. Ltd. v. Veluchamy. 2005 (1) CTC 38 sets out the parameters as to when the multiplier method can be adopted in the case of injury. In Paragraph 11 of the decision reads thus:

> *11. The following principles emerge from the above discussion:*
>
> ***(a) In all cases of injury or permanent disablement 'multiplier method' cannot be mechanically applied to ascertain the future loss of income or earning power.***
>
> ***(b) It depends upon various factors such as nature and extent of disablement, avocation of the injured and whether it would affect his employment or earning power, etc. and if so, to what extent?***
>
> ***(c) (1) If there is categorical evidence that because of injury and consequential disability, the injured lost his employment or avocation completely and has to be idle for the rest of his life, in that event loss of income or earnings may be ascertained by applying the 'multiplier method' as provided under the Second Schedule to Motor Vehicles Act, 1988.***
>
> ***(2) Even so there is no need to adopt the same period as that of fatal cases as provided under the Schedule. If there is no amputation and if there is evidence to show that there is likelihood of reduction or improvement in future years, lesser period may be adopted for ascertainment of loss of income.***
>
> ***(d) Mainly it depends upon the avocation or profession or nature of employment being attended by the injured at the time of accident."***

(Emphasis Supplied)

21. In ***Union of India v. Sham Lal***, III (2010) ACC 174, the claimant, working with All India Radio, became paraplegic due to the road accident which resulted in 90% permanent disability. Following ***R.D. Hattangadi*** (supra), the compensation was enhanced from Rs.6,67,200/- to Rs.22,23,200/-. The break-up of the compensation awarded by this Court is as under:-

Pain and Suffering	:	Rs.1,50,000/-
Loss of amenities of life and loss of expectation of life	:	Rs.1,50,000/-
Pecuniary Damages	:	Rs.10,56,000/-
Attendant Charges	:	Rs.1,50,000/-
Conveyance	:	Rs.15,000/-
Special Diet	:	Rs.35,000/-
Loss of Income	:	Rs.6,67,200/-

22. In ***Dr. Dattatraya Laxman Shinde v. Nana Raghunath Hire***, (2011) 5 Mah LJ 854, a young doctor suffered paraplegia in a motor accident. The paraplegia affected both motor and sensory below thoracic 12 with complete bladder and bowel involvement. Following ***R.D. Hattangadi*** (supra) and *Raj Kumar* (supra), the Bombay High Court enhanced the compensation from Rs.8,85,000/- to Rs.34,50,000/-. The relevant portion of the judgment is as under:-

> *"23. In the present case, the Appellant will never be able to practice medicine. He will not be able to continue as a lecturer due to physical disability. Moreover, witness examined by the Appellant admitted that the Appellant is not qualified for the post of a lecturer as he is not*

holding a post graduate degree. He is incapable of earning any income. No argument is necessary to come to the conclusion that this is a case of 100% loss of earning capacity. In the year 1993, the income of the Appellant as a lecturer was around Rs. 4,200/-. The Appellant had an excellent academic record. It is obvious that the income of the Appellant would have been much higher than Rs. 4,200/-. In a matter like this, exercise of determining the compensation always involves an element of guess work. Looking to the academic record of the Appellant, the income can be reasonably taken at Rs. 6,000/- per month. Multiplier of 18 will have to be applied as on the date of the accident the age of the Appellant was about 25 years. Applying multiplier of 18, the loss of income can be quantified at Rs. 12,96,000/-(Rs. 6000 × 12 × 18). As pointed out earlier, the entire body of the Appellant below waist has become paralytic and he has no control over bladder and bowel movement. He regularly requires catheterisation. As stated by Dr. Joshi, he requires an attendant for 24 hours. Even if the conservative estimate of cost of one attendant is taken at Rs. 200/- per day, the amount will be Rs. 6,000/- per month. Adopting multiplier method, the total amount will come to Rs. 12,96,000/-.

24. As far as claim of expenditure on medical treatment is concerned, it is brought on record that the Appellant was admitted in three different hospitals in Pune and in hospitals at Karad and Satara. The Appellant was also admitted to the institution at Coimbatore for a period of more than two months. Lot of expenditure must have been incurred on travelling and residence of the relatives and friends of the Appellant. The bills evidencing expenditure on medicines, medical treatment, special diet, travelling expenses and residence of the relatives and friends of the Appellant have been produced on record. There are four lists of documents marked as 85/1 to 85/4. Along with the said four lists, voluminous original documents such as bills, vouchers etc. have been produced on record. As expected, none of the documents were admitted by the Respondent No. 3. Perhaps the Respondent No. 3 wanted that large number of witnesses should be examined to prove the documents. In the examination-in-chief, the Appellant has made a reference to all the bills and vouchers. The Tribunal constituted under the said Act is not bound by strict rules of evidence. Therefore, the said bills and vouchers ought to have been *taken into consideration by the Tribunal in absence of the specific case made out that the documents were fabricated. The total amount reflected from the said bills and vouchers is Rs. 1,54,526/-, which can be rounded off to Rs. 1,55,000/-. Therefore, no separate amount can be awarded by the Tribunal for purchasing equipment such as chair, water bed etc.*

*25. Evidence of Dr. Joshi indicates that the Appellant will have to continuously remain under medication. Dr. Joshi has stated that such patients who are suffering from paraplegia can suffer many ailments. In paragraph 5 above, the detailed version of Dr. Joshi on the treatment required in future has been reproduced. Dr. Joshi has said "**The parapleagic patients are known to go into severe depressions and sometimes result is suicide. Parapleagic are known to have severe rediating pain in both legs and back which is neurological in origin. In addition to this, they suffer from multiple bladder infections which may led to superadded kidney infection and also injuries to both legs due to loss of sensation. Besides which a previously walking about patient sees a futile future and this leads him to suicidal tendency. The neuronal irritation gives rise to severe burning pains in both the legs.** All these symptoms stated above were found in the said patient Dr. Shide. For subsiding this pains, tablets like Mazetol are given i.e. antiepileptic drug. The side effect of this medicine is mainly drowziness, grastic irritation, with reflex depression. It also affects appetite with the loss of appetite with decrease in multi-vitamins in the body. Such type of patient is required supplementation of multi-vitamins along with high protein diet. **These patients require self catheterisation to remove the urine from the bladder from time to time. This could lead to multiple episodes of infections which have to be treated by higher antibiotics. Also these patients are required to sleep on a water bed or aid-bed to avoid pressure sores over the legs and buttocks. In addition to that the patient requires high protein diet along with multi-vitamin supplementation and enema frequently to regularise the bowel movements. They require passive physiotherapy for both the lower limbs. Usually at night time, tranquillizers are given to help the patient sleep. At times, there is a reflex spasm of the lower limbs in certain patients which usually develops between 4 to 6 years and for which tranquillizers is given.** The supplementary food contains high* *fiber and protein contain." The Tribunal has granted only a sum of Rs. 1,00,000/- for future expenses on treatment. The Appellant will require large amount in future on medicines and equipment like wheelchairs, water bed, catheters etc. Even by a conservative estimate, the said amount cannot be less than Rs. 2,50,000/-.*

26. The real problem is in determining non-pecuniary loss because there are no fix standards for assessing the non-pecuniary loss. ***In a case like this where the victims suffer from paraplegia, the non-pecuniary loss will be basically under the following headings.***

> ***i. pain and suffering;***
> ***ii. loss of amenities of the life; and***
> ***iii. loss or destruction for prospects of marriage.***

As far as first two items are concerned, in cases of a child or young person, who suffers paraplegia, the amount will be much higher than the entitlement of a person who suffers paraplegia at a comparatively late age. *Therefore, there is variance in the amounts fixed by this Court as well as the Apex Court in such cases. The Apex Court and this Court in its various decisions has granted amounts ranging from Rs. 1,00,000/- together under the first two headings to a very high amount. In the case of Nizam's Institute of Medical Sciences (supra), where the Apex Court was dealing with a case arising out of an order passed by the Consumer Redressal Forum, a very high amount of Rs. 10,00,000/- has been granted on account of the pain and suffering. That was a case of engineering student aged 20 years, who was a victim of medical negligence. The case before the Apex Court was of a young student who being the victim of paraplegia was confined to wheelchair, and who pursued career in education and ultimately got employed as I.T. engineer at a handsome salary. Reliance was placed on the judgment of the Division Bench in the case of The New India Assurance Co. Ltd. v. Shweta Dilip Mehta (supra).* ***This Court dealt with the injury sustained by a minor child aged 11 years, who became paraplegic as a result of accidental injuries. In the facts of the case, this Court granted total amount of Rs. 4,00,000/- on account of pain and suffering.*** *In the present case the compensation cannot be granted on account of loss of amenities of life in view of what is held by the Apex Court in the case of Raj Kumar. In paragraph 15 of the decision, the Apex Court held that:*

"15. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may."

(emphasis supplied)

*27. **In the case of Divisional Controller, Karnataka State Road Transport Corporation v. Mahadeva Shetty (supra), the Apex Court granted a sum of Rs. 1,00,000/- in case of similar injuries. Ultimately, the amount will depend on facts of each case. It will depend upon the age of the victim, his social status, his marital status, his family background etc. It cannot be overlooked that a young person like the Appellant who suffers from paraplegia, also suffers in mind and in the given case, such a person may become a patient of a psychological disorder. Paraplegia can have devastating effect on the mind of a person like the Appellant, who had a brilliant academic career and who was aiming to pursue post graduate studies in Ayurvedic Medicine. It must be borne in mind that the accident occurred in the year 1993. The Appellant was unmarried at the time of the accident. The Appellant had responsibility of family consisting mother and two younger brothers. The impact of all these factors will have to be considered. The amount granted on this count by the Apex Court and Division Bench of this Court is in the range of Rs. 1,00,000/- to Rs. 4,00,000/-. Considering the facts of this case, compensation on account of pain and suffering deserves to be fixed at Rs. 3,75,000/-. As the compensation has been granted on account of 100% loss of earning capacity, separate amount cannot be granted on account of loss of amenities of life. In the case of Divisional Controller, Karnataka State Road Transport Corporation v. Mahadeva Shetty (supra), the Apex Court approved compensation of Rs. 75,000/- granted by the Tribunal on account of complete loss of prospects of marriage. The same amount deserves to be granted in this case.***

28. With this Judgment a long drawn litigation has come to an end as far as this Court is concerned. Costs of the appeal will have to be quantified at Rs. 20,000/-
29. Thus, the entitlement of the Appellant to compensation is as under:

a. Loss of income Rs. 12,96,000/-;
b. Cost of attendant Rs. 12,96,000/-;
c. Expenditure on medicines, treatment, conveyance Rs. 1,55,000/-;
d. Compensation on account of pain and suffering Rs. 3,75,000/-;
e. Compensation on account of loss of prospects of the marriage Rs. 75,000/;
f. Compensation on account of medical expenditure in future Rs. 2,50,000/-;

Thus, the total compensation should be Rs. 34,47,000/-. This figure can be rounded off to Rs. 34,50,000/-.
30. After taking into consideration a sum of Rs. 8,85,000/- granted by the Tribunal, the Appellant will be entitled to enhancement of Rs. 25,65,000/-. As far as amount of Rs. 2,50,000/- is concerned, the interest will not be payable from the date of the accident and the interest will be payable from the date of this judgment. Interest on the remaining enhanced amount of Rs. 23,15,000/- will have to be granted at the rate of 7.5% per annum."

(Emphasis Supplied)

23. In ***Ritu v. Regional Manager Uttranchal State Road Transport Corporation,*** 2014 ACJ 1133, a six year old child suffered paraplegia with 80% disability. This Court examined the case law with respect to the award of compensation in injury cases and awarded compensation of Rs.41,19,928/-. Relevant portion of the said judgment is reproduced hereunder:

"The appellant is entitled to total compensation of Rs.41,19,928/- as per break-up given hereunder:-

Pain and suffering	:	*Rs. 3,00,000/-*
Loss of amenities of life	:	*Rs.3,50,000/-*
Disfiguration	:	*Rs.50,000/-*
Loss of matrimonial prospects	:	*Rs.75,000/-*
Loss of Education	:	*Rs.2,00,000/-*
Loss of earning capacity	:	*Rs.17,99,928/-*
Compensation towards cost of treatment	:	*Rs.50,000/-*
Future treatment	:	*Rs.2,00,000/-*
Physiotherapy	:	*Rs.1,00,000/-*
Conveyance and future conveyance	:	*Rs.1,50,000/-*
Cost of attendant	:	*Rs.1,08,000/-*
Future attendant charges	:	*Rs.4,80,000/-*
Special diet	:	*Rs.50,000/-*
Cost of wheelchairs	:	*Rs.1,00,000/-*
Cost of special wheelchair for bathing	:	*Rs.2,000/-*
Cost of special commode chair	:	*Rs.5,000/-*
Cost of special undergarments	:	*Rs.50,000/-*
Cost of jacket to be worn on wheelchair	:	*Rs.50,000/-*
Total	:	***Rs.41,19,928/-***

(Emphasis Supplied)

24. In MAC.APP.332/2014 tilted ***Oriental Insurance Company Ltd v. Rupashi Verma***, following principles laid down in ***Ritu's*** case (supra), this Court vide judgment dated 27th July, 2017 upheld the compensation of Rs.56,29,500/- awarded by the Claims Tribunal.

25. Learned counsel for the appellant submits that the appellant has filed an additional affidavit along with the treatment record, prescription and bills. It is submitted that the appellant is incurring Rs.8,000/- per month on treatment and medicines, Rs.2,000/- on special diet and Rs.5,000/- towards attendant charges.

26. Learned counsel for the respondent submits that the documents filed

by the appellant have not been proved in accordance with law.

27. Learned counsel for the appellant seeks permission to lead the additional evidence.

28. This Court is satisfied that additional evidence is necessary to determine the fair and just compensation to the appellant and therefore, the appellant is permitted to lead the additional evidence before the Claims Tribunal.

29. The appeal is allowed, the impugned award is set aside and the matter is remanded back to the Claims Tribunal for recording the additional evidence. The Claims Tribunal shall pass a fresh award after recording of the additional evidence. The amount already awarded by the Claims Tribunal and paid by the respondent shall be adjusted in the fresh award to be passed.

30. The parties shall appear before the Claims Tribunal on 18th September, 2017. The record of the Claims Tribunal shall return back forthwith.

31. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

AUGUST 17, 2017 **J.R. MIDHA, J.**

dk