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

FIRST APPEAL NO.1244 OF 2004

Ketaki Milind Kulkarni)
Age 17 years, Occu: Education,)
being minor, through)
her natural guardian mother,)
Smt. Nutan Milind Kulkarni,)
after remarriage Sou.Nutan Patwardhan,)
Age: 40 yrs., Occ: Household,)
R/o.N471-Jarapur Towers, Off. Link Road,)
Lokhandawala, Andheri(W), Mumbai.) .. Appellant
(Orig. Claimant)

VERSUS

1. Bajirao Dnyandeo Patil)
Age adult, Occu : Business,)
R/o Shirolu Dhumala, Tal. Karveer,)
District Kolhapur.)

2. The Oriental Insurance Co. Ltd.)
Progress House, Pune-Mumbai Road,)
Opp. Engineering College, Shivajinagar,)
Pune 411005.) .. Respondents
(Orig. Opponents)

Mr.Ashutosh M. Kulkarni with Ms.Akansha Helaskar and Mr.Sarthak
Diwan for the Appellant.

Mr.A.S. Vidyarthi with Mr.S.S. Vidyarthi and Ms.Ruchika Dave for the Respondent No.2.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 27th February 2020
PRONOUNCED ON : 26th June 2020

JUDGMENT :-

. By this First Appeal filed under section 173 of the Motor Vehicles Act, 1988, the appellant (original claimant) has impugned the judgment and award dated 5th April, 2004 partly rejecting the claims made by the appellant. Some of the relevant facts for the purpose of deciding this First Appeal are as under :-

2. The appellant is the daughter of deceased Milind Dinkar Kulkarni. It was the case of the appellant that on 19th March 1995 about 11.00 a.m. she with her father late Milind and mother Nutan left Kolhapur for going towards Pune by a car bearing registration No.MH-09-P- 1265. The said car was being driven by her father Milind Dinkar Kulkarni who owned the said car. He was driving the said car by left side of the road at a moderate speed by observing rules and regulations of traffic on the road. When the said car reached near the spot of accident, one tanker bearing registration No.09-A-6565 came by opposite side in very fast speed. The driver of the said tanker was driving the said tanker

in rash and negligent manner without observing the rules and regulations of the traffic on the road. He could not control the said tanker and by coming to the wrong side of the road, he dashed the said car driven by Milind Dinkar Kulkarni. The said Milind Dinkar Kulkarni (hereinafter referred to as “the said deceased”) and the appellant were seriously injured. The driver of the offending vehicle was charge-sheeted by the concerned police station.

3. The appellant was 8 years old and was a student at the time of her accident. The appellant along with her father Milind were firstly taken to Krishna Hospital, Karad and they were admitted in the said hospital for treatment. Her father died due to the injuries sustained by him in the said motor accident. The appellant was subsequently shifted to Ruby Hall Clinic, Pune and was operated and treated at the said clinic as indoor patient from 20th March 1995 to 25th April 1995 by the Specialist Doctors.

4. It was the case of the appellant that her relatives were required to contact the specialist doctors in Mumbai and other cities in India for consulting and for giving their opinion and proper treatment to the appellant and spent substantial amount towards telephone charges. Special Nurse-attendant was also required to be appointed by them for

taking care of the appellant at the hospital and even after discharge from the hospital for about 14 months were required to spend substantial amount for treatment and various other expenses. She was also required to take special diet for speedy recovery. Her relatives were attending her when she was hospitalized and spent substantial amount towards conveyance, their food and tea. The appellant was required to take treatment of Physiotherapist at Pune from Dr.Bhide and was required to come to Pune twice in a month from Kolhapur along with her mother and one more attendant. She was required to spend Rs.15,000/- towards conveyance. She was required to spend substantial amount under various other heads for taking treatment. She is still suffering from pains.

5. The appellant accordingly filed a claim before the MACT, Satara i.e. Motor Accident Claim Petition No.359 of 1997 against the respondents inter alia praying for an amount of Rs.12,50,000/- with interest thereon. The respondent no.1 though appeared did not file any written statement. The respondent no.2 filed written statement and denied the claims made by the appellant. It was the case of the respondent no.2 that the contention of the respondent no.2 that father of the appellant who was driving the said vehicle was solely responsible and no claim for compensation was payable to the appellant.

6. The Tribunal framed 5 issues for determination. The appellant examined her mother Nutan Kulkarni (PW-1) as one of the witnesses who was cross-examined by the respondent no.2. The said witness produced various documents before the Tribunal. The appellant examined Dr.Prachee Sathe (PW-2) to prove the claim for compensation on the issue of disabilities. The appellant also examined Dr.Dilip Kiyawat (PW-3) who was Neuro surgeon. The said witness was also cross examined by the respondent no.2. The respondent no.2 did not examine any witness.

7. The Tribunal passed the judgment and award dated 5th April 2004 allowing the said claim filed by the appellant partly and directed the respondent nos.1 and 2 to pay jointly and severally an amount of Rs.2,10,000/- inclusive of NFL compensation together with interest @9% p.a. from the date of the petition till the date of deposit of the amount of compensation. None of the respondents impugned the said judgment and award dated 5th April 2004. The appellant has filed an appeal seeking enhancement of compensation awarded by the said Tribunal.

8. Mr. Kulkarni, learned counsel for the appellant invited my attention to various paragraphs of the pleadings filed by the parties, oral evidence led by the appellant, various documents forming part of the

record and proceedings and would submit that at the time of the accident on 19th March, 1995, the appellant was only 7½ years old. He invited my attention to the issues framed by the Tribunal and the findings rendered thereon and would submit that the issues no.1 i.e. whether the appellant had proved that she had sustained injuries in the motor accident dated 19th March, 1995 due to rash and negligence driving of the driver of offending vehicle was decided in favour of the appellant by answering the said issue in affirmative. The respondent no.2 did not challenge the said finding rendered by the Tribunal. Similarly, finding on issue no.3 that the respondent no.2 had failed to prove that the accident was the result of contributory negligence of both the driver of the vehicles involved in the accident was though against the respondent no.2. The respondent no.2 did not challenge the said finding also and thus has attained finality.

9. Learned counsel invited my attention to the findings rendered by the Tribunal in paragraph 13 of the impugned judgment and award and would submit that though in the evidence led by the appellant, it was proved that the permanent disability of the appellant was on higher side, the Tribunal considered the permanent disability only at 50%. The Tribunal has denied the claim for loss of future income in favour of the appellant. It is submitted that in paragraph 9 of the impugned judgment and award, the Tribunal has allowed compensation in the meager sum of

Rs.2,10,000/- though the appellant had proved the claim for larger amount. The Tribunal did not grant compensation for future medical expenses in favour of the appellant. The claim for special diet is allowed at Rs.10,000/- only against the claim of Rs.20,000/- made by the appellant. The claim for conveyance charges also is allowed only at Rs.10,000/- as against the claim of the appellant at Rs.30,000/-. The Tribunal rejected the claim for attendant charges in toto.

10. In so far as the claim for pains and suffering is concerned, the Tribunal has allowed the meager sum of Rs.25,000/- though ought to have allowed atleast the sum of Rs.9,00,000/-. The attendant charges of relatives are allowed only at the sum of Rs.5,000/- though the actual expenses incurred were at much larger amount. The Tribunal has allowed a sum of Rs.75,000/- compensation towards permanent disability though the claim made by the appellant was for Rs.1,00,000/-. He strongly placed reliance on the judgment of Supreme Court in case of **Kajal v/s. Jagdish Chand and Ors.** delivered on 5th February, 2020 in Civil Appeal No. 735 of 2020 and would submit that according to the principles laid down in the said judgment, the appellant is entitled to claim compensation towards permanent disability in the sum of Rs.3,00,000/-. He relied upon the said judgment also in support of his submission that the Tribunal ought to have added 40% of the income towards future

prospect while considering the claim for “loss of dependency”.

11. Learned counsel for the appellant placed reliance on the judgment of Division Bench of this Court in case of ***New India Assurance Co. Ltd. v/s. Shweta Dilip Mehta and Others, 2010(3) Mh.L.J. 145*** and in particular paragraphs 18, 20, 24 and 25. He submits that in the said judgment this Court had considered the notional annual income in the similar circumstances at Rs.1,00,000/-. In this case, since the Tribunal considered the 50% permanent disability of the appellant, the Tribunal ought to have at least considered the notional annual income atleast at Rs.50,000/-.

12. Learned counsel for the appellant tendered a chart showing the amount claimed by the appellant, the amount awarded by the Tribunal and the amount now claimed on the basis on various judgments of Supreme Court. It is submitted that this Court shall reasonably increase the amount towards future medical treatment, towards attendant charges and phone charges. This Court shall consider the claim towards pains and suffering at Rs.6,00,000/- on the basis of the principles of law laid down by the Supreme Court in case of ***Malikarjun v/s. Divisional Manager National Insurance Co. Ltd.*** or Rs.9,00,000/- on the basis of principles of law laid down by the Supreme Court in case of ***Kajal*** (supra).

13. It is submitted by the learned counsel that this Court also shall consider the claim of Rs.3,00,000/- toward loss of prospect of marriage of the appellant according to the principles of law laid down by the Supreme Court in case of **Kajal** (supra).

14. In so far as the compensation for future loss of income is concerned, though the amount claimed by the appellant was Rs.4,32,000/-, the Tribunal has not granted any amount under this head. He submits that in view of there being 60% permanent disability of the appellant as proved by the appellant, the Tribunal ought to have considered the monthly income at Rs.2,907/- and ought to have considered 40% future prospect which comes to Rs.1,163.40/-. The net income per month ought to have been considered by the Tribunal at Rs.4,070/- and annual income at Rs.48,840/- in accordance with the principles of law laid down by the Supreme Court in case of **Kajal** (supra). He submits that after applying the multiplier of '18' to the said amount of Rs.48,840/-, the loss of dependency amount would be Rs.8,79,128/-.

15. Mr. Vidyarthi, learned counsel for the respondent no.2 on the other hand distinguishes the judgment of Supreme Court in case of **Kajal**

(supra) on the ground that the permanent disability considered by the Supreme Court in the said judgment was 100%, whereas in this case the Tribunal has rendered a finding of permanent disability only at 50%. He submits that the appellant has not disputed that though the appellant was only 7½ years old at the time of her accident, the appellant thereafter had shown progress and has passed upto 11th standard.

16. In so far as the issue of permanent disability of the appellant is concerned, it is submitted that the two doctors examined by the appellant gave two different certificates of disability, certifying permanent disability at 40% and between 50% and 60% respectively. The Tribunal has considered the permanent disability at 50%. He invited my attention to the cross-examination of the Dr. Dilip Kiyawat (witness no.3 of the appellant) and would submit that the said doctor has admitted that the appellant was in 10th standard on the date of giving the said evidence.

17. Learned counsel for the respondent no.2 distinguished the judgment of this Court in case of ***New India Assurance Co. Ltd. v/s. Shweta Dilip Mehta and Others*** (supra) on the ground that the facts before this Court in the said judgment were different. He submits that there was a finding rendered in the said judgment that the victim had

suffered permanent disability to the extent of 80% to 90% and thus would not assist the case of the appellant.

18. It is submitted by the learned counsel that since the appellant has passed 11th standard, loss of future income can be considered by this Court by applying the principles laid down by the Supreme Court in case of *Kajal* (supra). In so far as the claim towards pains and suffering is concerned, he submits that if this Court comes to the conclusion that the said claim for compensation awarded by the Tribunal is on lower side, the same can be increased by this Court. He submits that the Tribunal has already applied the maximum multiplier of '18' in this case and thus no interference is warranted as far as application of multiplier is concerned.

19. Mr. Kulkarni, learned counsel for the appellant in rejoinder submits that the Tribunal ought to have awarded interest @ 9% p.a. on the entire amount for entire period.

REASONS AND CONCLUSION

20. The Tribunal has allowed the compensation in favour of the appellant in the sum of Rs.2,10,000/- inclusive of the no fault liability compensation together with interest @ 9% per annum from the date of the claim application i.e. 19th June, 1997 till the date of the deposit of the

amount of the compensation under Section 140 of the Motor Vehicles Act and thereafter on the remaining amount till the date of the said judgment and award @ 7% per annum till realization. It is not in dispute that none of the respondents have either challenged any part of the said judgment and award dated 5th April, 2004 or has filed any cross-objection in this First Appeal filed by the appellant (original claimant). The appellant however has filed the First Appeal for seeking enhancement of the claims and for impugning some of the portion of the impugned judgment and award thereby not granting all the claims as prayed.

21. A perusal of the impugned judgment and award indicates that the Tribunal had framed 5 issues for determination. The Tribunal rendered a finding that the appellant herein had proved that she had sustained injuries in motor accident dated 19th March, 1995 due to rash and negligent driving of the offending vehicle by its driver. The Tribunal has also rendered a finding that the appellant had sustained permanent disability due to injuries received in the said accident however to the extent of 50%.

22. None of the findings rendered by the Tribunal and more particularly while dealing with issue nos. 1, 2 and 4 have been impugned by any of the respondents. The findings rendered by the Tribunal in the impugned judgment and award and the conclusion drawn therein have

attend finality in so far as the respondents are concerned. This Court is thus not required to go into the correctness of various findings rendered by the Tribunal against the respondents. The only question thus remain for consideration of this Court is whether part of the findings by the Tribunal against the appellant and the quantification of compensation partly awarded in favour of the appellant and not as claimed is just and adequate compensation in the facts and circumstances of this case.

23. In the claim application filed by the appellant, it was stated that the appellant was 8 years old at the time of accident and was a student. The appellant had claimed a sum of Rs.12,50,000/- under various heads as compensation. The said claim was resisted by the respondent no.2. The claim was vaguely denied by the respondent no.2 in the written statement dated 22nd April, 1998. The appellant examined her mother as one of the witness. In so far as the claim for compensation is concerned, the said witness who was an eye-witness and was travelling along with the appellant and her husband deposed that the appellant sustained brain injury in the said accident and was immediately taken to Ruby Hall Clinic at Pune. She was admitted in the said hospital from 20th March, 1995 till 25th April, 1995. She was in coma for about 20 days. She was given about 4 to 5 bottles of blood during her treatment. She also disclosed the names of the doctors who had given the treatment to the appellant. The appellant

was admitted in ICU. It was stated that the mother of the appellant had spent about Rs.2,00,000/- at Ruby Hall Clinic including all medicines and hospital charges. The said witness produced the medical bill to the extent of Rs.72,000/- when the appellant was under coma. She deposed that there were many complications in view of the said accident and more particularly when the appellant was under coma. The said witness however deposed that she had incurred about Rs.25,000/- to Rs.30,000/- as conveyance charges. Her mother-in-law and other relatives used to come from Kolhapur. Her brother who was practicing as Doctor at Pune also had attended the appellant. She had spent about Rs.20,000/- for mess etc. and has spent Rs.10,000 towards diet charges.

24. In her examination-in-chief, the said witness deposed that the appellant suffered from convulsions and epileptic attacks and therefore somebody had always to look after her. The appellant required physiotherapy for about 1 month. The appellant could not appear in the examination due to the accident and injuries sustained by her. The appellant was a bright child and had got very good prospects. She was also getting the marks above 90% and stood first in the class. However, after her accident, she was not able to keep her balance. She could write but slowly and could not speak fluently. Basically, she had become overall very slow. She deposed that previously before accident, the

appellant use to play games but now she was not able to play any games. The said witness also produced various documents such as FIR, Spot Panchnama, Insurance Policy, Discharge Card, etc. She deposed that she had filed a claim for compensation of Rs.2,50,000/- and if the Court would award more compensation, she was ready to pay the Court fee stamp accordingly.

25. The said witness examined by the appellant was cross-examined only by the respondent no.2. In so far as the compensation is concerned, the said witness in her cross-examination deposed that the appellant was studying in 10th standard at the time of evidence. The appellant has not lost any academic year. She denied the suggestion that the appellant was obtaining the said marks even today as she was obtaining prior to the date of accident. She also denied the suggestion that there was no medical certificate showing that the activities of the appellant had become slow. She also denied the suggestion that she had inflated the medical expenses bills or that she was deposing falsely. She deposed that she had not produced the disability certificate of her daughter.

26. Pursuant to the liberty granted by the Tribunal, the said witness examined by the appellant was recalled as per order dated 5th

February, 2004 and was allowed to lead further examination-in-chief. She deposed that the appellant was examined by Dr. Dilip Kiyawat and Dr. Prachee Sathe and in such examination Dr. Kiyawat had given certificate to the effect that the appellant had suffered 55% to 60% permanent disability and 40% disability respectively vide certificates at Exh. 47 and Exh. 40 respectively. She deposed that due to such permanent disability, the appellant was unable to do the work as she was doing earlier. It was also difficult to get her married. She deposed that she was likely to require to bear expenses of Rs.5,00,000/- to Rs.6,00,000/- to find out a suitable boy for her marriage and to get his consent for marriage. In view of such additional expenses, she prayed for a total compensation of Rs.12,50,000/-.

27. After such further examination-in-chief of the said witness permitted by the Tribunal and led by the said witness, she was once again cross-examined by the respondent no.2. The said witness admitted that the doctor had not given her any opinion to the effect that the appellant was not likely to get married. It was her opinion that if she would spent Rs.5,00,000/- to Rs.6,00,000/- on the marriage of the appellant to get some suitable boy who would be ready to marry her. The said witness denied the suggestion that considering the age of the appellant at that time, there was good scope for improvement in her condition. She

admitted that the appellant was going to the school and studying in 11th standard on the date of the said witness. She did not fail in any examination since date of the said motor accident. The witness volunteered that she was not getting admission in any college on the basis of the disability certificate on the quota of disables. The witness denied the suggestion that even if a boy gets good marks, it was not possible for him to get admission in the college. The said witness also denied the suggestion, there was no proper ground for enhancing of compensation of Rs.10,00,000/- claimed by her. There was hardly any cross-examination on the quantification claimed by the appellant conducted by the respondent no.2.

28. The appellant also examined Dr. Prachee Sathe as one of the witness who had examined the appellant in hospital after her accident. In her examination-in-chief, the said witness admitted that the appellant was admitted in her hospital as patient for road accident on 20th March, 1995 and was in hospital till 25th April, 1995. She was in unconscious condition for 15 days and she sustained head and chest injuries. The appellant was under her treatment. She identified her signature on the discharge card of the appellant and deposed that the contents thereof were true and correct.

29. The said witness deposed that due to head injuries the

appellant could not work and climbed the stairs. Her control had been reduced on fine motor movements like writing, dressing up herself, fine skilled movements, reduced concentration span. The balance activities of the body of the appellant had reduced because of damage to cerebellum. There was significant change in voice causing difficulty in speech because of local injuries to vocal cords. The affectivity of the speech and the communication had reduced significantly due to damages to centre of the speech in a brain. The left side of the body was partially paralyzed. These deficits and disabilities were of permanent nature which would hamper her carrier prospect and professional ability in addition to difficulties in personal life. She deposed that she had examined the appellant on 6th February, 2003 and had issued the said certificate of partial disability. According to the said certificate issued by her the disability of the appellant was 40%. The said witness was cross-examined by the respondent no.2.

30. In the cross-examination of the said witness by the respondent no.2, she denied the suggestion that the appellant was known to her. She did not know whether the appellant was studying in 10th standard or not. She denied the suggestion that the change in voice was because of vocal cord injuries. She deposed that she had examined the appellant six months back and denied the suggestion that disability was

not mentioned in the certificate dated 11th August, 2001 because she was not disabled. She deposed that the assessment of disability was in relation to the function and control of brain and body, the drug treatment for the after effect of head injuries was withdrawn 3 years ago. She denied the suggestion that the drug had been withdrawn because of complete recovery. She denied the suggestion put to her by the respondent no.2 that issue of physical and mental disability done by her was based on clinical and scientific evidence but hypothetically case paper of Ruby Hall Clinic were not available.

31. A perusal of the cross-examination of the said witness i.e. Dr.Prachee Sathe clearly indicates that there was hardly any cross-examination on the physical condition of the appellant after her accident and the effect of such accident affecting the abilities of the appellant in the manner and to the extent deposed in the examination-in-chief.

32. The appellant had also examined Dr. Dilip Kiyawat as one of the witness who was educated upto M.D. (Neurosurgeon) and was practicing since last 20 years on the date of recording his evidence. The appellant was admitted in Ruby Hospital for road accident. The said Doctor was attached to Ruby Hall Hospital since 1995 and had examined the appellant during the period between 20th March, 1995 to 25th April,

1995. The appellant had come to his hospital as O.P.D. patient for 1½ year. He had examined the appellant 3 months back. He agreed with the deficiency nos. 1 to 4 of the certificates issued by Dr. Prachee Sathe. The said Doctor deposed that according to his opinion the permanent disability of the appellant was 55% to 60%. She could not drive two wheeler. She could not drive car etc. efficiently. She had increased risk of epilepsy. He identified his signature on the certificate issued by him and deposed that contents thereof are true and correct.

33. In his cross-examination conducted by the respondent no.2, the said witness deposed that he had not got examination papers of the appellant when she visited to his clinic. She recovered slowly. He denied the suggestion that he had not examined the appellant last 6 months back and examination papers and notes were not available with him. He deposed that the appellant would learn something in future. He had not met Dr. Prachee Sathe for about 1½ year. He denied the suggestion that the certificate issued by the Dr. Prachee Sathe on 6th February, 2003 mentioning the deficiencies 1 to 4 were incorrect. He also denied the suggestion that permanent disability to the extent of 55% to 60% in the certificate issued by him was incorrect. He denied the suggestion that the appellant would improve in future or that she will improve her talking and walking. He deposed that he had enquired about the education of the

appellant. She was in 10th standard on the date of the said evidence. He deposed that the appellant would learn to drive a vehicle. He however denied the suggestion that there was no increase in epilepsy. He denied the suggestion that there were no permanent injuries and permanent disabilities for which medicines were required.

34. A perusal of the cross-examination of the said witness examined by the appellant clearly indicates that there was hardly any cross-examination on the deposition on the contents of the disability certificate to the extent of 55% to 60% of the appellant. It is not in dispute that the respondent no.2 did not examine any witness on any of the issues including issue no. 3 i.e. “whether opponent no.2 proves that the accident was the result of the contributory negligence of both the drivers of vehicles involved in the accident”. The Tribunal after considering the evidence led by the appellant has answered the said issue in negative.

35. In this backdrop of the matter, I will now consider whether the compensation in sum of Rs.2,10,000/- awarded by the Tribunal is just compensation or not and whether any case is made out for enhancement of the claim for compensation by the appellant or not. The Tribunal in the impugned judgment and award has dealt with the issue no.2 which was

relating to the extent of permanent disability sustained by the appellant if any due to the injuries received in the accident. In paragraphs 11 to 13, the tribunal has held that the appellant had succeeded in proving that she had suffered 50% permanent disability due to the injuries she had received in the said motor accident. The Tribunal while coming to the conclusion that the appellant had suffered 50% permanent disability has dealt with the certificate issued by Dr.Dilip Kiyawat who had opined that the disability was 55% o 60% permanent in nature and also dealt with certificate issued by Dr. Prachee Sathe opining that the disability of the appellant was to the extent of 40%.

36. The relevant part of the evidence led by the mother of the appellant examined by the appellant and two doctors summarized aforesaid clearly indicates that the appellant had suffered 60% permanent disability due to the injuries she had received in the said motor accident. The substantial part of the evidence to demonstrate the sufferings of the appellant and how such injuries suffered by her had affected her life in present and also would affect in future were not controverted by the respondent no.2 in the cross-examination. In my view, the Tribunal thus could not have rendered a finding that the appellant was successful in proving only that she had suffered 50% permanent disability due to the injuries she had received in the said motor accident. The conclusion thus

drawn by the Tribunal in this respect is erroneous and contrary to the evidence led by the appellant and thus deserves to be modified by holding that the appellant had proved that she had suffered 60% permanent disability due to the injuries she had received in the said motor accident.

37. In paragraph 15 of the impugned judgment and award, the Tribunal has considered the compensation in the sum of Rs.85,000/- comprising of Rs.73,000/- towards medical treatment at Ruby Hall Clinic, Pune and Rs.12,000/- towards physiotherapy treatment. The mother of the appellant who was examined as one of the witness could produce the bills only of Rs.73,000/- in her evidence which were available with her. The Tribunal after considering the evidence led by the mother of the appellant has awarded the said sum of Rs.85,000/- is concerned and thus does not warrant any interference.

38. The Tribunal has awarded Rs.10,000/- towards special diet as claimed. There is no dispute towards conveyance charges in favour of the appellant. The mother of the appellant had deposed in her examination-in-chief that the appellant had incurred expenses of Rs.25,000/- to Rs.30,000/- as conveyance charges. There was no cross-examination by the respondent no.2 on this aspect except putting a suggestion to the said witness that the deposition of the said witness that

she had incurred Rs.25,000/- to Rs.30,000/- for conveyance charges was false. In my view, the Tribunal thus ought to have been awarded a sum of Rs.25,000/- towards conveyance charges.

39. In so far as the attendant charges is concerned, the mother of the appellant in her evidence had deposed that her brother who was practicing as doctor at Pune also attended the appellant with the said witness and had spent substantial amount. There was no cross-examination on this aspect except putting a suggestion to the witness that her deposition in that regard was false. In my view, the Tribunal thus ought to have awarded a sum of Rs.25,000/- towards attendant charges to the appellant.

40. In so far as the phone charges are concerned, the Tribunal has not awarded any amount under this head of compensation. The appellant had not admitted any such amount before the Tribunal nor led any evidence in respect of this claim. I do not find any infirmity with this part of the judgment and award and does not incline to award any amount towards phone charges.

41. In so far as the claim for pain and suffering is concerned, the Tribunal has awarded a sum of Rs.25,000/- to the appellant in paragraph

26 of the impugned judgment and award. A perusal of the evidence led by the mother of the appellant clearly indicates that her evidence about the pain suffered by the appellant due to the said accident and more particularly that the appellant had sustained brain injury, she was in hospital for the period between 20th March, 1995 and 25th April, 1995, various bottles of blood were required to be transmitted, she could not appear for examination due to accident and injuries suffered by her, she was not able to keep her balance and could write but slowly has not been shattered in cross-examination conducted by the respondent no.2. The Doctors examined by the appellant also deposed in detail as to how balancing activities of the body of the appellant had been reduced because of damage to cerebellum. There was significant change in voice causing difficulty in speech because of vocal injuries to vocal cord. The left side of the body was partially paralyzed which were of permanent nature. This part of the evidence was also not shattered in cross-examination. Supreme Court in case of **Malikarjun v/s. Divisional Manager National Insurance Co. Ltd.** (supra) has awarded the compensation toward pain and suffering in the sum of Rs.15,00,000/- considering the 90% disability of the claimant. Supreme Court in case of **Kajal** (supra) also has awarded substantial amount towards pain and suffering. In the facts of this case, the appellant has suffered 60% permanent disability. The principles of law laid down by the Supreme

Court in case of **Malikarjun** (supra) would apply to the facts of this case. However, considering the permanent disability at 60%, I am inclined to enhance the claim for compensation towards pain and suffering from Rs.25,000/- to Rs.9,00,000/-. This part of the impugned judgment and award thus is modified by enhancing the said amount from Rs.25,000/- to Rs.9,00,000/-.

42. In so far as the claim for loss of prospect of marriage is concerned, the Tribunal in paragraph 27 of the impugned judgment and award has considered a part of the compensation under this head without any break-up while considering the claim arising out of permanent disabilities at Rs.75,000/-. It is erroneously held by the Tribunal that none of the doctors examined by the appellant had certified in their certificates that it was difficult to get the appellant married. At the same time, the Tribunal also observed that it could not be denied that due to such defects in her development to some extent, it would be difficult to get suitable boy for her for the marriage. A perusal of the examination-in-chief of the mother of the appellant indicates that she had specifically deposed that the appellant was not able to keep her balance, could write but slowly and could not speak fluently. She had become overall very slow.

43. The witness deposed that due to the permanent disability of

the appellant, the appellant was unable to do the work as earlier. It was also difficult to get her married. She further deposed that the appellant was likely to require to bear expenses of Rs.5,00,000/- to Rs.6,00,000/- to find out a suitable boy for her marriage and to get his consent for marriage. In her cross-examination, the mother of the appellant deposed that it was her opinion that if she would spent Rs.5,00,000/- to Rs.6,00,000/- on her marriage, some suitable boy would be ready to marry the appellant. In my view, the Tribunal could not have expected proof from the said witness as to how she would have been required to spent a sum of Rs.5,00,000/- to Rs.6,00,000/- for the marriage of the appellant. The mother of the appellant had already proved beyond reasonable doubt that due to various physical disorders and due to permanent disability to the extent of 60%, it was difficult for the appellant to get married and thus she was likely to spent substantial amount to find out a suitable boy for her. In my view, the Tribunal thus ought to have considered a sum of Rs.3,00,000/- under this head in favour of the appellant.

44. In so far as the compensation towards loss of future income is concerned, the appellant had demanded a sum of Rs.4,32,000/- before the Tribunal. The appellant was about 7½ years old at the time of her accident and was a student studying in 2nd Standard. The mother of the

appellant in her cross-examination admitted that on 17th December, 2002 when the evidence of the said witness was recorded, the appellant was studying in 10th standard and had not lost any academic year of the school. She also deposed that the appellant was however not obtaining the same marks which she was obtaining earlier. She also denied the suggestion that there was no medical certificate showing that the activities of the appellant had become slow.

45. The Tribunal in the paragraph 28 of the impugned judgment and award has awarded a composite sum of Rs.75,000/-. The Tribunal in the impugned judgment and award has not awarded any amount towards loss of future income by holding that when the accident had occurred, the appellant was studying in 2nd standard and on the date of the delivering the judgment and award, the appellant was studying in 10th standard. In my view, the Tribunal has totally ignored the evidence of the mother of the appellant in more particularly in her cross-examination demonstrating the extent of the future possibilities of loss of future income. The Supreme Court in case of **Kajal** (supra) did not approve the view taken by the High Court holding that the claimant being a young girl of 12 years only notional income of Rs.15,000/- per annum could be taken into consideration. The Supreme Court observed that it was not proper way of assessing the future loss of income. The said victim girl of 12 years after studying could have worked and could have earned more than

Rs.15,000/- per annum.

46. The Supreme Court considered that the minimum wages payable to a skilled workman is Rs.4,846/- per month which would be the minimum amount which the said victim would have earned on becoming a major. The claimant in the said matter before the Supreme Court had proved 100% permanent disability of the said victim. The Supreme Court accordingly considered the minimum wages payable to a skilled workman Rs.4,846/- per month and awarded 40% towards future prospect. The Supreme Court also applied multiplier of 18 to the said amount and awarded the said claim of Rs.14,66,000/- towards loss of future income. In this case, the appellant has proved that she had sustained 60% permanent disability.

47. I am thus inclined to consider the 60% of Rs.4,846/- per month which was minimum wages payable to a skilled workman as the base for the purpose of considering the claim for compensation of future loss of income. The said amount would be Rs.2,970 per month. In my view, the appellant would be also entitled to 40% towards future prospect which would be Rs.1,163.40/-. The net income of the appellant thus would be in the sum of Rs.4,070/- per month and Rs.48,840/- per month. The multiplier applicable to the appellant considering the age of the appellant would be 18. After applying the multiplier of 18, the loss of

future income would be in the sum of Rs.8,79,128/-. This part of the impugned judgment and award thus deserves to be modified by allowing the claim in the sum of Rs.8,79,128/- towards loss of future income.

48. Supreme Court in case of **Kajal** (supra) has held that it is impossible to equate human suffering and personal deprivation with money. The Court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by the victim. It is held that the on the one hand the compensation should not be assessed conservatively and on the other hand the compensation also should not be assessed in such a way to make it bounty to the claimant. The Court while assessing the compensation should have recorded the degree of deprivation and the loss caused by such deprivation. Such compensation is to be termed as just compensation. It is held that the compensation or damages arising out of personal injuries should be substantial to composite a injured for the deprivation suffered by the injured thereof his/her life and they should not be just taken damages. In my view, the principles laid down by the Supreme Court in case of **Kajal** (supra) applies to the facts of this case. In my view, the basic amount awarded by the Tribunal under various heads while considering the claim for compensation is on lower side and thus requires to be enhanced as referred to aforesaid.

49. The Tribunal has not granted any compensation towards future medical treatment though the appellant had claimed a sum of Rs.40,000/-. The appellant had examined three witnesses to prove the extent of permanent disability and the future treatment which the appellant would be required to take. The Tribunal however has totally overlooked this part of the evidence in the impugned judgment and award and did not award any such amount. In my view, the Tribunal ought to have awarded Rs.1,00,000/- towards future medical treatment. This part of the judgment and award thus deserves to be modified by awarding sum of Rs.1,00,000/- towards future medical treatment.

50. In so far as the submission of the learned counsel for the respondent no.2 that the judgment of Supreme Court in case of ***Kajal*** (supra) would not be applicable to the facts of this case is concerned, Supreme Court in the said judgment had considered the case of 100% permanent disability. In this case, the appellant has proved that she had sustained 60% permanent disability. This Court has thus not awarded the compensation based on 100% permanent disability but has awarded compensation considering the factum of 60% permanent disability. There is thus no merit in this submission of the learned counsel for the respondent no.2.

51. In so far as the submission of the learned counsel for the respondent that the judgment of this Court in case of ***New India Assurance Co. Ltd. v/s. Shweta Dilip Mehta and Others*** (supra) distinguishable in the facts of this case is concerned, in that matter the Division Bench of this Court had considered the case of 80% to 90% permanent disability while awarding the claim for compensation. This Court has not awarded the compensation based on 80% to 90% disability but has reduced the compensation that was awarded by the Division Bench of this Court in the said judgment by considering only 60% permanent disability.

52. Mr. Vidyarthi, learned counsel for the respondent no.2 fairly stated that since the appellant has passed 11th standard, loss of future income can be considered by this Court by applying the principles laid down by the Supreme Court in case of ***Kajal*** (supra). He also fairly stated that if this Court comes to the conclusion that the compensation towards pain and suffering is on lower side, the same may be enhanced by this Court by awarding reasonable compensation. There is no dispute about the multiplier of 18 applied by the Tribunal in this case.

53. In so far as the interest awarded by the Tribunal is concerned, the Tribunal has awarded interest @ 9% from the date of

claim petition till the date of deposit of the amount of compensation by the respondent no.2 under Section 140 of the Motor Vehicles Act and thereafter @ 7% per annum on the remaining amount till the date of award till realization. In the facts and circumstances of this case, in my view, the appellant deserves to be granted interest @ 9% per annum on the shortfall amount which is not deposited by the respondent no.2 including the additional amount awarded by this order from the date of such deposit till realization.

54. I therefore pass the following order:-

- (a) The appellant would be entitled to receive the compensation in the sum of Rs.22,24,128/- inclusive of no fault liability compensation from the respondent no.2 from the date of filing claim application till realization. The amount of Rs.2,10,000/- awarded by the M.A.C.T., Satara is accordingly enhanced to Rs.22,24,128/-.
- (b) The appellant shall give credit of the amount already recovered by the appellant out of the amount deposited by the respondent no.2 before M.A.C.T., Satara. If there is any shortfall in the amount of deposit made by the respondent no.2 before the M.A.C.T., Satara, such amount of shortfall shall be deposited by the respondent no.2 within two weeks from the date of computation of such shortfall by the M.A.C.T., Satara. The appellant would be entitled to withdraw the said amount of shortfall also. If the M.A.C.T.,

Satara finds any excess amount deposited by the respondent no.2 after paying the decretal amount as awarded by the M.A.C.T., Satara and modified by this judgment to the appellant, such excess amount shall be refunded to the respondent no.2 by the Tribunal.

- (c) The appellant shall pay the shortfall in payment of court fee, if any within two weeks from the date of computation of such shortfall by the Tribunal without fail.
- (d) The appellant would be entitled to recover interest @ 9% per annum from the date of filing claim application i.e. 19th June, 1997 on the entire amount after giving credit of the amount already deposited till payment or realisation.
- (e) Impugned judgment and award dated 5th April, 2004 is partly modified to this extent.
- (f) First Appeal No. 1244 of 2004 is partly allowed in aforesaid terms.
- (g) This Judgment will be digitally signed by the Personal Assistant of this Court. Associate of this Court is permitted to forward the parties copy of this order by e-mail. All concerned to act on digitally signed copy of this order.

(R.D. DHANUKA, J.)