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NEUTRAL CITATION NO: 2022/DHC/003264

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 04.08.2022

Judgment Delivered on: 22.08.2022

MAC. APP. 586/2017 & CM APPL. 24388/2017 (Stay)

**U. P. STATE ROAD TRANSPORT
CORPORATION**

....Appellant

Through: Ms. Garima Prashad, Senior
Advocate with Mr. Shahdab
Khan, Advocate

versus

RAJAN RAUT & ANR

...Respondents

Through: Mr. Varun Sareen, Ms. Shashi
Bala Bansal and Ms. Aparna
Iyer, Advocates

**MAC. APP. 918/2015 & CM APPL. 5502/2020 (for releasing
FDR filed by respondent no. 1) & CM APPL. 19409/2018 (for
early hearing)**

**U. P. STATE ROAD TRANSPORT
CORPORATION**

....Appellant

Through: Ms. Garima Prashad, Senior
Advocate with Mr. Shahdab
Khan, Advocate

versus

PREM PRAKASH MAINRA & ANR.

...Respondents

Through: Mr. Varun Sareen, Ms. Shashi
Bala Bansal and Ms. Aparna
Iyer, Advocates

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. Both these appeals are heard together and disposed of by this common judgment. These appeals arise out of the Awards passed by the learned Trial Court which arise out of the same incident.



2. **MAC. APP. 586/2017** is preferred by the Appellant/ U. P. State Road Transport Corporation for setting aside the Award dated **06.03.2017** passed by learned Presiding Officer, Motor Accident Claims Tribunal, South East District/ Saket Courts, New Delhi in MACT case no. 3110/2016 whereby the learned Presiding Officer accepted the claim of the petitioner/injured and awarded *Rs.4,36,000/- (Rupees Four Lacs Thirty Six Thousand only) alongwith interest @ 9% per annum* from the date of filing of the present petition till the date of realization in favour of the petitioner against the respondents on account of their liability being joint and several and **MAC. APP. 918/2015** is preferred by the Appellant/ U. P. State Road Transport Corporation for setting aside the Award dated **10.09.2015** passed by learned Presiding Officer, Motor Accident Claims Tribunal-2, Patiala House Courts, New Delhi in Suit No. 466/2014 whereby the learned Presiding Officer accepted the claim of the petitioner/injured and awarded *Rs.1,50,80,000/- (Rupees One Crore Fifty Lacs Eighty Thousand only) alongwith interest @ 9% per annum* from the date of filing of the present claim petition till its realization including, interim award, if any, already passed against the respondents and in favour of the petitioner.

Facts of the case

3. The facts borne out from the records are that on 16.05.2009 at about 08:30 A.M, the petitioner along with his colleague Ashok Sharma was going from Delhi in their office car (Innova) bearing registration No.DL-7CG-3740 to their Company's Plant Sidhkul Pant Nagar and when they reached Delhi Moradabad National Highway at about 08:30 A.M, one U.P. Roadways Bus bearing No.UP-21 N-7245 came from the opposite direction and hit the



Innova car. Due to the impact, the petitioner, his colleague Ashok Sharma and the driver of the Innova car Mr. Rajan Raut got seriously injured and they were hospitalized by the people/passersby who gathered there. All the injured who were travelling in the Innova car were admitted to the nearest hospital. An FIR bearing no. 761/2009 dated 16.05.2009 was lodged against the driver of U.P. Roadways Bus bearing No.UP-21 N-7245 under Sections 279/337/338/427 of the Indian Penal Code at Police Station Gajraula, J. P. Nagar, Janpad Amroha, Uttar Pradesh. The injured Mr.Prem Prakash Mainra and Mr.Rajan Raut firstly preferred claim petitions before the MACT Court Agra for compensation. However, the said claim petitions were dismissed by the MACT Court at Agra on the ground of territorial jurisdiction. The owner driver and insurer of the Innova Car were also made parties in the said claim petitions. The injured Mr. Prem Prakash Mainra and Mr.Rajan Raut filed separate claim petitions before the MACT Tribunal in Delhi for grant of compensation on various heads for the injuries suffered by them claiming that the accident took place due to the rash and negligent driving of the bus bearing No.UP-21N-7245 driven by the respondent No.2 (Mr. Mukesh Gupta) who was solely responsible for the accident by driving the offending roadways bus rashly and negligently. Both the claim petitions filed by the Respondent herein were allowed by the learned Tribunal against which the present appeals have been preferred by the U. P. State Road Transport Corporation.

(A) Determination of the preliminary question of negligence

4. For the purpose of determining the preliminary question as to whether the claimants suffered injuries in the accident which



occurred on 16.05.2009 is caused due to rash and negligent driving of vehicle bearing no. UP-21N-7245, driven by Mr. Mukesh Gupta, owned by the petitioner, the facts as well as evidence adduced in **MAC. APP. 918/2015** is referred herein below.

Submissions on behalf of the appellants on the preliminary question of negligence

5. On this aspect, Ms. Garima Prashad, learned senior counsel appearing on behalf of the appellants contended that the impugned Awards passed by the learned Tribunal are based on conjecture and surmises and are liable to be set aside. She further contended that the accident had occurred due to the sole negligence on the part of the driver of the Innova Car bearing No. DL-07-CG-3740 as the Innova car was driven very rashly and negligently in a very high speed which firstly hit the jeep and thereafter collided with the UP Roadways bus in a very high speed.
6. Learned senior counsel for the appellants placed reliance on the site plan prepared by the Mr. Radhey Shaym, Senior Station Incharge (RW2) and contended that since the Delhi-Moradabad road was blocked due to construction work, the offending vehicle i.e. Innova car was coming from wrong side being driven in a rash and negligent manner. The driver of UP Roadways bus bearing no. UP-21N-7245 saw the offending Innova vehicle from a distance and stopped the bus on the left side of the road. But despite due diligence shown by the UP Roadways driver, the offending Innova vehicle lost its control after hitting the jeep and hit the stationary UP Roadways bus from front in a very high speed causing injuries to the driver and occupants of the Innova car.



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7. Learned senior counsel for the Appellants further contended that the learned Tribunal erred in observing that the site plan prepared by the Investigating Officer was not an exhibited document. He further submitted that the learned Tribunal erred in taking into account the site plan prepared by the Investigating Officer as the same was prepared at the behest of the injured persons in order to benefit them in raising the claim against the appellants. She further contended that the site plan prepared by the Investigating Officer has to be discarded at the threshold as it does not depict the actual scene of the alleged incident, more so, the site plan does not show that at the time of the alleged incident one side of the National Highway was closed due to construction work.
8. Learned senior counsel for the appellants further contended that the learned Tribunal erred in ignoring that the Insurer, Driver and owner of the Innova car were not made a party and the claim petitions were to be dismissed on this preliminary objection of mis-joinder of necessary party as without their impleadment issue of negligence cannot be properly adjudicated.
9. Learned senior counsel for the appellants further contended that the learned Tribunal erred in placing reliance on the testimonies of PW-1 and PW-3 (injured witnesses) as they themselves are interested witnesses.
10. In order substantiate her arguments learned senior counsel for the appellants placed reliance on *Oriental Insurance Co. Ltd vs. Meena Variual & Ors. 2007 (5) SCC 428* as well as a judgment passed by this Court on 29.02.2016 in the case of *MAC. APP. No. 165/2013* titled *New India Assurance Ltd. vs. Devki & Ors..*



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Submissions on behalf of the respondents on the preliminary question of negligence

11. On the other hand Mr. Varun Sareen, learned counsel appearing on behalf of the respondents contended that the impugned Awards passed by the learned Tribunal are correct and no interference is called for in the impugned Awards by this Court. He further contended that the impugned Awards are based on cogent, consistent and reliable evidences of injured witnesses which could not be impeached during the cross-examination.
12. Learned counsel for the respondents further contended that the burden of proving negligence on the claimant is less than the preponderance of probabilities and contended that registration of criminal case against the driver of offending vehicle was enough to record a finding that he was responsible for the accident.
13. Learned counsel for the respondents placed reliance on the site plan prepared by the Investigating Officer contending that the offending vehicle i.e. UP Roadways bus bearing no. UP-21N-7245 was coming from the wrong side, being driven rashly and negligently, hitting the Innova car in a high speed grievously injuring the driver and occupants, who were admitted in the hospital in an unconscious state. He further submitted that though the site plan was not exhibited by the Investigating Officer but it was placed before the learned Tribunal alongwith the criminal case record instituted against the driver of UP Roadways bus bearing no. UP-21N-7245. He further contended that the site plan prepared by the Investigating Officer is also placed before this Court and this Court is well within its powers to peruse the same and record a finding to that effect.



14. In order to substantiate his arguments learned counsel for the respondents placed reliance on the case of *Khen Yei Vs New India Assurance Company Limited and Ors.* (2015) 9 SCC 273, *Raj Kumar Vs Ajay Kumar and Ors.* (2011) 1 SCC 343, *Supe Dei vs National Insurance Co. Ltd* (2009) 4 SCC 513 and *Karthik Subramamian Vs B. Sarath Babu and Anr.* 2021 ACJ 993.

Courts Reasoning on the preliminary question of negligence

15. The learned Tribunal after going through evidence and considering the submission made by respective parties on issue of negligence has concluded as under:-

“29. The site plan prepared by the IO has not been placed on record while the site plan filed by R2W1 shows that the accident had taken place on the side of the bus but he had also stated that he had prepared the site plan as per the position of the vehicles when he reached the spot of accident. However from the damage to the Innova car it is evident that the same would have been at high speed and further PW3 had stated that he had seen the bus at a distance of 100 metres but still he was not able to take any corrective action. It was in fact contended on behalf of the respondents that the petitioner had deliberately not made the owner and insurer of the Innova car as parties to the petition and during cross-examination by the learned counsel for the respondents PW1 denied the suggestion that he had deliberately not made the owner and insurer of the Innova car parties to the present petition. He admitted that they were parties before the U.P. Court. A copy of the petition filed before the MACT, UP shows that the owner and insurer of the Innova car had been made parties therein whereas in the present case they have not been joined as parties and in fact the driver of the Innova has been examined as PW3. However, while the Innova car may also have been fault, the involvement of the offending bus in the accident cannot be disputed and also that the respondent No.1 was negligent in driving the same. While the documents produced by R2W1 mention that the bus was stationary at the time of the accident, it is pertinent that the respondents have not pleaded the same, nor R1W1 deposed to that effect and there is also nothing to show that the bus was stationary. Further the criminal record has been placed on record which shows that the respondent No.1 has been charge sheeted for the offence under Sections 279/337/338/427 IP and R1W1 had admitted that the criminal case was pending against him. In *Basant Kaur and*



others v. Chattar Pal Singh and others 2003 ACJ 369 MR (DB)
 it was observed that registration of criminal case against the driver of the offending vehicle was enough to record a finding that the driver of the offending vehicle was responsible for causing the accident.

XXX

XXX

XXX

XXX

XXX

XXX

31. There is nothing to disprove the involvement of vehicle No.UP 21N 7245. In view of the testimony of PW1 and PW3 and the documents on record which have remained unrebutted, the negligence of the respondent No.1 has been prima facie proved.”

16. Admittedly at the time of the alleged incident there were three occupants in the Innova Car bearing No. DL-07-CG-3740. It is further an admitted position that all the three occupants after the alleged incident have been taken to hospital by the passerby in an injured condition. Both the parties, during the trial have produced witnesses in support of their case. At this stage, it is relevant to rummage through the evidence of injured witnesses alongwith other witnesses produced by the Petitioners and Respondent. PW-1, Sh. Prem Prakash Mainra (Injured Respondent) during his examination in chief deposed as under:-

*“I tender my evidence by way of affidavit which is exhibited as Ex.PW-1/A bearing my signatures at point A to H. I met with an accident on 16.05.2009 at 8.30 a.m. with a UP roadways bus no. UP21N7245 on Delhi Muradabad National Highway. **I sustained grievous head injuries and injuries on my both eyes and my front two teeth are up routed, multiple fractures on left hand. The bones of my left hand was broken into pieces and nerve injury' in my right hand. I have filed 8 discharge summaries which are Ex. PW1/1 to Ex.PW1/8 (Ex. P8 (Ex. PW1/1, is exists in paper book no. 2 and it also contains treatment record of 169 page-s). I have filed my medical bills which are Ex.PW119 to Ex.PW1/14. (Bill Ex.PW1/10, Ex.PW1/12, Ex.PW1/13 exists in paper book no. 1 and it also contains discharge summary Ex.PW1/2, Ex.PW1/3, Ex.PW1/5 and Ex.PW1/6). I have filed my treatment record Ex.PW1/15 (Colly) (79 pages paper book no. land in paper book no. 3 to 6.”***

(emphasis supplied)



17. During cross examination, PW-1, Sh. Prem Prakash Mainra (Injured Respondent) corroborated the statement made by him in his examination in chief which is indistinguishable with the averments made in the claim petition. PW-3, Sh. Rajan Raut (Injured Respondent) also deposed in the same lines as stated by PW-1 Sh. Prem Prakash Mainra and also stood the test of cross-examination. Relevant portion of the examination in chief of PW-3 is recapitulated as under:-

“On 16.05.2009, I was working as a Driver with Era Land Mark Pvt. Ltd. Company which is based in Okhla. At about 8.30 a.m. I was going from Delhi to Pant Nagar, and P. P. Mainra and A. K. Sharma were sitting in the vehicle Innova bearing no. DL7CG3 40. When we reached Gajraula, one bus bearing no.UP21N7245 coming from the side of Muradabad hit the Innova from the front. The bus was being driven at highspeed. All three of us received injuries. I fell unconscious and when I retained consciousness, I was in the hospital. The accident had taken place due to the rash and negligent driving -at the bus driver who had come to my side and hit my vehicle .”

(emphasis supplied)

18. At this stage, it is also relevant to peruse the FIR bearing no. 761/2009 dated 16.05.2009 was lodged against the driver of U.P. Roadways Bus bearing No.UP-21 N-7245 under Sections 279/337/338/427 of the Indian Penal Code at Police Station Gajraula, J. P. Nagar, Janpad Amroha, Uttar Pradesh and also the site plan prepared by the Investigating Officer.
19. The site plan prepared by the Investigating Officer which is placed on record reads as under:-

“SITE PLAN OF AGCIDENTAL PLACE. REGARDING F.I.R. NO.761/09 UNDER SECTION POLICE STATION- GAJRAULA. J.P. NAGAR

Village Shahbazpur Dor



Delhi- →- →- →- →- →-
Gajraula

(A)

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Delhi
Gajraula

INDICATES

- 1. Mark →→- → shows, the Executive Director Sh. Prem Prakash Mainra & Ors. were going from Ghaziabad towards Moradabad ^ though Innova Car bearing No.DLTCG-3740. AS STATED
- 2. Mark ==→==→ shows, the Roadways bus driver came from the Moradabad side, the bus as driven at a high speed and negligent manner and hit the Innova Car, he Sustained grievous injuries, AS STATED.
- 3. Mark "A" place shows, where the roadways bus driver hit the Innova Car AS STATED.”

20. A conjoint reading of the aforementioned statements alongwith FIR bearing No. 761/2009 and the site plan prepared by the Investigating Officer it can be inferred without demur that the Innova car which was travelling on the Delhi-Moradabad road was hit by U.P. Roadways Bus bearing No.UP-21 N-7245, which came from opposite side as the Moradabad-Delhi road was closed due to construction, being driven rashly and negligently, in a high speed grievously injuring the occupants. It is also pertinent to note here that no FIR has been lodged against the Driver of the Innova Car for rash and negligent driving. The statements of the witnesses and FIR is further illustrative of the fact that the impact of the collusion was so hard that the occupants were rushed to the hospital in a state of unconsciousness and the Innova car was badly damaged from the front side.



21. Learned senior counsel for the Appellants placed reliance on the site plan prepared by RW2 Radhey Shyam which depicts that the Innova car came from the wrong side and hit the UP Roadways from front side. However, the statement given by RW2 Radhey Shyam perforate the arguments made learned senior counsel as the witness admitted that 'We received information of the accident after 1-1 1/2 hour and after 2 1/2 hour of the same we reached the spot. I cannot tell the position of vehicles was tampered with or not prior to our reaching the spot. It correct that I cannot tell, the exact position of the vehicles at the time of the accident and I prepared the site plan on the basis of the position of the vehicles when I reached there. There was no one at the spot apart from me and the TI Mr. Ramesh Chand'. It is evident from the statement that the witness reached the spot after 2 ½ hour of the incident and it is most unlikely that the vehicles were not removed from the original collide site. The witness has not got his report and site plan testified from any of the eye witnesses or from any passerby at the time of preparation of this report. This Court finds that the site plan prepared by RW2 Radhey Shyam does not depict the definite collide site and cannot be relied upon to determine the negligence.
22. The Witness RW-1 stated that the Innova Car hit the bus which was in a static position. RW-1 further stated that the Innova car first hit a jeeb which was going ahead of the bus and thereafter hit the bus. However, there is no proof to these facts. No FIR was registered against the driver of Innova car for colliding with Jeep as alleged by the RW-1. Hence in the absence any cogent, the statement RW-1 can not be believed in this regard.



23. In view of the above discussion, it is held that Innova car which was travelling on the Delhi-Moradabad road was hit by U.P. Roadways Bus bearing No.UP-21 N-7245, which came from opposite side as the Moradabad-Delhi road was closed due to construction, being driven rashly and negligently, in a high speed, grievously injuring the occupants.

Quantum of compensation in MAC. APP. 586/2017

24. Learned senior counsel appearing on behalf of the appellants restricted her arguments on quantum of compensation paid to the claimant/Mr. Rajan Raut and contended that the learned Tribunal erred in granting the compensation to the claimant as the alleged incident occurred due to rash and negligent act of the driver of the Innova Car bearing No. DL-07-CG-3740.
25. It is held above by this Court that the accident occurred as U.P. Roadways Bus bearing No.UP-21 N-7245, which came from opposite side as the Moradabad-Delhi road was closed due to construction, being driven rashly and negligently, in a high speed, grievously injuring the occupants of Innova Car bearing No. DL-07-CG-3740. Accordingly, this court is of the view that there is no reason to interfere with the impugned Award dated **06.03.2017** passed by learned Presiding Officer, Motor Accident Claims Tribunal, South East District/ Saket Courts, New Delhi in MACT case no. 3110/2016.

Quantum of compensation in MAC. APP. 918/2015

26. Learned senior counsel appearing on behalf of the appellants with regard to quantum of compensation paid to the claimant/ Mr. Prem Prakash Mainra contended that the learned Tribunal erred in granting the compensation to the tune of Rs. 1,50,80,000/- which is



unjust and highly exorbitant. She further contended that the learned Tribunal erred in granting excessive compensation for loss of income, medical expenses, conveyance charge, special diet and attendant charges without taking into the account the actual amount spent by the claimant.

27. Learned senior counsel further contended that the claimant has taken a stand that he took loan from its company for his treatment, however, no document in support of loan had been provided by the claimant or PW-2. She further contended that the multiplier adopted by the learned Tribunal is contrary to the law laid down in case of *Sarla Varma & Ors. Vs DTC Vs Ors.* reported in (2009) 6 SCC 121.
28. Learned senior counsel further contended that the learned Tribunal erred in relying on the false disability certificate produced by the claimant which is contrary to the disability certificate produced by the claimant before the Agra MACT Court.
29. Learned counsel further contended that learned Tribunal has erred In awarding excessive compensation towards Pain and Suffering to the tune of Rs.1,50,000/-. She further contended that the learned Tribunal has erred in awarding excessive compensation for an amount of Rs.60,000/- towards loss of amenities of life and further awarded Rs.40,000/- towards the disability and disfiguration, even, through there is no provision for such compensation.
30. Per contra, Mr. Varun Sareen, learned counsel for the Respondents contended that quantum of compensation provided by the learned Tribunal is just and proper and no interference in quantum of compensation granted by the learned Tribunal is called for by this Hon'ble Court.



31. In the case of **Raj Kumar v. Ajay Kumar** reported in (2011) 1 SCC

343, the Hon'ble Supreme Court has laid down the different heads under which compensation is to be awarded for personal injuries.

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

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

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

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

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

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity)."

32. As per the aforesaid judgment, 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

33. The compensation awarded by the learned Tribunal by way of impugned award is as under:-

Medical and future treatment	Rs. 28,00,000/-
Pain and suffering	Rs. 1,50,000/-
Loss of amenities	Rs. 60,000/-
Disability	Rs. 40,000/-
Conveyance charges	Rs. 1,00,000/-



Special Diet	NEUTRAL CITATION NO. 2022/DHC/003264 Rs. 25,000/-
Nursing and Attendant charges	Rs. 15,00,000/-
Loss of Income	Rs. 1,04,05,000/-
Total	Rs. 1,50,80,000/-

34. It is borne out from the records that the date of birth of the claimant is 15.09.1948. Taking into account the date of birth, the claimant was 60 years 8 months and 1 day old on the date of accident i.e. 16.05.2009. As per the judgment passed by the Hon'ble Supreme Court in the case of *Sarla Varma & Ors. Vs DTC Vs Ors.* reported in (2009) 6 SCC 121, the multiplier of 7 was applicable if the claimant was aged 61 to 65. In the present case the claimant has not attained the age of 61 and as such the learned Tribunal has rightly applied the multiplier of 9.
35. In the case of ***Joginder Singh and Ors. Vs. ICICI Lombard General Insurance Company*** reported in **2012 SCC Online Mad 3922** the Hon'ble Supreme Court while dealing with issue of multiplier in an accident case has held that,

“The issue with respect to whether the Multiplier to be applied in the case of a bachelor, should be computed on the basis of the age of the deceased, or the age of the parents, is no longer res integra. This issue has been recently settled by a three Judge bench of this Court in Royal Sundaram Alliance Insurance Co. Ltd. v. Mandala Yadagari Goud and Ors. , (2019) 5 SCC 554 wherein it has been held that the Multiplier has to be applied on the basis on the age of the deceased. The Court held that:

10. A reading of the judgment in Sube Singh (supra) shows that where a three Judge Bench has categorically taken the view that it is the age of the deceased and not the age of the parents that would be the factor for the purposes of taking the multiplier to be applied. This judgment undoubtedly relied upon the case of Munna Lal Jain (supra) which is also a three Judge Bench judgment in this behalf. The relevant



portion of the judgment ^{NEUTRAL CITATION NO: 2022/DHC/003264} has also been extracted. Once again the extracted portion in turn refers to the judgment of a three Judge Bench in Reshma Kumari and Ors. v. Madan Mohan and Anr. : (2013) 9 SCC 65. The relevant portion of Reshma Kumari in turn has referred to Sarla Verma (supra) case and given its imprimatur to the same. **The loss of dependency is thus stated to be based on: (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased.** It is the third aspect which is of significance and Reshma Kumari categorically states that it does not want to revisit the law settled in Sarla Verma case in this behalf.

11. Not only this, the subsequent judgment of the Constitution bench in Pranay Sethi (supra) has also been referred to in Sube Singh for the purpose of calculation of the multiplier.

12. We are convinced that there is no need to once again take up this issue settled by the aforesaid judgments of three Judge Bench and also relying upon the Constitution Bench that it is the age of the deceased which has to be taken into account and not the age of the dependents.”

(emphasis supplied)

36. The Hon’ble Supreme Court in the case of **Sarla Varma & Ors. Vs DTC Vs Ors. (2009) 6 SCC 121** while determining the multiplier in an accident case has held that:-

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

(emphasis supplied)

37. Multiplier to be used as per above dicta of in **Sarla Varma & Ors. Vs DTC Vs Ors.** is as under:-

Column	Upto	15	21	26	31	36	41	46	51	56	61	Abo
	15	to	to	to	to	to	to	to	to	to	to	ve



	yrs	20	25	30	35	40	45	50	55	60	65	65
		yrs	yrs	yrs	yrs	yrs	yrs	yrs	yrs	yrs	yrs	yrs
(4)	15	18	18	17	16	15	14	13	11	9	7	5

38. It is also evident from the record that the claimant sustained grievous head injuries, injuries on his both eyes, his front two teeth were uprooted and he has also sustained multiple fractures on left hand. The bones of his left hand were broken into pieces and there was nerve injury in his right hand. He was hospitalized eight times in Fortis Hospital, Noida, U.P. i.e. from 16.05.2009 to 27.07.2009; 29.10.2009 to 01.11.2009; 15.02.2010 to 22.02.2010; 08.09.2010 to 14.09.2010; 14.09.2010 to 15.09.2010; 24.09.2010 to 28.09.2010; 18.10.2010 to 19.10.2010 and 29.11.2010 to 04.12.2010. Eight discharge summaries are also annexed by claimant as Ex.PW1/1 to EX.PW1/8. He had filed original hospital records regarding his treatment, original discharge summaries and bills related to his treatment and transportation and attendants. As per the claim petition the Respondent has exhausted all his savings and has taken a huge amount of loan from the company. As per his affidavit Ex.PW1/A he had also stated that he had paid more than Rs.75,00,000/- for his treatment, conveyance and special diet and nursing. Evidence produced to this effect also proves that huge amount was spent by the claimant on his treatment. PW-2, Sh. Raj Sharma, Vice President HR, ERA Group also proved on record that a loan of approximately 56 lacs has been taken by the claimant from the company. As far as medical attendant charges are concerned the claimant has produced on record receipt taken from the service provider in relation to round the clock attendant facility for an amount of Rs. 12,59,375/- which are EX.PW-1/28 (Colly).



39. In the case of in **K. Suresh v. New India Assurance Co. Ltd.** NEUTRAL CITATION NO: 2022/DHC/003264 reported in (2012) 12 SCC 274, the Hon'ble Supreme Court of India while observing that Tribunal and Courts have to be broad based in computing compensation has held as under:-

*“10. It is noteworthy to state that an adjudicating authority, while determining the 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.”*

(emphasis supplied)

40. Further in the case of **Jagdish v. Mohan** reported in **AIR 2018 SC 1347**, the Hon'ble Apex Court observed that the Courts must provide a realistic compensation for the pain of loss and the trauma of suffering of the victim and has held that:-

*“14. In making the computation in the present case, the court must be mindful of the fact that the Appellant has suffered a serious disability in which he has suffered a loss of the use of both his hands. For a person engaged in manual activities, it requires no stretch of imagination to understand that a loss of hands is a complete deprivation of the ability to earn. Nothing at least in the facts of this case can restore lost hands. But the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. **Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles.** In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity.”*

(emphasis supplied)



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41. This court is of the opinion that the quantum of compensation granted by the learned Tribunal is just and proper and has been granted in terms of dicta of Hon'ble Supreme Court by way of various judicial pronouncements.
42. As far as interest component is concerned we do not deem it appropriate to reduce the interest granted by the learned Tribunal.
43. In view of the reasoning given above, both the appeals are dismissed and all pending application stands disposed of.
44. Registry is directed to release the amount deposited in this Court to the claimants in terms of the Awards passed by the learned Tribunal and Appellants are directed to deposit the remaining amount in terms of the impugned Awards, if any, with the registry of this Court within 6 weeks from today.

**GAURANG KANTH
(JUDGE)**

AUGUST 22, 2022

नित्यमेव जयते