

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

FIRST APPEAL NO.524 OF 2008

Jalim Khan s/o Noor Khan,
Aged about 24 years, Occ. : Nil,
Represented through Natural Guardian,
Father namely Noor Khan s/o Khairullah Khan,
Aged about 53 years, Occ. Labour,
R/o. Jamthi, Tahsil – Murtizapur,
District Akola

...APPELLANT

VERSUS

1. The New India Assurance Co. Ltd.
Through its Divisional Manager,
Old Cotton Market,
Akola, Tq. & District Akola
2. Smt. Gunwanti Umarsi Lodoya,
Aged about Adult,
Occ. Owner of Luxury Bus No. MH-27-A-9196,
R/o. Ward No.2, House No.43,
Krishnarpan Colony,
Amravati, at and post Amravati

Second Address :

Smt. Gunwanti Umarsi Lodoya,
Aged about Adult,
Occ. Owner of Luxury Bus No. MH-27-A-9196,
R/o. C/o Vijay Umarsi Lodoya,
Wanipura, Karanja Lad,
Tahsil Karanja Lad, District Washim

3. Sheikh Salim s/o Sheikh Tukdu,
Aged about 47 years,
Occ. Driver of Luxury Bus No. MH-27-A-9196,
R/o Gawalipura, Karanja Lad,
Tah. Karanja Lad,
District Washim

Vide Registrar's Order
dated 07/08/2012, the
F.A. is dismissed in
default against R.No.3.

...RESPONDENTS

Shri A.S. Mardikar, Senior Advocate for the appellant.
Shri Sandeep Marathe, Advocate for respondent No.1.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : MARCH 30, 2023.

ORAL JUDGMENT :

None is present for respondent No.2. Appeal is already dismissed against respondent No.3.

2. Heard Shri A.S. Mardikar, learned Senior Counsel for the appellant, Shri S. Marathe, learned Counsel for respondent No.1.

3. Present appeal is filed by the injured of accident for enhancement of compensation by challenging the judgment and award passed by the Motor Accident Claims Tribunal, Akola in M.A.C.P. No.235/2003.

4. The facts which are required to dispose of the appeal are as under:

A] The appellant- Jalim Khan s/o Noor Khan aged about 24 years working as a labour who had been to Akola to attend the marriage ceremony. After attending the marriage ceremony, he was returning to the village at night on 16/06/2003 in a luxury bus bearing No.MH-27-A-

9196. At about 1.30 hours, the bus reached near Asara phata on Murtizapur-Amravati National Highway No.6, the driver of the bus has driven the bus in a rash and negligent manner in a high speed without observing the traffic rule and regulations which resulted into turtle down of the bus. The appellant - Jalim Khan s/o Noor Khan suffered grievous injuries i.e. fracture to his cervical spine and one Salimkhan received injuries like fracture to his left leg. The appellant - Jalim Khan s/o Noor Khan was immediately shifted to L.D. Hospital, Murtizapur and thereafter removed to the District General Hospital, Akola.

5. As per the contention of the appellant, the alleged accident had taken place due to the rash and negligent driving of the bus driver. Said bus was owned by respondent No.2 and validly insured with respondent No.1. The offending bus was driven by respondent No.3 - Sheikh Salim s/o Sheikh Tukdu at the relevant time. Regarding the said accident, crime was registered at Murtizapur police station against the bus driver vide Crime No.92/2003 under Section 279, 337 and 304-A of the Indian Penal Code (hereinafter referred to as 'the Code' for short). As the said accident took place due to the rash and negligent driving of the bus driver owned by respondent No.2 and validly insured with respondent No.1, both the respondents are jointly and severally liable to pay the compensation to the appellant.

6. It is further contended by the appellant that despite he was treated in a District General Hospital, Akola a center for Critical Care at Akola and in various hospitals as an indoor patient and outdoor patient, he could not recover completely and the injuries sustained by him resulted into his permanent disability making him incapable of doing any work. Now he is bed ridden and completely unable to work. His working capacity is affected totally due to the injuries sustained by him. The Medical Board assessed his disability to the extent of 50% but considering his nature of work he is 100% disabled, and therefore, he is entitled for the compensation. He further contended that towards the medical treatment he had incurred the huge expenses however, he could not recover from the said injuries. Taking into consideration all these aspects, he claimed the compensation from the respondents.

7. In response to the notice, respondent No.1 - New India Assurance Co. Ltd. resisted the claim by filing the written statement vide Exhibit 14. The Insurance Company denied the contentions of the claimants. The Insurance company also denied that the alleged accident has taken place due to the rash and negligent driving of the bus driver and prayed for rejection of the claim. Respondent Nos.2 and 3 in spite of the service of notice, failed to appear and the claim petition was proceeded ex-parte against them.

8. The claimant to substantiate his contention adduced the evidence by examining Noor Khan s/o Khairullah Khan who is the father of the injured vide Exhibit 25. He narrated about the alleged accident as well as the injuries sustained by his son. In support of the contention PW-2 Dr. Manoj Jain who has treated the injured has also examined vide Exhibit 18 who testified that the injured had sustained the permanent disability to the extent of 50%. On the basis of the Insurance company no evidence is adduced.

9. After appreciating the evidence on record, the Tribunal come to the conclusion that the claimant is entitled to receive the compensation of Rs.2,43,498/- jointly and severally from the respondents along with the interest @ 9%.

10. Being aggrieved and dissatisfied with the quantum of compensation, present appeal is preferred by the appellant for enhancement of compensation on the ground that the learned Tribunal has not considered that though the disability is ascertained by the Medical officer to the extent of 50% but considering the nature of work of the injured, his disability is 100%. He has sustained permanent disability and his loss of earning is 100%. The Tribunal had also not considered the future prospects of the claimants and not awarded the compensation under the other heads such as compensation for mental

agony, pain and sufferings, marriage prospects, etc.

11. It is contended on behalf of the claimants that considering the award passed by the Tribunal and the evidence on record, the compensation is to be enhanced.

12. Heard Shri A.S. Mardikar, learned Senior Counsel for the appellant. He vehemently submitted that the injured was working as a labour. He had sustained the injury on his cervical spine. Due to the accidental injuries he is completely disabled and unable to render the services and working as was before. He had sustained the injuries due to the rash and negligent act of bus driver which is owned by respondent No.2 and validly insured with respondent No.1. It is further submitted that considering the nature of the injuries now the claimant is for the rest of the life unable to stand on his own leg and to work as he was previously working. But all these factors are not considered by the Tribunal and awarded inadequate compensation, therefore, this is a fit case to enhance the compensation amount.

13. Per contra, Shri S. Marathe, learned Counsel for respondent No.1 submitted that the evidence on record sufficiently shows that he had sustained 50% of the permanent disability. There is no evidence on record to show that the claimant has sustained the 100% disability.

There is no 100% loss. The Tribunal had considered the quantum of compensation properly and no interference is called for, therefore, the appeal has no merits and liable to be dismissed.

14. In support of the contention, Shri A.S. Mardikar, learned Senior Counsel for the appellant relied on the catena of decisions as follows :

- (i) *Sarla Verma (Smt) and ors. Vs. Delhi Transport Corporation and anr. (2009) 6 SCC 121*
- (ii) *Jithendranuh Vs. New India Assurance Co. Ltd. and anr. 2021 SCC OnLine SC 953*
- (iii) *Jakir Hussein Vs. Sabir and ors. (2015) 7 SCC 252*
- (iv) *Kavita Vs. Deepak and ors. (2012) 8 SCC 604*
- (v) *Jagdish Vs. Mohan and ors. (2018) 4 SCC 571*
- (vi) *Sanjay Kumar Vs. Ashok Kumar and anr. (2014) 5 SCC 330*
- (vii) *Raj Kumar Vs. Ajay Kumar and anr. (2011) 1 SCC 343*
- (viii) *Appeal of this Court in First Appeal No.264/2009 (Mihir s/o Kashyap Laladiya Vs. The Oriental Insurance Co. Ltd. and ors.) decided on 28/06/2022*

15. After hearing both the sides following points arise for my determination :

- (i) Whether the Tribunal is justified in awarding the compensation of Rs.2,43,498/- ?
- (ii) Whether the claimant has made out the case for enhancement of compensation?

16. To substantiate the contention raised by the claimant, on behalf of the claimant his father Noor Khan stepped into the witness box. As per his evidence, injured is a bedridden as he sustained fracture of lumbar. He reiterated the contentions raised in the petition that his son sustained the injuries due to the rash and negligent act of the bus driver which was owned by respondent No.2 and validly insured with respondent No.1. He further testified that after the accident, injured was treated in various hospital however, he could not recover from the injuries and his injuries resulted into the permanent disablement. Besides his oral evidence, he placed reliance on First Information Report (Exhibit 26), Spot Panchnama (Exhibit 27), Injury Form (Exhibit 28), Certificate of Registration (Exhibit 29), Certificate of Insurance (Exhibit 30), Certified copy of License issued in the name of Salim Takdu (Exhibit 31). He had also produced discharge-card issued by Akola Critical Hospital (Exhibit 32), the report of C.T. Scan issued by Dr. Khandelwal, Akola (Exhibit 33). The original receipts/bills (Exhibit 35 to 79) and the disability Certificate which is at (Exhibit 81). This witness is cross-examined by the Insurance company at length. Admittedly, this witness has not witnessed the alleged accident. He deposed on the basis of police papers and the information gathered by him. Though he is cross-examined at length, the fact that his son has sustained the injuries

in an accident which took place on 16/06/2003 and the injuries are grievous injuries on his lumbar region is not falsified. Admittedly, no other vehicle is involved in the accident. The police papers on record sufficiently shows that regarding the said accident, crime was registered against the bus driver. The recitals of the FIR which was lodged by Sabadarkhan Dulekhan of village Jamthi shows that the said accident took place due to the rash and negligent act of the bus driver. The Spot-panchnama - Exhibit 27 also supports the contention of the claimant that the alleged accident took place due to the rash and negligent driving of the bus driver. Admittedly, the finding of the Tribunal holding the Insurance company liable as the accident took place due to the rash and negligent driving is not challenged either by the Insurance company or by the owner. Thus, the evidence on record is sufficient to show that the alleged accident took place due to the rash and negligent driving of the bus driver.

17. As far as the contention of the claimant regarding the quantum of compensation is concerned, the evidence is adduced by the claimant by examining his father which shows that the injured was working as a Porter and earning Rs.125/- per day. Now due to the accidental injuries, he is unable to work as a Porter or agricultural labourer after the accident. At the time of accident, the age of the

injured was only 22 years. The claimant-injured cannot carry out his daily routine on his own accord due to the accidental injuries sustained by him. Evidence of PW-1 further shows that he has to incur the expenses of Rs.1000/- to Rs.1500/- per month toward the medicine expenses of the claimant.

18. To prove that the injuries sustained by the claimant resulted into the permanent disablement, claimant has examined by Dr. Manoj Jain vide Exhibit 18 who testified that he is Neurosurgeon at Akola. The injured was admitted in his hospital. He is also a Member of the Medical Board at Civil Hospital, Akola. Injured appeared before the Medical Board on 28/02/2004. The injured has sustained the cervical spine injury as per the X-ray examination which was taken at Civil Hospital, Akola. The C-2 had congenital block and C-3 and C-4 had a prolapsed intra vertebra disk and sustained permanent disability of about 50%. The disability certificate is at Exhibit 81. He further testified that the patient was admitted in a center of Critical Care at Akola from 17/06/2003 to 24/06/2003. During his cross-examination he admitted that the patient was given the treatment in a Critical Care Hospital at Akola. He denied that the patient was discharged from the hospital as he was completely cured.

19. Thus, even the cross-examination also shows that from the C.T. Scan it revealed that there is a gap between C-3 and C-4. The Insurance company has made an attempt to show that such type of situation can appear in cervical spondilites also which is admitted by the Medical Officer – PW-2.

20. After appreciating the evidence the Tribunal held that the injured was working as a labourer and coolie and earning Rs.125/- per day however he has not produced any document to that effect. The Tribunal had considered that the injured was earning Rs.50/- per day and considering the said income by applying multiplier of 17 awarded the compensation of Rs.1,53,000/- towards permanent disability. The Tribunal further awarded Rs.9000/- towards loss of earning during treatment period and remaining immobilize, towards pain and suffering amount of Rs.5000/- was granted, towards future medical treatment amount of Rs.25,000/- was granted and towards nutritious diet, attendant and conveyance Rs.5000/- was granted. Thus, total amount of Rs.2,43,498/- was awarded by the Tribunal.

21. Being aggrieved with the same, present appeal is preferred by the appellant on the ground that the Tribunal had not considered that considering the nature of injuries sustained by the injured his disability is 100%. Due to his injuries he could not appear before the Court and

adduce his own evidence. But these facts are totally ignored by the Tribunal.

22. In support of the contention, learned Counsel placed reliance on the judgement of the Hon'ble Apex Court in Sarla Verma (supra) wherein the concept of just compensation was elaborated by the Apex Court and held that assessment of compensation though involving certain hypothetical considerations, should nevertheless be objective. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision-making process and the decisions. While it may not be possible to have mathematical precision or identical awards, in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the formula/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation. To arrive at uniformity sustained in determination of compensation in cases of death provisions directed to follow the well settled steps as indicated hereunder. He further placed reliance on Jithendran (supra) wherein by referring the judgment of the Hon'ble Apex Court in Helen C. Rebello Vs. Maharashtra SRTC held that the word "just", as its nomenclature, denotes equitability, fairness and

reasonableness having a large peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable, if it exceeds; it is termed as unfair, unreasonable, unequitable, not just.” In Jakir Hussein (supra) relied wherein the issue of permanent disability, functional disability was considered and held that as per the medical opinion the appellant, a driver got distressed joint fracture in humerus bone of his right hand with wiring and nailing and had suffered 55% disability and cannot drive any motor vehicle in future then his disability is to be treated as 100%. In Kavita Vs. Deepak and ors. (supra) wherein also the Hon’ble Apex Court has considered that the victim virtually becoming a vegetable vendor requiring treatment throughout life. The victim had to give up partnership in a business earning Rs.12,000/- per month who had lost her memory and capacity of hearing. Thus, her loss is to be treated as 100%. In case of Jagdish Vs. Mohan and ors. (supra) the Hon’ble Apex Court has considered that the permanent total disability, loss of future prospects is to be taken into consideration and held that the claim of the appellant carpenter that his earnings were Rs.6000/- per month cannot be discarded or cannot be regarded as being unreasonable or contrary to a realistic assessment of the situation on the date of accident. Following five-Judge Bench in Pranay Sethi, (2017) 16 SCC 680, the Hon’ble Apex Court has held that the benefit of future prospects should

not be confined only to those who have a permanent job and would extend to self-employed individuals. In the case of a self-employed person, an addition of 40% of established income should be made where the age of victim at time of the accident was below 40 years and be entitled to an enhancement of Rs.2400/- towards loss of future prospects. In Sanjay Kumar Vs. Ashok Kumar (supra) wherein the Hon'ble Apex Court has considered that the appellant claimant, an embroider, sustained serious injuries in an accident involving the vehicle in question. His right leg above the knee was amputated, considered his disability to the extent of 100%. In the said judgment the loss of marriage prospects of the injured was also taken into consideration. Lastly, he placed reliance on Raj Kumar Vs. Ajay Kumar and anr. (supra) wherein the principles regarding the award of compensation in case of permanent disability are considered by the Hon'ble Apex Court and the guidelines are issued to the Tribunals regarding how the compensation is to be ascertained in cases of permanent disability.

23. It is well settled that a man is not compensated for physical injury, he is compensated for the loss which he suffers as a result of that injury. His loss is not in having the stiff parts of the body, it is his inability to live a full life, his inability to enjoy those amenities which depend on freedom of movement and his inability to earn as much as he

used to earn or could have earned. In calculating the compensation, the object is to award an amount which will put the injured person in the same position had he not sustained the injuries. It is true that money cannot be renewed the physical frame which has been damaged, but the endeavour in awarding the compensation should be the just and reasonable compensation. The Hon'ble Apex Court in the case of **Jagdish Vs. Mohan and ors. (2018) 4 SCC 571** makes the following relevant observation on the values of human life and dignity i.e. admitted to be recognized through such compulsory awards. "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." In view of above such well settled principles laid down by the Hon'ble Apex Court, the Courts should strive to provide a realistic recompense having regard to the realities of life, both in terms of assessment of the extent of disabilities and its impact including the income-generating capacity of the claimant. In cases of similar nature wherein the claimant has suffering severe dis-functional and restricted ability the Court should bear in mind however, of the fact that even though the physical

disability is assessed at the lower percentage and functional disability is to be considered as 100% in so far as the claimants loss of earning capacity is concerned. In case of Raj Kumar Vs. Ajay Kumar (supra) detailed principles are laid down in case of injury cases. It is held by the Hon'ble Apex Court that the provision of the Motor Vehicles Act, 1988 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 Hon'ble Apex Court further considered that the disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. While issuing the guidelines it is further observed by the Hon'ble Apex Court that would requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terns of money, to arrive at the future loss of earnings.

Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability. The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. The Hon'ble Apex Court has also laid down the same examples in paragraph No.14 and observed that if the left hand of a

claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be 100%, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings'. In the light of the above principles laid down if the facts of the present case are taking into consideration, the claimant was only 22 years of age at the time of accident.

24. As per the evidence, he was working as a Porter and earning Rs.3500/- per month however, Shri Marathe, learned Counsel submitted that there is no evidence that he was working as a Porter and was earning Rs.3000/- per month, and therefore, the trial court had taken into consideration Rs.50/- per day and awarded the compensation which cannot be interfered. There is no dispute that the injured was working as a labour. The learned Counsel Shri Marathe submitted that there is no evidence that he was working as a Porter and was earning Rs.3000/-

per month, and therefore, the trial Court had taken into consideration Rs.50/- per day and awarded the compensation which cannot be interfered, there is no dispute that the injured was working as a labour. Though the contention of the learned Counsel Shri Marathe accepted and it is considered that he was working as a labour or agricultural labour then also the injuries sustained by him will affect his working capacity. The medical evidence i.e. the evidence of PW-2 specifically shows that the patient had sustained the cervical spine injury and in C-2 he had congenital block and C-3 and C-4 had a prolapsed intra vertebra disk. During cross-examination PW-2 has specifically denied that the patient was discharged from the hospital after he was completely cured. So there is no dispute that the injured had sustained the injury to his cervical spine. As per the evidence of PW-1 due to the said injury, the claimant is bedridden. As the claimant was bedridden, his evidence was not recorded before the Tribunal also. He had filed the application through his father as natural guardian. These facts are sufficient to show that the injured was not in a position to mobilize himself from one place to another. The trial Court had only taken into consideration Rs.50/- per day whereas the evidence of PW-1 shows that the injured was working as a Porter earning Rs.3500/- per month. Even it is accepted that there is no evidence adduced by the claimant to show that he was working as a Porter and the fact is taken into consideration that

he was working as a labour then also considering he was earning Rs.100/- and Rs.150/- per day. His monthly income comes to more than Rs.3000/- and 4500/-. In Ramachandrappa Vs. Royal Sundaram Alliance Insurance Co. Ltd. (2011) 13 SCC 236 wherein monthly income of the deceased was shown to be Rs.4500/- who died in an accident in 2004 who was a labour. The Hon'ble Apex Court found fault with the tribunal for reducing the monthly income from Rs.4500/- to Rs.3000/- and determined the income at Rs.4500/-. In view of the said observation in the present case also the notional income can be taken into consideration and on the basis of notional income i.e. Rs.3000/- per month, the compensation of the claimant is to be ascertained. If Rs.3000/- per month is taken into consideration, the yearly income of the injured comes to Rs.36,000/-. After adding 40% toward the future income considering he was 22 years of age at the time of accident. The Hon'ble Apex Court in the case of Pranay Sethi (supra) observed that although the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the government employees and those employed in private sectors, but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the

challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching clothes. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour like barber, blacksmith, cobbler, mason, etc. It is further observed by the Hon'ble Apex Court that in the last three lines of paragraph No.24 of *Sarla Verma* judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes victim of an accident then the same formula deserves to be applied for calculating the amount of compensation. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years and at the age of 50 to 60 years.

25. In view of that after adding 40% toward the future prospects in the annual income of Rs.36,000/-, the amount comes to Rs.14,400/- and total comes to Rs.50,400/-. So yearly income of the injured is to be taken into consideration as Rs.50,400/-. Considering his age multiplier of 18 is applicable. After multiplier of 18 it comes to Rs.9,07,200/-. The Tribunal has already awarded the compensation under the head of future medical treatment @ Rs.25,000/- so the amount need not be enhanced under such head. The amount awarded by the Tribunal for the loss of earning during treatment period is Rs.9000/- which is also deserves to be maintained. However, the amount awarded under the head of pain and suffering and mental agony is very meager amount. Considering that the claimant who has sustained the injury like cervical spine injury he is unable to move from one place to another and he has to undergo pain and suffering during the rest of his life. Considering the same, the amount of Rs.5000/- under the pain and suffering and mental agony is very meager amount. Under the said head additional amount of Rs.25,000/- the claimant is entitled to receive. The amount which was granted under the head of nutritious diet, attendant charges, transport charges etc. is also requires to be enhanced from Rs.5000/- to Rs.15,000/-.

26. It is not in dispute that the claimant was only 22 years of age at the time of accident and was unmarried. His marriage prospects was

affected due to the accidental injuries. In fact, his marriage prospects are totally ruined as his desire to have a family is completely shattered due to the accidental injuries sustained by him due to the negligence on the part of the bus driver. Therefore, under the head of loss of marriage prospects the claimant is entitled to receive the compensation of Rs.1,00,000/-.

27. It is well settled that the just and reasonable compensation is to be awarded in R.D.Hattangadi v. M/s.Pest Control (India) Pvt. Ltd., AIR 1995 SC 755, wherein, the Hon'ble Apex Court held as follows:

"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 disability caused. But all the aforesaid elements have to be viewed with objective standards."

28. In another judgment in Divisional Controller, KSRTC v. Mahadeva Shetty and another, (2003) 7 SCC 197, in paragraph 12, the Supreme Court has held that,

"Broadly speaking, in the case of death the basis of compensation is loss of pecuniary benefits to the dependents of the deceased which includes pecuniary benefits to the dependents of the deceased which includes pecuniary loss, expenses etc. and loss to the estate. The object is to mitigate hardship that has been caused to the legal representatives due to the sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring the value

of human life and the measure of damage cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor should it be a source of profit for the person in whose favour it is awarded.”

In paragraph No.15 in the said judgment, the Hon’ble Supreme Court has held that :

“Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. 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, and non-arbitrariness. If it is not so, it cannot be just.”

29. In ***Nizam Institute of Medical Sciences Vs. Prasanth S. Dhananka 2010 ACJ 38 (SC)***, a three-Judge Bench was dealing with a case arising out of the complaint filed under the Consumer Protection Act, 1986. While enhancing the compensation awarded by the National Consumer Disputes Redressal Commission the bench made the following observations which can appropriately be applied for deciding the petitions filed under Section 166 of the Act. It is reproduced for reference :

“We must emphasise that the court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the court must not be chary of awarding adequate compensation. The "adequate compensation" that we speak of, must to some extent, be a rule of thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned.... At the same time we often find that a person injured in an accident leaves his family in greater distress, vis-`-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity.”

30. Thus, in view of the above principles, the question as to the methodology required to be applied for determination of compensation as regards prospective loss of future running however, as far as possible should be based on certain principles. A person may have bright future prospect, he might have become eligible to promotion immediately, there might have been chances of an immediate pay revision whereas in another the nature of employment was such that he might not have continued in service, his chance of promotion, having regard to the nature of employment may be distant or remote. It is therefore, difficult

for any Court to lay down rigid test which should be applied in all situation.

31. Having regard to the above facts in the present case, the claimant – an injured is entitled to receive the compensation of Rs.10,47,200/-. Thus, the Insurance company is liable to pay the compensation at the enhanced rate to the claimant of Rs.10,47,200/- @ of 7.5% interest per annum from the date of application till realization of the amount. In view of the above discussion, the total compensation the claimant is entitled to receive is Rs.10,47,200/- after deducting the compensation already awarded by the Tribunal along with the interest. The claimant has already received Rs.2,43,000/-. Hence after deducting Rs.2,43,000/-, the claimant is entitled to receive the balance amount of compensation @7.5% interest per annum from the date of application till realization of the amount. Therefore, I proceed to pass the following order :

- (i) Appeal is partly allowed.
- (ii) In addition to what is granted by the Tribunal, this Court awards the compensation of Rs.10,47,200/- towards future loss.
- (iii) The respondent Nos.1 and 2 are liable to pay jointly and severally Rs.10,47,200/- along with proportionate costs and 7.5% interest in addition to what has been

awarded by the claimant Tribunal from the date of
award.

(iv) The appeal stands disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*