

FAO-4749-2014 (O&M)
Decided on :17.08.2023

Versus

FAO-5298-2013 (O&M)
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injured/victim/appellant in a motor vehicular accident. For the sake of convenience and brevity, facts extracted from FAO-5298-2013 are detailed hereafter.

2. Briefly stated facts of the case are that on the night of 10th August 2011, Dinesh Kumar along with his brothers and others, was traveling from Kurukshetra to Saharanpur in a Jeep registered as HR-99HV (TP)-5347. The vehicle, driven by Respondent No. 4 - Rakam Singh, collided with a parked truck registered as HR-46D-4414. The claimant alleges that the truck was parked dangerously in the middle of the road without parking lights, indicators, or safety measures. This resulted in a serious accident causing injuries to Rahul and Dinesh, who were then taken to LNJP Hospital. An FIR was registered against respondent No. 1 for violations of traffic rules and causing injuries.

3. Claimants filed a claim petition under Section 166 and 140 of The Motor Vehicles Act, 1988 for seeking compensation before the Ld. Tribunal pleading that the Truck bearing No. HR-46D-4414 was parked by Respondent No. 1-driver of the offending truck in the middle of the road in a dangerous manner and without caring for traffic rules. Further, parking lights, indicators as well as reflectors of the offending vehicle were off and neither any stone, brick or branches of tree nor any fire was lit around the offending vehicle. Thus, it is the negligence of the Respondent No.1-driver of the offending vehicle that led to the accident.

4. After completion of the pleadings, Ld. Tribunal framed the issues, which are reproduced herebelow:

“I. Whether the accident in question took place on 11.08.2011 at about 0030hours in the area of Singla Rice Mill on Pipli-Ladwa Road under police station, Sadar Thanesar due to rash and negligent

driving of the truck bearing registration No. HR-46 D-4414 by respondent No. 1 and it resulted in injuries to claimant? OPP

II. If issue No. 1 is proved in affirmative, what extent of compensation the petitioner would be entitled to and from whom? OPP

III. Whether the terms and conditions of Insurance Policy were violated by Respondent No. 1 and insurance company. Is not liable to indemnify the compensation as alleged? OPR-3

IV. Relief.”

5. For proving the issue No.1, Claimant examined Rahul Sharma as PW-1 who was the author of the FIR (Ex.P75) and he himself appeared as PW-3, and categorically deposed that it was the negligence of the Respondent No.1 - Driver of the offending truck which led to the accident and after submission of Report by police under section 173 CrPC and framing of charges, Respondent No.1 - Driver of the offending truck is facing trial.

Ld. Counsel for the Respondent No. 3 - Insurance Company vehemently argued that the witnesses PW-1 and PW-3 have themselves admitted that they had cautioned the driver of the Jeep Make Tata Safari about the standing truck, still the collision took place. Thus, negligence on the part of Driver of Jeep make Tata safari is clearly made out.

6. After going through the depositions of the witnesses, oral and documentary evidence on record and the arguments raised by both the counsel, Ld. Tribunal decided the Issue No. 1 in favour of Claimant and categorically stated in Para No. 13 that ***“merely instructing the driver at the sight of the truck, does not indicate that there was no negligence of the driver parking the truck in the middle of the road.”***

7. With respect to Issue No. 2, Ld. Counsel for the claimant argued that the claimant was admitted in Hospital for a total duration of 318 days, placed on record the medical bills which were undisputed. PW-2, Dr.

Bimla Gouri stated that the claimant has suffered a physical disability to the extent of 100%. The contention of the Respondent - Insurance company that the disability was assessed qua a particular limb i.e. spine and not the entire body was rejected by the Ld. Tribunal. Age of the claimant was assessed as 45 years and income was determined as Rs.13,500/- per month in view of the income tax returns, future prospects of 30% were applied and a multiplier of 14 was applied.

For the sake of convenience, the compensation awarded by the learned Tribunal is presented in a tabular form herebelow:-

Head	Compensation awarded by learned Tribunal (in Rs.)
Medical expenses	Rs. 25,16,689/-
Loss of income due to disability	Rs.29,05,560/-
Pain and suffering	Rs.3,50,000/-
Hospitalization charges	Rs.4,77,000/-
Loss of amenities and expectation	Rs.3,50,000/-
Total compensation	Rs.65,99,249/-

8. Issue no. 3 was decided against the respondents and a total compensation was awarded to the claimant as Rs.65,99,249/- and respondent No.1 being driver of the offending truck, Respondent No. 2 being owner of the offending truck and respondent No.3 being insurer of the offending vehicle **were held jointly and severally liable to pay the amount of compensation.**

Arguments of Appellant Insurance Company in FAO-5298-2013:

9. Ld. Counsel for the appellant - Insurance Company in FAO-5298-2013 argues that the accident was caused due to the negligence of the driver of the Jeep make Tata Safari rather than the driver of the offending truck. He refers to the deposition of the claimant who appeared as PW-3 as well as PW-1 Rahul Sharma, who in their cross-examination has stated that they had seen the truck standing on the road at the distance of about half an acre and also warned the driver to be careful. For the sake of convenience, the relevant extract of the cross-examinations is reproduced here below:

“PW3 Dinesh Kumar son of Nasib Singh, aged about 46 years, resident of Saket Colony, Hakikat Nagar, Shaharanpur (U.P.) on SA

Xx xx xxxx by Shri A.S. Pabla, Advocate for respondent no.3

I was sitting on the front seat in the Tata Safari Car. The Tata Safari was being driven at the speed of 50 K.M.P.H. I had seen the truck standing on the road at the distance of about half an acre. Our driver was instructed by me to be careful as the truck is standing in the road.

PW1 Rahul Sharma son of Shri Vinod Sharma, aged 19 years, student, resident of Janta Senior Secondary School Camp, Kurukshetra

On SA

Xx xx xxxx by Shri A.S. Pabla, Advocate for respondent no.3.

I was sitting on the rear seat in the Tata Safari Car and the name of our driver was Rakam Singh. The Tata Safari was being driven at the speed of 40 K.M.P.H. Dinesh claimant was sitting in the front seat of the Tata Safari. Nothing was visible to me as to what was happening on the road. Volunteered I had noticed noticed the truck which was parked on the road. I had seen the truck standing on the road at the distance of about half an acre. Our driver was instructed by me to be careful as the truck is standing in the road.”

He further argues that even in case, the respondent-company is held liable to pay the amount of compensation on account of negligence of

the driver of the offending truck, still, the amount awarded as compensation is on the higher side.

10. As far as deposition of PW-1 and PW-3 is concerned, there is a specific finding in the Paragraph 13 of the award of the Ld. Tribunal which has been reproduced below:

“Merely instructing the driver at the sight of the truck, does not indicate that there was no negligence of the driver parking the truck in the middle of the road”.

11. This Court is satisfied with the view of the Ld. Tribunal that merely seeing of the truck by the passengers which was parked in the middle of the road in a rash and negligent manner would not absolve the driver of the offending truck from the liability on account of his negligence. Further, parking lights, indicators as well as reflectors of the offending vehicle were off and neither any stone, brick, or branches of tree nor any fire was lit around the offending vehicle. Thus, it cannot be expected from the person who is driving the vehicle to anticipate a parked truck in the middle of road at the time of dead night i.e. 12:15 AM that too in the absence of any sign of warning or for alarming the public in general, especially the vehicles coming from the other side of the road. In the accidents happening in such manner, rather it would be hard to opine the reason of accident due to contributory negligence. Tribunal has also recorded its categoric finding in paragraph No.14 of the impugned award that there was no case of contributory negligence.

Thus, issue is decided accordingly.

Arguments of Appellant/ Claimant in FAO-4749-2014:

12. While addressing arguments, Counsel for the appellant/claimant in FAO-4749-2014 submits that the Ld. Tribunal has erred in determining the total amount of compensation payable to the claimant. While substantiating his argument, Ld. Counsel submits that Ld. Tribunal has failed to grant amount of compensation on account of attendant charges, future medical expenses, special diet, transportation, loss of income during treatment and loss of enjoyment. Ld. Counsel relies on the judgment of the Hon'ble Apex Court in **Kajal v. Jagdish Chand and others 2020(4) SCC 413:Law Finder Doc ID#1679623** to substantiate his arguments.

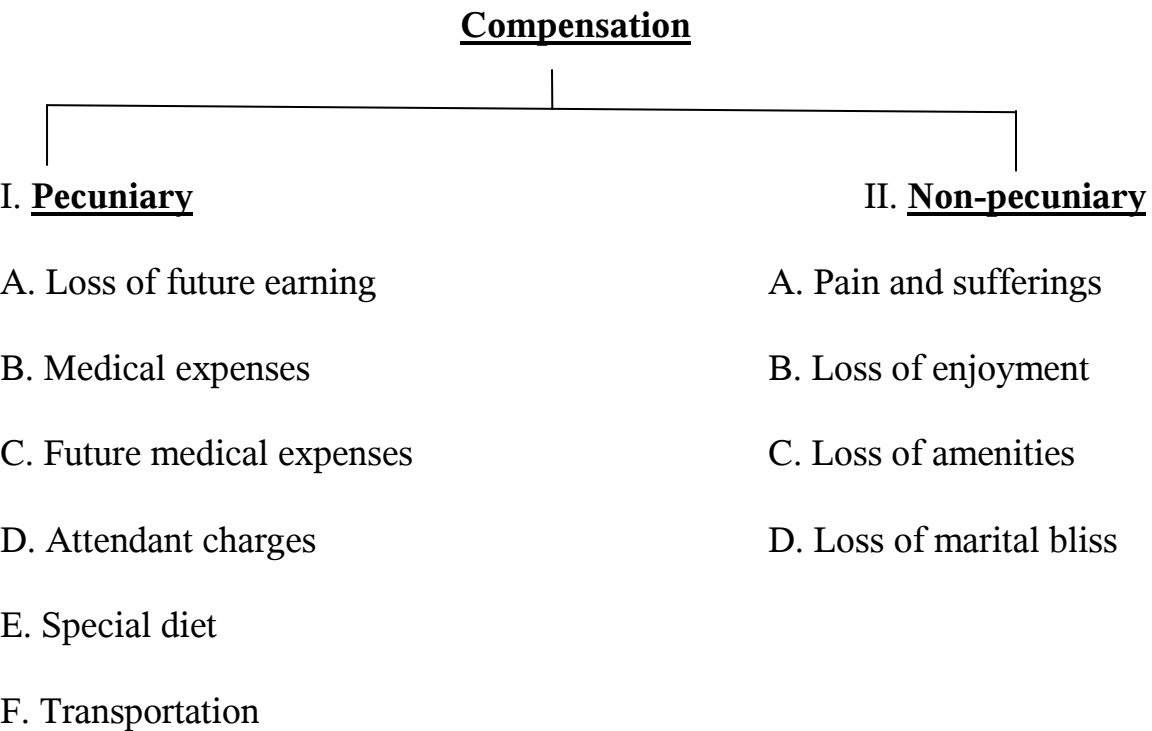
13. On the other hand, Ld. Counsel for Respondent No. 3 – Insurance Company submits that the Ld. Tribunal has rightly determined the amount of compensation to be awarded to the claimant. Thus, there is no error in the award rendered by Ld. Tribunal and no need to interfere in the same.

14. I have gone through the impugned award and the calculations mentioned therein, heard the learned counsel for the parties and has perused the authorities cited.

15. The case in hand is a case of injury suffered by the claimant in a motor vehicular accident. Dr. Bimla Gouri (PW-2) has clearly deposed that it is a case of *survival spine injury*, and the claimant has suffered 100% disability which is permanent in nature. Thus, this Court is satisfied that it is a case of 100% permanent disability suffered by the claimant in a motor vehicular accident.

16. This Court has gone through a recent judgment rendered by Hon'ble Apex Court in **Abhimanyu Partap Singh v. Namita Sekhon, 2022(3) R.C.R (Civil) 557: Law Finder Doc ID #2008349**, whereby the

Apex Court observed that the compensation in a case of motor vehicular accident can be assessed under two heads.



17. There is no doubt that in a situation where the different Courts at different times were at diversions in their opinion and in the absence of any clarification by the law makers despite recommendations by the Hon'ble Apex Court, all the major issues were referred to the larger Bench and accordingly, Constitution Bench was constituted in **National Insurance Company Limited v. Pranay Sethi and others 2017 (4) RCR (Civil) 1009:Law Finder Doc ID #918174**. Thus, for the purpose of reaching out to appropriate amount of compensation for adjudging the rights of the claimants, guidelines laid down in the judgment of the Constitution Bench in **Pranay Sethi's case (supra)**, would help the Courts.

In a given situation, as in the present injury case, said judgement of the Hon'ble Apex Court would guide the Courts to assess the amount of compensation for the injured under the head of application of suitable multiplier, future prospects as well as attendant charges.

18. This Court will now deal with all the aspects in order.

I. Pecuniary

A. Loss of future earning:

A.(i) Determination of monthly salary of injured:

In order to compute the amount of compensation payable to the claimant, the first aspect to be determined is the monthly salary of the injured. Ld. Tribunal in its impugned award has determined the salary of injured as Rs. 13,500/- per month based on the income tax returns (Ex. P4 to Ex. P6) which was further duly proved by Bhagwati Prasad Thapliyal, Tax assistant who deposed as PW-6.

Learned counsel for the appellant-insurance company argues that learned Tribunal should have determine the salary of the deceased on the basis of the income tax return (Ex.P-6) and not income-tax return (Ex. P-5).

Ld. Tribunal further categorically observed that there was nothing available on record to disbelieve the duly proved income tax returns. For the sake of convenience, relevant extract of the impugned award is reproduced here below:

“In view of facts and circumstances of the case, there is nothing to disbelieve the income tax returns which had been filed not after the accident but before the accident.”

This Court is *ad-idem* with the income assessed by the Ld. Tribunal. Thus, the monthly salary of the injured is maintained as **Rs. 13,500/- per month** as held by Ld. Tribunal.

Accordingly decided.

A.(ii). Future Prospects:

Counsel for the appellant further argues that the Ld. Tribunal should have provided an enhancement of 50% towards future prospects to

the salary of the injured as the injured has suffered 100% permanent disability due to the accident.

On the other hand, Ld. Counsel for the respondent - Insurance company argues that the future prospects awarded by the Ld. Tribunal is in consonance with guidelines laid down by the Apex Court in **Pranay Sethi's case (supra)**, thus, the same is worth to be maintained.

This Court has gone through the judgment of the Hon'ble Apex Court in **Pranay Sethi's case (supra)**. The relevant Para 61 (iii) of the said judgment, is reproduced here below:

“61. In view of the aforesaid analysis, we proceed to record our conclusions:-

*X-----X-----X-----X-----X-----X-----X-----
-X-----X-----X-----X-----X*

(iii) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

Therefore, in view of the law laid down by Hon'ble Apex Court, this Court is of the view that the enhancement by way of future prospects of 30% added to the salary of the injured is worth to be maintained. Thus, after addition of future prospects, the monthly salary of the deceased would be **Rs.17,550/- (Rs.13,500/- + Rs.4,050/-)**.

Accordingly decided.

A.(iii). Annual Salary of Injured:

Now, by multiplying the monthly salary of the Injured - Dinesh Kumar i.e. Rs. 17,550/- with 12 months i.e. one year period, the total entitlement of compensation of appellants (claimants) would be of **Rs.2,10,600/- per annum.**

However, as per the law laid down by the Apex Court in Smt. **Smt. Sarla Verma and others v. Delhi Transport Corporation and another 2009(3) R.C.R. (Civil) 77:Law Finder Doc ID #188882**, the income tax payable on the income of the injured is to be deducted from the annual income of the injured/ thus, Ld. tribunal has rightly deducted the amount payable as income tax from the income of the injured i.e. Rs.3,060/-, thus, the annual income of the injured is rightly determined as **Rs. 2,07,540/-**

Accordingly decided.

A.(iv). Multiplier:

Both the Counsel for the appellant (claimant) and Counsel for the respondent - Insurance Company are *ad-idem* to the fact that the Ld. Tribunal has rightly applied the multiplier of 14 which is in consonance with the schedule/guidelines laid down in **Smt. Sarla Verma's case (supra).**

This Court also agrees with the view taken by Ld. Tribunal as the age of the deceased as assessed by the Ld. Tribunal is 45 years and the same falls in the category of 40-45 years for which the multiplier of 14 is applicable. Thus, the **multiplier of 14** applied by Ld. Tribunal is worth to be maintained.

Accordingly decided.

This way, the total loss of future earning, by applying the multiplier of 14, would be of Rs. 29,05,560/-. (Rs. 2,07,540 X 14)

Accordingly decided.

B.Medical Expenses (including hospitalization charges):

The Ld. counsel for the Respondent - Insurance company contends that the Ld. tribunal has wrongly awarded **Rs. 25,16,689/-** towards the medical expenses to the claimant as the total bill of medical expenses exhibited by the claimant is only Rs. 17,17,786/-.

On the other hand, Ld. Counsel for the appellant/ claimant argues that the medical expenses awarded by the Ld. Tribunal has been rightly assessed as claimant was admitted to the hospital for a total period of 318 days which was further proved by PW4, who testified that claimant is under his treatment since 15-06-2012.

This Court is of the view that the medical expenses assessed by the Ld. Tribunal is correct and in consonance with the bills exhibited on record and thus, the same is worth to be maintained.

Further, the Ld. Tribunal has awarded an amount of compensation of Rs. 4,77,000/- for Hospital charges. Considering the fact, that the claimant has suffered 100% permanent disability in the accident for which he had to be hospitalized for a total period of 318 days, this Court deems it appropriate to grant a lump sum amount of compensation of **Rs.5,00,000/-** to the claimant under the head of Hospitalization charges.

Thus, total medical expenses including Hospitalisation charges comes to be **Rs. 30,16,689/- (Rs. 25,16,689 + Rs. 5,00,000)**

Accordingly decided.

C. Future medical expenses:

As far as future medical expenses are concerned, no amount of compensation has been awarded by the Ld. Tribunal under this head. In a case of 100% permanent disability, a co-ordinate Bench of this Court has provided a compensation of Rs. 50,000/- in case titled as **Alka Yadav v. Vijay Singh and others 2023(1) TAC 635: Law Finder Doc ID #2145720.**

Thus, looking at the nature of the injury suffered by the claimant and the amount of compensation awarded by the co-ordinate Bench of this Court in case of similar injury, this court deems it appropriate to grant a compensation of **Rs. 50,000/-** under the head of future medical expenses.

Accordingly decided.

D. Attendant charges:

Learned counsel for the appellant-insurance company argues that the learned Tribunal has failed to grant any compensation on account of attendant charges although, the claimant will need assistance of an attendant throughout his life due to 100 per cent permanent disability suffered by him in this motor vehicular accident.

This Court cannot lose sight of the fact that in view of 100% permanent disability suffered by the injured, he would require an attendant to take care of him and nurse for rest of his life. For the said purpose, an attendant would be required for the claimant round the clock to take care of him and the attendant would also have to be medically trained and skilled. The Supreme Court **in Kajal's case (supra)** has categorically held that even for determining the attendant charges multiplier system should be followed.

Ld. Counsel for the appellant/claimant cites a judgement of Hon'ble the Supreme Court titled as **Abhimanyu Partap Singh v. Namita**

Sekhon 2022(3) R.C.R (Civil) 557: Law Finder Doc Id #2008349, where in a case of injury of 100% permanent disability, attendant charges of Rs. 10,000 per month were awarded for two attendants and appropriate multiplier was applied.

However, on the careful perusal of the cited judgement, it is evident that in the cited case, the claimant/injured belonged to an affluent family and his father was a professor and mother was an IAS officer. Thus, considering the status of the family, Ld. Apex Court granted a compensation to the tune of Rs. 10,000/- per month under the head of the attendant charges.

However, considering the facts and circumstances of the present case in which the claimant/ injured was running a *kiryana shop*, this Court deems it appropriate to grant amount of compensation on account of attendant charges to the tune of Rs. 5,000/- per month (Two attendants @ Rs.2,500/- per month) and by applying the appropriate multiplier that is 14, the amount of compensation under the head of compensation charges comes out to be Rs. 8,40,000/- (Rs.5,000 X 12 X 14).

E. Special diet

This Court is of the view that the claimant's path to recovery and sustaining a meaningful life necessitates a special diet. This dietary requirement, essential for his well-being, will span the entirety of his life's journey. As a recognition of these challenges, this Court deems it appropriate to award an amount of compensation of Rs. 1,50,000/- to support and aid his ongoing care.

Accordingly decided.

F. Transportation

Due to the 100% permanent disability suffered by the claimant, necessity of recurrent hospital visits and ongoing medical support will arise. Thus. This Court deems it appropriate to award an amount of compensation of **Rs. 50,000/-** under the head of transportation, recognizing the need for continued medical care and aiming to provide a measure of relief during this difficult time.

Accordingly decided.

II. Non-Pecuniary

A. Pain and sufferings:

Ld. Tribunal has awarded an amount of compensation as Rs.3,50,000/- on account of pain and sufferings suffered by the claimant/injured due to the injuries sustained in the motor vehicular accident.

However, this Court is of the view that the 100% permanent disability, stemming from a motor vehicular accident, has inflicted significant pain and profound debilitation to the claimant. In the light of this, an augmentation in compensation for the purpose of addressing the endured agony and hardship is deemed necessary. Thus, the compensation on account of loss of pain and sufferings is enhanced to **Rs.5,00,000/-**.

B. Loss of enjoyment

The accident has resulted in a 100% permanent disability for the claimant, causing an irrevocable loss of enjoyment in all facets of life. Recognizing this profound impact, this Court deems it appropriate to grant a compensation of **Rs. 2,50,000/-** to address the challenges and hardships faced by the individual.

Accordingly decided.

C. Loss of amenities to life:

This Court is of the view that amount of compensation on account of loss of amenities that is Rs.3,50,000/- as assessed by the ld. Tribunal is correct. Thus, the same is worth to be maintained.

D. Loss of marital bliss

Enduring a 100% permanent disability after an accident is a life-altering challenge. The added anguish of loosing the cherished state of marital bliss, a cornerstone of emotional well-being, compounds the distress. Recognizing the significance of this loss, the court deems it appropriate to award Rs. 2,50,000/- as a measure of reparation for the profound impact on the individual's quality of life, acknowledging not only physical disability but also the intangible, yet crucial, loss of marital happiness.

Accordingly decided.

19. For the sake of convenience, amount of compensation awarded by this Court is produced here below in a tabular form:

Heads	Compensation awarded by this Court
I. Pecuniary	
A. Loss of future earning	Rs.29,05,560/-
B. Medical Expenses (including Hospitalization charges)	Rs. 30,16,689/-
C. Future Medical Expenses	Rs. 50,000/-
D. Attendant Charges	Rs. 8,40,000
E. Special diet	Rs. 1,50,000/-
F. Transportation	Rs. 50,000/-
III. Non- Pecuniary	
A. Pain and Sufferings	Rs. 5,00,000/-
B. Loss of Enjoyment	Rs. 2,50,000/-
C. Loss of Amenities	Rs. 3,50,000/-
D. Loss of Marital Bliss	Rs. 2,50,000/-
Total compensation	Rs. 83,62,249

20. At this stage, Ld. Counsel for the appellant – Claimant argues that keeping in view the precedents of the Hon'ble Apex Court and as applied by this Court also, the rate of interest of 6% per annum as awarded by the Ld. Tribunal should be enhanced to 7.5% per annum. On the other hand, Ld. Counsel for the appellant – Insurance company submits that the rate of interest as awarded by Ld. Tribunal i.e. 6% per annum is worth to be maintained.

This Court deems it appropriate to grant amount of compensation at the rate of 7.5% per annum in consonance with the established precedents.

21. Thus, keeping in view the aim of this beneficial legislation of providing relief to the victims or their families, the total compensation payable to the appellant (claimant) is **Rs. 83,62,249/-** along with interest at 7.5% per annum from the date of filing of claim petition till the date of payment of compensation to the appellants (petitioners/claimants).

22. Needless to mention that out of the total payable compensation amount, already paid amount (if any), in compliance to the impugned award would be adjusted.

23. However, it is made clear that 50% of the awarded amount of compensation shall be kept in the form of fixed deposit in any nationalized bank fetching maximum interest for period of five years and FDR shall be made in the name of the claimant.

24. Before parting with the judgment, this Court extends its heartfelt appreciation to the dedicated assisting **Law Researchers namely Mr. Akinchan Aggarwal and Ms. Ipshita Arora**, for their unwavering commitment, rigorous research, meticulous calculations and additional assistance significantly contributing to the proceedings.

25. Thus, the appeal filed by the Insurance Company (FAO-5298-2013) is dismissed, while the appeal filed by the claimant/injured (FAO-4749-2014) is allowed by partly modifying the award with the terms indicated here-above.

26. Photocopy of the order shall be placed on the connected case.

(SANJAY VASHISTH)
JUDGE

August 17, 2023

Lavisha

Whether speaking/reasoned: Yes/~~No~~
Whether Reportable: Yes/~~No~~