2023:PHHC:049580

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-874-2015 (O&M)

Smt.Krishana and others

...Appellants

VERSUS

Jagat Singh and another

...Respondents

(ii) FAO-875-2015 (O&M)

Jagdish

...Appellant

VERSUS

Surjeet @ Jeeta (now deceased) and others

...Respondents

Date of Decision: April 11, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Pritam Saini and Mr.Deepak Saini, Advocates for the appellants (in both the appeals).

Mr.Rajneesh Malhotra and Ms.Yagyasree Singh, Advocates for respondent No.3-Insurance Company (in both the appeals).

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ARCHANA PURI, J.

These are two appeals filed to challenge the Award dated 16.10.2014 passed by learned Motor Accident Claims Tribunal, thereby, granting compensation, on account of death of Sandeep as well as injuries sustained by Jagdish, in a motor vehicular accident, which took place on 19.10.2011.

FAO-874-2015 has been filed by the parents and minor brother, vis-a-vis, the death of Sandeep, whereas, FAO-875-2015 has been filed by appellant-claimant Jagdish, vis-a-vis, injuries sustained by him in the accident in question.

On appraisal of the evidence adduced, learned Tribunal had imputed rashness and negligence, on the part of driver of the offending jeep bearing registration No.HR-69AT-7379, namely Surjit Singh (since deceased). As Surjit Singh had died, the liability was fastened, solely upon the owner of the said jeep and the insurance company was not made liable to pay the compensation, so assessed, as it was concluded that there is violation of terms of the insurance policy, at the instance of insured-owner of the offending vehicle.

In view of the evidence adduced by the appellants-claimants, Learned Motor Accident Claims Tribunal, vis-a-vis, death of Sandeep, had awarded compensation to the extent of Rs.1,65,000/-, on account of loss of dependency. Out of the said compensation, claimant-Krishana was to receive a sum of Rs.1,23,750/-, whereas, claimant-Manjeet, brother of the deceased, was to receive a sum of Rs.41,250/-. On this count, compensation was denied to father Jai Kishan. Besides the same, appellants-claimants were held entitled to Rs.20,000/- each, towards love and affection, Rs.6,700/- as transportation charges, Rs.10,000/- as funeral and last rites, in equal shares, vis-a-vis, death of Sandeep.

Likewise, injured Jagdish was held entitled to the compensation to the extent of Rs.61,772/-, on account of injuries sustained by him.

Besides the same, interest @ 7.5% per annum was granted from the date of filing of the petition, if the amount is deposited within two months of passing of the Award, failing which, respondent-Jagat Singh was held liable to pay interest @ 9% per annum, from the date of filing of the petition, till realization, in the capacity of being owner of offending vehicle bearing registration No.HR-69AT-7378.

Being dissatisfied with the extent of compensation, so granted and the liability, having not so fastened upon the Insurance company, the appellants-claimants have filed the respective appeals, detail whereof, has been given, as herein above.

In this backdrop, let us firstly consider FAO-874-2015, which relates to the compensation awarded, on account of death of Sandeep. As per version of the parents and minor brother of deceased, Sandeep was 19 years old, at the time of his death and he was a student. The photocopy of the post-mortem examination is Ex.P1, copy of MLR, Ex.P2, follow up and discharge card, Ex.P5, X-ray investigation form, Ex.P19, OPD Cards, Ex.P20 and P21 and these documents sufficiently show the age of the deceased to be 18 years. Thus, it has been so rightly concluded by learned Tribunal, about the age of the deceased Sandeep, at the relevant time, to be 18-19 years. Also, it is stands established that deceased Sandeep was unmarried son of claimants Krishana and Jai Kishan. The appellants-claimants asserted earnings of the deceased Sandeep to be Rs.5,000/- per month. However, learned Tribunal had taken the earnings of Sandeep, being non-earning person, as Rs.15,000/- per annum, in accord with Schedule-II attached with Section 163-A of the *ibid* Act. On the basis thereof, considering the age of the mother to be 55 years, as she was younger to her husband Jai Kishan, multiplier of '11' was applied and compensation was worked upon as Rs.1,65,000/-. Besides the same, under various other heads, the compensation was granted.

However, at this juncture, it is pertinent to mention that on the count of loss of dependency, the father namely Jai Kishan was denied compensation, though, he was granted compensation, on account of love and affection and also, vis-a-vis, amount assessed on the count of transportation charges and funeral expenses.

At the very outset, the denial of compensation, on the count of loss of dependency to father Jai Kishan, as done by learned Tribunal, is erroneous.

The word '**dependent**' has a different meaning in different connotation. Some may be dependent in terms of money and other may be dependent in terms of service. It does not mean financial dependency only. Dependency includes gratuitous service dependency, physical dependency, emotional dependency, psychological dependency, and so on and so forth, which can never be equated in terms of money. Reverting to the case in hand, it is pertinent to mention that deceased was 18-19 years old, young unmarried boy, at the time of accident. Even though, assuming that appellant No.2, being father of the deceased, may not be dependent financially upon the deceased, but however, at this age, father is definitely emotionally and psychologically dependent upon his young child and also he has service dependency. In the given circumstances, appellant No.2, ought not to have been deprived of the compensation, to be so worked upon. As such, the finding, so got recorded by learned Tribunal, thereby depriving appellant No.2 of the compensation, to be granted, on the count of 'loss of dependency' is hereby set aside and appellant No.2 along with other appellants, is held entitled to the compensation, to be so worked upon, on the count of 'loss of dependency'.

Reverting to the computation of compensation, in the facts of this case, a bachelor, 18-19 years old had died. He was a student at the relevant time. In these circumstances, it is required to be seen, how the computation of compensation may be made.

At this juncture, it is pertinent to mention that the Hon'ble Supreme Court in case titled as ***"Kurvan Ansari alias Kurvan Ali and another v/s Shyam Kishore Murmu and another, Civil Appeal No.6902 of 2021 decided on 16.11.2021"***, while considering the case of death of 7 years old child, in a motor vehicular accident, which took place in the year 2004, had made certain observations, which are as under:-

> *"11. As the claim was made under Section 163-A of the Motor Vehicles Act 1988, since the deceased child was not an earning member, the Tribunal has considered notional income as per Schedule–II for the purpose of fixing compensation. The Tribunal has awarded compensation by taking notional income of the deceased at Rs.15,000/- per annum by applying multiplier '15', awarded compensation of Rs.2,25,000/- towards loss of dependency with interest @ 6% per annum from the date (2009) 14 SCC 1 (2014) 1 SCC 244 (2020) 7 SCC 256 of judgment. When the appeals are preferred by the Insurance Company as well as the appellants herein, by the impugned common judgment, the High Court has dismissed the appeal preferred by the Insurance Company, and in the appeal preferred by the claimants, while confirming the compensation awarded for loss of dependency at Rs.2,25,000/-, has awarded*

a further sum of Rs.15,000/- towards funeral expenses and accordingly granted a total compensation of Rs.2,40,000/- with interest @6% per annum payable by respondent No.2 - Insurance Company and by permitting it to recover the same from Respondent No.1 - owner of the motorcycle.

12. In the judgment in the case of Puttamma & Ors., this Court has observed that the Central Government was bestowed with the duties to amend Schedule-II in view of Section 163A(3) of the Motor Vehicles Act 1988, but it failed to do so. In view of the same, specific directions were issued to the Central Government to make appropriate amendments to Schedule-II keeping in mind the present cost of living. In the said judgment, till such amendments are made, directions were issued for award of compensation by fixing a sum of Rs.1,00,000/- (Rupees one lakh only) towards compensation for the non-earning children up to the age of 5 (five) years old and a sum of Rs.1,50,000/- (Rupees one lakh fifty thousand only) for the non- earning persons of more than 5 (five) years old.

13. In the case of R.K. Malik & Anr. also, this Court has observed that the notional income fixed under Section 163-A of the Motor Vehicles Act, 1988 as Rs.15,000/- per annum should be enhanced and increased as the same continued to exist without any amendment since 14.11.1994. In the case of Kishan Gopal & Anr. where the deceased was a ten years old child, this Court has fixed his notional income at Rs.30,000/- per annum.

14. In this case, it is to be noted that the accident was on 06.09.2004. In spite of repeated directions, Schedule-II is not yet amended. Therefore, fixing notional income at Rs.15,000/- per annum for non- earning members is not just and reasonable.

15. In view of the judgments in the cases in Puttamma & Ors., R.K. Malik & Anr. and Kishan Gopal & Anr., we are of the view that it is a fit case to increase the notional income by taking into account the inflation, devaluation of the rupee and cost of living. In view of the same, the judgment in the case of Rajendra Singh & Ors. relied on by the learned counsel for respondent No.2-Insurance Company would not render any assistance to the case of the insurance company."

In view of the aforesaid observations, the Court took the notional income of the deceased child as Rs.25,000/- per annum and applied multiplier of '**15**' as prescribed in Schedule-II, for the claims under Section 163A of the Motor Vehicles Act, 1988 and worked upon the compensation to be awarded, on the count of 'loss of dependency' and also had awarded compensation, on the count of loss of consortium as well as funeral expenses.

Considering the aforesaid, now reverting to the case in hand. Be it noted that the the owner of the offending vehicle made liable, had not challenged the Award. The accident in the case, in hand, had taken place on 19.10.2011 and thus, considering the date of accident, which resulted into injuries sustained by Jagdish and death of Sandeep, the value of rupee has come down drastically. Taking into consideration, the aforesaid factors and also the observations made by the Hon'ble Supreme Court, as herein above given, the notional earnings of 18-19 years boy, can conveniently be taken as Rs.50,000/- per annum. Looking at the age of the deceased, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, appropriate multiplier to be applied is '18' and so calculating, the extent of earnings comes to be Rs.9,00,000/-.

As the deceased is established to be a bachelor, 50% is to be deducted as personal and living expenses, in view of the judgment passed in ***Sarla Verma's case (supra)***. Thus, on the count of 'loss of dependency', the amount so worked upon, comes to be Rs.4,50,000/-.

Besides the aforesaid, it is pertinent to mention that as per guidelines passed in ***Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram and others, 2018(18) SCC 130*** and in ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, the appellants-claimants are entitled to compensation, on the count of 'loss of consortium' to the extent of Rs.44,000/- each. Even though, learned Tribunal had granted compensation to the extent of Rs.20,000/- each, to the appellants-claimants, on account of 'love and affection', but however, it is pertinent to mention that as per ***Magma's case (supra)***, **'loss of love and affection is comprehended in loss of consortium'**. Therefore, there is no justification to award compensation towards 'loss of love and affection', as a separate head, which view was further endorsed in ***The New Assurance Company Limited vs. Smt.Somwati and others, Civil Appeal No.3093 of 2020, decided on 07.09.2020***.

Besides the same, as per ***Pranay Sethi's case (supra)***, the appellants-claimants are entitled to compensation to the extent of Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses, which requires 10% enhancement, after a period of three years, which has since passed by. As such, the appellants-claimants, are entitled to compensation to the extent of Rs.16,500/- as 'loss of estate' and Rs.16,500/- as 'funeral expenses'.

Thus, the 'loss of dependency' comes to be Rs.4,50,000/-, loss of consortium comes to be Rs.1,32,000/-(Rs.44,000/- to each of the appellant/claimant), Rs.16,500/- as loss of estate and Rs.16,500/-, as funeral expenses. Also, as worked upon by learned Tribunal, appellants-claimants are also entitled to another sum of Rs.10,700/-, on the basis of medical bills and receipts, on the expenditure incurred on the treatment of the deceased. Furthermore, another sum of Rs.6,700/-, on the basis of the receipts Ex.P22 to Ex.P25, with regard to the expenses incurred on transportation of Sandeep. Besides the same, it is pertinent to mention that accident had taken place on 19.10.2011 and Sandeep, on account of injuries sustained in the accident, had remained admitted in various hospitals and died on 04.04.2012. PW-1 Dr.Raghvendra Singh, has been examined, who had stated about the manner of death of Sandeep on account of injuries, sustained by him, in the accident in question. Even, PW-2 Dr.Sham Lal, Medical Officer, who had conducted medico-legal examination of Sandeep on 19.10.2011, has tendered into evidence, his affidavit Ex.PW2/A and proved copy of MLR, giving the detail of injures, as Ex.P2. Besides the same, even the medical record, with regard to the admission and hospitalization and the expenditure incurred, have also been proved.

Considering the same, it is quite obvious that during the period of his hospitalization, deceased Sandeep must have been looked after by at least one attendant and must have also been put on special diet. Thus, on these counts, another amount of Rs.10,000/- each is granted, as attendant charges and special diet. Accordingly, the appellants-claimants are held entitled for compensation as under:-

Loss of dependency	:	**Rs.4,50,000/-**
Loss of consortium	:	**Rs.1,32,000/-**
Loss of estate	:	**Rs.16,500/-**

Funeral expenses	**:**	**Rs.16,500/-**
Medical bills	**:**	**Rs.10,700/-**
Transportation charges	**:**	**Rs.6,700/-**
Attendant charges	**:**	**Rs.10,000/-**
Special diet	**:**	**Rs.10,000/-**
Total	**:**	**Rs.6,52,400/-**

Out of the compensation, so now awarded, a sum of Rs.2,75,000/- each shall be paid to appellants-claimants No.1 and 2, namely, Krishana and Jai Kishan (parents of the deceased) and Rs.1,02,400/-, shall be paid to appellant-claimant No.3, namely Manjeet. If the earlier awarded amount had already been paid, the same shall be deducted from the enhanced compensation and the difference of the awarded amount, now shall be paid, as per the apportionment stated herein above. The interest component, shall remain the same, as ordered by learned Tribunal.

Now, coming to the re-computation of the compensation to be granted to injured Jagdish in FAO-875-2015.

As per claim of the appellant-claimant Jagdish, he had sustained injuries in the accident in question. At the relevant time, he was working as vegetable vendor, besides running milk dairy as well as dealing in sale and purchase of buffaloes and thus, his earnings were Rs.18,000/- per month. It is also his claim that soon after the accident, he remained admitted in Civil Hospital, Panipat, Prem Hospital, Panipat and PGIMS, Rohtak, till 27.08.2012 and had spent about Rs.10 lakh, on his treatment.

To so substantiate his claim, appellant-claimant Jagdish has himself stepped into witness box as PW-5 and his sworn testimony, in the form of affidavit is Ex.PW5/A. He also proved the receipts Ex.P27 to Ex.P32, discharge summary Ex.P33, NCCT Head report Ex.P34, prescription slips and receipts Ex.P35 to Ex.P68, photocopy of ration card Ex.P69, photocopy of MLR Ex.P70 and x-ray films Ex.P71 to Ex.P88. Even, his wife Parkashi has stepped into witness box as PW-7 and tendered her affidavit Ex.PW7/A and therein, she has deposed about her husband to have become 100% handicapped, due to the injuries sustained in the accident and also deposed about issuance of disability certificate by Civil Hospital, Panipat and further also deposed about dependence of herself as well as her seven children, upon the earnings of the injured.

Besides the aforesaid, PW-9 Dr.Rakesh Gupta, Senior Professor, PGIMS, Rohtak, has also been examined by the appellant-claimant Jagdish, who deposed about the admission of Jagdish in PGIMS, Rohtak on 20.10.2011 vide CR No.991732. He further deposed that injured was suffering from *cervical spine injury with quadriparesis with fracture shaft of femur with fracture on both bones leg with potts fracture with fracture clavicle*. He also deposed that injured was operated for his fracture on 11.11.2011 and was discharged from the hospital on 14.12.2011. Furthermore, various discharge cards and medical reports have been also proved in evidence. Copy of the disability certificate is Ex.P118.

From the documents coming on record, it stands established that the appellant-claimant had remained admitted in various hospitals from 19.10.2011 to 14.12.2011. Though, it is the specific claim of the appellant-claimant about having suffered 100% disability, but learned Tribunal has denied compensation, on account of permanent disability, as it is stated that though disability certificate has come on record as Ex.P118, but however, the doctor concerned, has not been examined and therefore, appellant-claimant was held not entitled to compensation, on the count of permanent disability.

In view of the material put forth, break up of the compensation, as so granted by learned Tribunal, is herein given:-

Medical expenses	**:**	**Rs.27,722/-**
Loss of income	**:**	**Rs.4,050/-**
Pain and agony	**:**	**Rs.10,000/-**
Better diet	**:**	**Rs.10,000/-**
Medical bills	**:**	**Rs.10,700/-**
Transportation	**:**	**Rs.10,000/-**
Total	**:**	**Rs.61,772/-**

In the light of the compensation, so worked upon, it is submitted by learned counsel for the appellant-Jagdish that even though, from the material adduced, it stands established that injured has suffered permanent disability and in unable to perform even everyday activities, for which he requires constant support, for the confined life, which he has been forced to live after the accident, but however, his invalidity has not been taken into consideration. Even, the loss of income has been worked upon on lower side. Learned Tribunal had also not taken into consideration the impact of permanent disability, not only to his income generating capacity but also about non-quantifiable implications, on the life of the appellant-claimant.

Also, learned counsel for the appellant assiduously submitted that looking at the nature of the injuries sustained by the appellant, additional medical exigencies are necessitated and expenses are incurred for regular medical treatment in future. Thus, learned counsel for the appellant has made a prayer for extensive enhancement of the amount, so awarded by learned Tribunal.

On the other hand, learned counsel for the respondent has refuted the claim of the appellant-claimant, while asserting that no satisfactory evidence has been led to seek compensation, as now impressed upon. Thus, he submits that the appeal sans merit and deserves to be dismissed.

In ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the Supreme Court held that the '**just**' compensation is adequate compensation and the Award must be just that- '**no less and no more**'. The plea of the victim suffering from a cruel twist of fate, when asking for some more, is not extravagant, but it is for seeking appropriate recompense, to negotiate with the unforeseeable and the fortuitous twists, in his impaired life. Therefore, while the money awarded by Courts can hardly redress the actual sufferings of the injured victim (who is deprived of the normal amenities of life and suffers the unease of being a burden on others), the courts can make a genuine attempt to help restore the self-dignity of such claimant, by awarding '**just compensation**'.

A three Judges' bench in ***Jagdish Vs. Mohan and others, 2018 (4) SCC 571***, while considering the enhancement of compensation awarded, vis-a-vis, injuries suffered by the victim, a reference has been made to the decision rendered in ***Laxman vs. Divisional Manager, Oriental Insurance Co. Ltd., 2012 ACJ 191 (SC)***, wherein, the Hon'ble Apex Court, has held as under:-

> *"(12) The ratio of the above noted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to accident, loss of earnings and victim's inability to lead normal life and enjoy amenities, which we would have enjoyed but for disability caused due to the accident."*

Furthermore, while making reference to various case law, it was held that the compensation can be granted for disability as well as for loss of future earnings and the first head relates to the impairment of a person's capacity, while the other relates to the sphere of pain and suffering and loss of enjoyment of life by the person himself.

Thus, considering the same, if the victim of the accident suffers disability, then efforts should also be made to award compensation, not only for the physical frame and treatment, but also for the loss of earnings and his inability to lead a normal life and enjoy amenities, which he would have enjoyed, but for the disability caused, due to the accident.

In this backdrop, it is pertinent to mention that though, it is the specific claim of the appellant-Jagdish, about himself to have suffered 100% disability, but the Tribunal has denied the compensation, on account of permanent disability, as it was held that though the disability certificate, has been tendered into evidence as Ex.P118, but no doctor has been examined and therefore, permanent disability, as such, cannot be assessed and the compensation was not granted on this count.

Very true, as so pointed out, during the course of arguments that disability certificate has been tendered in evidence as Ex.P118 and no doctor from the Board of Doctors, who examined the claimant, has been examined as a witness. May it be so, but however, fact remains that the disability certificate is coming on record. The Motor Vehicle Act is a benevolent piece of legislation and summary proceedings are conducted. Any document, as such, coming on record, can be taken into consideration and it has to be considered, in the backdrop of other evidence adduced.

PW-9 Dr.Rakesh Gupta, Senior Professor, PGIMS Rohtak, has been examined, who has deposed about the admission of Jagdish in Department of Orthopedic on 20.10.2011 vide CR No.991732. He further deposed that ***'injured was suffering from cervical spine injury with quadriparesis with fracture shaft of femur with fracture on both bones leg with potts fracture with fracture clavicle'***. He also deposed that injured was operated for his fracture on 11.11.2011 and was discharged from the hospital on 14.12.2011, with advice to come for follow up on orthopedic outdoor. He had brought the original treatment file and Ex.P89 is the photocopy of the treatment file, which co-relates to the injuries, so deposed by the doctor and manner of treatment, so given to the appellant-claimant Jagdish. This record also co-relates to the injuries, as mentioned in the disability certificate Ex.P118, which states about 100% disability and the injury has been specified as '**quadriparesis due to cervical spine injury with bladder bowel involvement**'. However, at the same time, it should be noted that though there is mention of the aforesaid injuries in the disability certificate and the disability is stated to be 100%, but it is totally silent qua the same being permanent and in relation to the which part of the body or the whole body.

However, the injury is quadriparesis, which is a condition characterized by weakness in all four limbs (both arms and both legs). It also refers to as tetraparesis. However, this weakness may be temporary or permanent. Considering this kind of injury, it is evident that all four limbs become immobile. However, this fact is not evident that whether it is permanent or temporary and precisely, on this account, sole reliance cannot be placed on the disability certificate and therefore, the doctor concerned, who was member of the Board of Doctors, which examined the appellant-claimant and assessed disability, having not so examined, gains weight.

Even though, PW-9 Dr.Rakesh Gupta had stated in his examination-in-chief, that the appellant-claimant was discharged from the hospital on 14.12.2011, with advice to follow up in orthopedic outdoor, but while facing cross-examination, he had stated that he had not given follow up treatment to this patient. There is no other evidence, brought on record, regarding follow up treatment.

This being the fact situation, in view of the disability certificate, having come on record, some guess work has to be applied.

However, considering the nature of the injuries, as evident from the disability certificate and also as deposed by PW-9 Dr.Rakesh Gupta, which are so evident from the treatment file, it is quite obvious that even if, the same are taken into consideration and the position, in the minimum is taken to be reversible, then also, the duration of time, to be so taken for reversing of the condition, in the modest estimate, can be taken to be one year, since the period of discharge from the hospital i.e. 14.12.2011.

It is pertinent to pin point at this stage, that appellant-claimant Jagdish has asserted himself to be working as vegetable vendor and indulgence in dairy farming and his earnings are asserted to be Rs.18,000/- per month. Learned Tribunal had taken the earnings of Jagdish as Rs.4,500/- per month. However, this amount is definitely on lower side. Considering the avocation so followed by the injured as stated, in modest estimate, his earnings, can be taken to be Rs.6,000/- per month.

From the evidence brought on record, it is evident that appellant-claimant remained hospitalised for the period from 19.10.2011 to 14.12.2011. In the light of the same, the period of admission of the injured in the hospital, taken as 27 days by learned Tribunal, is palpably wrong. Considering the same, the compensation so awarded, requires re-assessment.

During the period of hospitalization, for the duration of two months and also for a period of one year, as worked upon aforesaid, the appellant-claimant must have been looked after by at least one attendant. Thus, on this count, taking the attendant charges as Rs.2000/- per month, another sum of Rs.28,000/- is awarded, for a period of 14 months.

Even, on the count of pain and suffering, Rs.10,000/- as granted by learned Tribunal is a meagre amount, which is now enhanced to Rs.50,000/-.

During the period of treatment, the appellant-claimant must have also taken special diet. Considering the same, for the period aforesaid, the charges for special diet as worked upon as Rs.10,000/- is enhanced to Rs.20,000/-. However, the medical expenses, on the basis of the bills and receipts, proved in evidence, remain the same as granted by learned Tribunal i.e. Rs.27,722/-.

Also, on account of the injuries, so sustained by the appellant-claimant, in the accident, even though, he may have become immobile, then also, he would require further medical treatment in future for some period of time and keeping in view the same, on this count, another sum of Rs.50,000/- is granted to the appellant-claimant.

Thus, considering all the aforesaid factors, the compensation is now re-computed as herein given:-

Loss of income during the period of hospitalization for the period 19.10.2011 to 14.12.2011	Rs.11,000/- (while taking earnings as Rs.6,000/- per month)
On account of disability/confinement to bed for a period of one year, even if disability is taken as reversible	Rs.6000 x 12 = Rs.72,000/-
On account of pain and suffering	Rs.50,000/-.
Special diet during the period of treatment in hospital and one year thereafter	Rs.20,000/-
Attendant charges for the period of hospitalization and one year thereafter	Rs.28,000/- (Rs.2000 per month)
Medical expenses	Rs.27,722/-
On the count of need of future treatment	Rs.50,000/-
Total	**Rs.2,58,722/-**

Besides seeking enhancement of compensation, so granted by learned Tribunal, the appellants-claimants, in both the appeals, have also challenged the finding, so recorded by learned Tribunal, thereby, exonerating the insurance company from the liability to pay the compensation, so worked upon. During the course of arguments, it has been assiduously submitted by learned counsel for the insurance company that at the relevant time, the offending jeep was carrying passengers, much beyond its prescribed limit, as per the policy and therefore, there is violation of the insurance policy. In this regard, a letter dated 18.02.2012, issued by the insurance company, thereby, denying claim of Jagat Singh-respondent, owner of the offending jeep, has been proved as Ex.R2. As per the same, the claim of registered owner of the jeep had not been considered by the insurance company, due to breach of policy conditions, as to 'Limitations as to use', since at the relevant time, occupants of the jeep were 22, which was beyond the permitted capacity of 10 passengers. Ex.R1 is the copy of the registration certificate of the jeep bearing registration No.HR-69AT-7378. As per the same, the seating capacity of jeep (including driver) is mentioned as '10'. However, from the testimony of Rinku, an eye witness to the accident in question, as well as from the recitals of the FIR and various other documents, it is evident that there were 20-22 passengers, sitting in the jeep, at the relevant time, which was beyond the permissible limit of seating capacity of '10', which included the driver also.

The question, vis-a-vis, the liability of the offending vehicle carrying more than seating permissible capacity, cropped up in case titled as

'***United India Insurance Co. Ltd. vs. K.M.Poonam and other, 2011(2) RCR (Civil) 194***'. Therein, while considering the controversy involved, the Hon'ble Apex Court made observations, as herein given:-

> *"24. The liability of the insurer, therefore, is confined to the number of persons covered by the insurance policy and not beyond the same. In other words, as in the present case, since the insurance policy of the owner of the vehicle covered six occupants of the vehicle in question, including the driver, the liability of the insurer would be confined to six persons only, notwithstanding the larger number of persons carried in the vehicle. Such excess number of persons would have to be treated as third parties, but since no premium had been paid in the 35 policy for them, the insurer would not be liable to make payment of the compensation amount as far as they are concerned. However, the liability of the Insurance Company to make payment even in respect of persons not covered by the insurance policy continues under the provisions of sub-section (1) of Section 149 of the Act, as it would be entitled to recover the same if it could prove that one of the conditions of the policy had been breached by the owner of the vehicle. In the instant case, any of the persons travelling in the vehicle in excess of the permitted number of six passengers, though entitled to be compensated by the owner of the vehicle, would still be entitled to receive the compensation amount from the insurer, who could then recover it from the insured owner 36 of the vehicle.*
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> *25. As mentioned hereinbefore, in the instant case, the insurance policy taken out by the owner of the vehicle was in respect of six passengers, including the driver, travelling in the vehicle in question. The liability for payment of the other passengers in excess of six passengers would be that of the owner of the vehicle who would be required to compensate the injured or the family of the deceased to the extent of compensation awarded by the Tribunal.*
>
> *26. Having arrived at the conclusion that the liability of the Insurance Company to pay compensation was limited 37 to six persons travelling inside the vehicle only and that the liability to pay the others was that of the owner, we, in this case, are faced with the same problem as had surfaced in Anjana Shyam's case (supra). The number of persons to be compensated being in excess of the number of persons who could validly be carried in the vehicle, the question which*

> *arises is one of apportionment of the amounts to be paid. Since there can be no pick and choose method to identify the five passengers, excluding the driver, in respect of whom compensation would be payable by the Insurance Company, to meet the ends of justice we may apply the procedure adopted in Baljit Kaur's case (supra) and direct that the Insurance Company should deposit the total amount of 38 compensation awarded to all the claimants and the amounts so deposited be disbursed to the claimants in respect to their claims, with liberty to the Insurance Company to recover the amounts paid by it over and above the compensation amounts payable in respect of the persons covered by the Insurance Policy from the owner of the vehicle, as was directed in Baljit Kaur's case.*
>
> *27. In other words, the Appellant Insurance Company shall deposit with the Tribunal the total amount of the amounts awarded in favour of the awardees within two months from the date of this order and the same is to be utilized to satisfy the claims of those claimants not covered by the Insurance Policy along with the persons so covered. The Insurance Company will be entitled to recover the amounts paid by 39 it, in excess of its liability, from the owner of the vehicle, by putting the decree into execution. For the aforesaid purpose, the total amount of the six Awards which are the highest shall be construed as the liability of the Insurance Company. After deducting the said amount from the total amount of all the Awards deposited in terms of this order, the Insurance Company will be entitled to recover the balance amount from the owner of the vehicle as if it is an amount decreed by the Tribunal in favour of the Insurance Company. The Insurance Company will not be required to file a separate suit in this regard in order to recover the amounts paid in excess of its liability from the owner of the vehicle."*

Undisputedly, qua the other passengers, travelling in the offending jeep, at the relevant time, various claims had been filed. It is brought to the notice of the Court by learned counsel for the appellants-claimants that there was settlement made by the insurance company on 27.05.2012, in case titled '***Rajesh Kumar vs. Surjit and others***', which fact is not denied by learned counsel for the insurance company. Also, it is not disputed that this matter was also referred to the Lok Adalat, but however, it was not settled, as learned counsel for the insurance company has stated that there is legal hitch in this case. It is pertinent to mention that along with the appeal, an application for seeking permission to produce additional evidence was also filed, which was allowed by this Court, vide order dated 15.11.2019 and requisite copy of the Award dated 27.05.2013, which relates to the settlement of the case by the insurance company, has come on record as Annexure A-1, whereby, compensation was settled to the extent Rs.85,000/-, to be paid to one of the injured namely Rajesh Kumar.

Also, it is not disputed that there are other claim petitions filed by the passengers of the offending vehicle. In these circumstances, taking guidelines from the aforesaid decision rendered by the Hon'ble Apex Court, in ***K.M.Poonam's case (supra)***, the insurance company, as such, ought to be made liable, for making payment of compensation, though, its liability, shall be confined only to permissible limit of 10 persons, but however, it cannot be make pick and chose method, to identify the said 10 passengers. Considering the same, amount of 10 Awards, at the maximum, which are highest, shall be construed as liability of the insurance company. If any other claim petition is filed, though, the insurance company, at first instance, shall be liable to pay the compensation, but it shall have the option to recover the same from the owner of the offending vehicle, as if it is amount decreed by the Tribunal, in favour of the insurance company and there shall not be any necessity to file a separate suit, vis-a-vis, recovery of the amount, if so paid, in excess of its liability (beyond 10 passengers), from the owner of the offending vehicle.

In view of the aforesaid observations, both the appeals, are hereby allowed and the compensation amount stands enhanced, as observed herein above and even insurance company is fastened with the liability to pay the aforesaid amounts, which shall be adjusted in the mode, as prescribed aforesaid. However, the remaining terms and conditions of the Award, so passed by learned Tribunal, shall remain the same.

It is made clear that liability of the insurance company shall be joint and several with the owner of the offending vehicle. However, the insurance company, at first instance, shall pay the compensation and shall have the option, always open to recover in the mode, as observed herein above.

April 11, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**