



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 17.10.2023
Pronounced on: 21.11.2023

+ **MAC.APP. 1008/2016**

RELIANCE GENERAL INSURANCE CO LTD Appellant
Through: Ms.Perna Mehta, Adv.

versus

MASTER RAHUL & ORS Respondents
Through: Mr.Manish Maini, Mr.Vibhor
Jain & Ms.Yashika Miglani,
Advs. for R-1.

+ **MAC.APP. 410/2017**

RAHUL Appellant
Through: Mr.Manish Maini, Mr.Vibhor
Jain & Ms.Yashika Miglani,
Advs.

versus

RELIANCE GENERAL INSURANCE CO LTD & ORS
..... Respondents
Through: Ms.Perna Mehta, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. These cross appeals have been filed challenging the Award dated 29.08.2016 (hereinafter referred to as 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, Karkardooma



Courts, East District, Delhi (hereinafter referred to as the 'Tribunal') in MAC No. 11056/2016 titled ***Master Rahul v. Mohd. Miya S/o. Sh. Shadab Akhtar & Ors.***

2. The above Claim Petition arises out of the Detailed Accident Report (in short, 'DAR') which reported that on April 29, 2014, around 1:00 PM, the Claimant-Rahul, a boy aged 13 years, was going to his home along with his father from Patparganj Industrial Area. He was hit by a speeding Radio Taxi bearing registration no. DL-1RT-1784, (hereinafter referred to as the 'Offending Vehicle') at Road No. 56, near the Telco Flyover, ISBT Anand Vihar. He was rushed to the GTB Hospital, where he remained under treatment till 18.06.2014. He sustained injuries that resulted in a 75% permanent disability. FIR No. 295/14, under Sections 279/338 of the Indian Penal Code, 1860 was registered at Police Station Gazipur against the driver of the Offending Vehicle.

3. The learned Tribunal, on the basis of the evidence led before it, found that the accident had taken place due to the Offending Vehicle being driven in a rash and negligent manner, and awarded compensation in the following amounts:

1	Future Loss of Income	Rs.18,47,664.00
2	Towards Pain, Shock & Suffering	Rs.1,50,000.00
3	Loss of Amenities & Enjoyment of Life	Rs.1,50,000.00
4	Towards servant/attendant charges	Rs.20,000.00
5	Towards conveyance & special diet	Rs.40,000.00
6	Towards Medical bills	Rs.5,000.00



7	Towards Loss of studies	Rs.1,00,000.00
	Total	Rs.23,12,664.00

4. The learned counsels for the parties, at the outset, submit that during the pendency of the present appeals, unfortunately the Claimant expired on 16.06.2021.

CHALLENGE OF THE INSURANCE COMPANY

5. The learned counsel for the Insurance Company submits that with the passing away of the claimant, the award of compensation towards pain, shock and suffering; loss of amenities and enjoyment of life; and loss of studies, are no longer maintainable and are liable to be set aside. In support of her submission, she places reliance on the judgment of the Supreme Court in *Oriental Insurance Co. Ltd. v. Kahlon @ Jasmail Singh Kahlon*, 2021 SCC OnLine SC 691; of this Court in *V.Mepherson v. Shiv Charan Singh*, 1996 SCC OnLine Del 718; of the Madhya Pradesh High Court in *Bhagwati Bai & Anr. v. Bablu @ Mukund & Ors.*, 2006 SCC OnLine MP 393; and of the Madras High Court in *The Managing Director, Dheeran Chinnamalaii Transport Corporation, Trichy v. Mrs.Padmavathi & Ors.*, (judgment dated 05th April 2006 passed in C.M.A No. 1218 of 1997).

6. She further submits that even if the argument of the Claimant is to be accepted that these amounts were received by the injured during his lifetime and formed a part of his Estate, then this Court should reduce the compensation amount considering that he survived only for



a period of seven years whereas the damages under these heads were granted assuming that he would have continued to live till the age of 70.

7. She further submits that the learned Tribunal has erred in awarding the compensation to the Claimant by assessing his functional disability as 100% in relation to his whole body in spite of the Disability Certificate assessing the same as 75%. She submits that there was no reason for enhancing the functional disability of the claimant in the present case.

8. She submits that in any case, if the Functional Disability is retained as 100%, compensation on the head of pain, shock and suffering; loss of amenities and enjoyment of life; and loss of studies, cannot be granted.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE CLAIMANT ON THE CHALLENGE OF THE INSURANCE COMPANY

9. On the other hand, the learned counsel for the Legal Heirs of the Claimant submits that the compensation awarded towards pain, shock and suffering; loss of amenities and enjoyment of life; and/or for loss of studies cannot be set aside or reduced only on the ground that the injured had later expired during the pendency of the present appeal. He submits that the compensation awarded will form part of the estate of the Claimant and while the legal representatives of the Claimant cannot seek enhancement of compensation on these heads, at the same time, the Insurance Company cannot challenge the



compensation already awarded to the claimant only on account of the death of the Claimant.

10. On the issue of assessment of functional disability of the claimant, the learned counsel for the respondent submits that Dr. Wajid Nazir, Specialist and Head of Department Neurosurgery of the GTB Hospital was examined before the learned Tribunal as PW-3 for proving the Disability Certificate. He deposed that the Claimant was suffering from ataxia (gait disturbance, that is, impaired balance and coordination), and was unable to read or write anything and could not walk without support. He further deposed that the Claimant's brain performance was impaired, including his intellectual capacity, and he was unable to perform the requisite test deemed necessary from neuropsychology department, and that the disability suffered by him was permanent in nature. Relying on the said testimony of the PW-3, the learned counsel for the respondent submits that, therefore, no fault can be found in the learned Tribunal assessing the functional disability of the Claimant as 100%.

CHALLENGES OF THE CLAIMANT

11. The learned counsel for the Legal Heirs of the Claimant further submits that the learned Tribunal has erred in not granting loss of future prospects while determining the loss of income of the Claimant. He submits that 40% of the income towards loss of future prospect should have been granted in favour of the Claimant as compensation.

12. He submits that the learned Tribunal has also erred in awarding only a sum of Rs.20,000/- towards servant/attendant charges. Placing



reliance on the judgments of the Supreme Court in *Kajal v. Jagdish Chand*, (2020) 4 SCC 413; and *Master Ayush v. Branch Manager, Reliance General Ins. Co. Ltd. and Another*, (2022) 7 SCC 738, he submits that for the attendant charges, the minimum wages as notified by the Government of NCT of Delhi should have been applied with a multiplier of seven as he remained alive for seven years after the date of the accident.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE INSURANCE COMPANY TO THE CHALLENGE OF THE LR'S OF THE CLAIMANT

13. The learned counsel for the Insurance Company refutes the above challenge of the Legal Heirs of the Claimant by contending that as the Claimant was a child of only 13 years and has admittedly died within seven years of the accident, the Legal Heirs of the Claimant are not entitled to the grant of compensation on account of future prospects of increase in income.

14. She further submits that in the absence of the Claimant leading any evidence on the employment of an attendant, the learned Tribunal has rightly assessed the compensation payable for the attendant as Rs. 20,000/-. She submits that the same does not deserve any enhancement.

ANALYSIS AND FINDINGS

15. I have considered the submissions made by the learned counsels for the parties.



Whether the claim abates:

16. I would first consider the submission made by the learned counsel for the Insurance Company on whether the claims and the award of compensation towards pain, shock and suffering; loss of amenities and enjoyment of life; and loss of studies, survive the death of the Claimant or whether his Legal Heirs can receive the same.

17. In this regard, the judgment of the Supreme Court in **Kahlon** (supra) is instructive, and the relevant findings therein are reproduced herein under:

“9. The Act is a beneficial and welfare legislation. Section 166(1)(a) of the Act provides for a statutory claim for compensation arising out of an accident by the person who has sustained the injury. Under Clause (b), compensation is payable to the owner of the property. In case of death, the legal representatives of the deceased can pursue the claim. Property, under the Act, will have a much wider connotation than the conventional definition. If the legal heirs can pursue claims in case of death, we see no reason why the legal representatives cannot pursue claims for loss of property akin to estate of the injured if he is deceased subsequently for reasons other than attributable to the accident or injuries under Clause 1(c) of Section 166. Such a claim would be completely distinct from personal injuries to the claimant and which may not be the cause of death. Such claims of personal injuries would undoubtedly abate with the death of the injured. What would the loss of estate mean and what items would be covered by it are issues which has to engage our attention. The appellant has a statutory obligation to pay compensation in motor accident claim cases. This obligation cannot be evaded behind the defence that it was



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available only for personal injuries and abates on his death irrespective of the loss caused to the estate of the deceased because of the injuries.

10. In **Umed Chand** (supra), giving a broad liberal interpretation to the provisions of the Act so that legal representatives do not suffer injustice, it was observed that the claim for personal injuries will not survive on death of the injured unrelated to the accident but the legal representatives could pursue the claim for enhancement of the claim for loss of the estate which would include expenditure on medical expenses, travelling, attendant, diet, doctor's fee and reasonable monthly annual accretion to the estate for a certain period. It is trite that the income which a person derives compositely forms part of the expenditure on himself, his family and the savings go to the estate. The unforeseen expenses as aforesaid naturally have to be met from the estate causing pecuniary loss to the estate.

11. In **Maimuna Begum** (supra) the defence under Section 306 of the Indian Succession Act, 1925 on the old English Common Law maxim “*actio personalis moritur cum persona*” was rejected opining that it would be unjust to non-suit the heirs on that ground.

12. In **Venkatesan** (supra), the injured claimant preferred an appeal dissatisfied, but was deceased during the pendency of the appeal. Compensation came to be awarded under the Act for loss of estate keeping in mind the nature of the injuries, the treatment, the expenditure incurred and loss of income.

13. In **Surpal Singh** (supra), Justice K.S. Radhakrishnan, C.J. (as he then was), observed that the Act was a social welfare legislation providing for compensation by award to people who sustain bodily injuries or get killed. The grant of compensation had to



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be expeditious as procedural technicalities could not be allowed to defeat the just purpose of the act. The Courts in construing social welfare legislations had to adopt a beneficial rule of construction which fulfils the policy of the legislation favorable to those in whose interest the Act has been passed. Judicial discipline demanded that the words of a remedial statutes be construed so far as they reasonably admit so as to secure that relief contemplated by the statute and it shall not be denied to the class intended to be relieved. Rejecting the maxim of “actio personalis moritur cum persona” on the premise that it was an injury done to the person and the claim abated with his demise it was observed:

“11. The question as to whether injury was personal or otherwise is of no significance so far as the wrong doer is concerned and he is obliged to make good the loss sustained by the injured. Legal heirs and legal representatives would have also suffered considerable mental pain and agony due to the accident caused to their kith and kin. Possibly they might have looked after their dear ones in different circumstances, which cannot be measurable in monetary terms. We are therefore in full agreement with the view expressed by the learned Single Judge of this Court in Gujarat State Road Transport Corporation's case (supra) that even after death of the injured, the claim petition does not abate and right to sue survives to his heirs and legal representatives.”

14. This view has subsequently been followed in a decision authored by brother Justice M.R. Shah J., (as he then was) in Madhuben Maheshbhai Patel v. Joseph Francis Mewan, (2015) 2 GLH 499, holding as follows:



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“12....Considering the aforesaid decision of the Division Bench of this Court in the case of Surpal Singh Ladhubha Gohil (supra); decisions of the learned Single Judge of this Court in the case of Jenabai Widow of Abdul Karim Musa (supra) and in the case of Amrishkumar Vinodbhai (supra); and aforesaid two decisions of the learned Single Judge of the Rajasthan High Court, we are of the opinion that maxim “*actio personalis moritur cum persona*” on which Section 306 of the Indian Evidence Act (sic Indian Succession Act) is based cannot have an applicability in all actions even in an case of personal injuries where damages flows from the head or under the head of loss to the estate. Therefore, even after the death of the injured claimant, claim petition does not abate and right to sue survive to his heirs and legal representatives in so far as loss to the estate is concerned, which would include personal expenses incurred on the treatment and other claim related to loss to the estate. Under the circumstances, the issue referred to the Division Bench is answered accordingly. Consequently, it is held that no error has been committed by the learned Tribunal in permitting the heirs to be brought on record of the claim petition and permitting the heirs of the injured claimant who died subsequently to proceed further with the claim petition. However, the claim petition and even appeal for enhancement would be confine to the claim for the loss to the estate as observed hereinabove.”

15. Similar view has been taken by the Punjab & Haryana High Court in **Joti Ram v. Chamanlal**, AIR 1985 P&H 2 and the Madras



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*High Court in **Thailammai v. A.V. Mallayya Pillai**, 1991 ACJ 185 (Mad).*

*16. The view taken in **Kanamma** (supra) and **Uttam Kumar** (supra) that the claim would abate is based on a narrow interpretation of the Act which does not commend to us. The reasoning of the Gujarat High Court is more in consonance with aim, purpose and spirit of the Act and furthers its real intent and purpose which we therefore approve.*

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18. The Tribunal, on technicalities rejected his claim for salary, medical expenses and percentage of disability and granted a measly compensation of Rupees one lakh only by a cryptic order. We are, therefore, of the opinion that while the claim for personal injuries may not have survived after the death of the injured unrelated to the accident or injuries, during the pendency of the appeal, but the claims for loss of estate caused was available to and could be pursued by the legal representatives of the deceased in the appeal.

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20. We see no reason to deviate from the consistent judicial view taken by more than one High Court that loss of estate would include expenditure on medicines, treatment, diet, attendant, Doctor's fee, etc. including income and future prospects which would have caused reasonable accretion to the estate but for the sudden expenditure which had to be met from and depleted the estate of the injured, subsequently deceased.

(Emphasis supplied)

18. In the present case, the learned Tribunal has awarded the compensation in favour of the claimant on the heads of pain, shock and suffering; loss of amenities and enjoyment of life; and loss of studies. The said compensation now forms part of the estate of the



claimant. Therefore, following the judgment of the Supreme Court in ***Kahlon*** (supra), it must be held that while the Legal Heirs of the Claimant may not be entitled to seek enhancement of compensation on the above heads, they would surely be entitled to defend the compensation already granted to the Claimant, and that the same cannot be denied to them or reduced only because of the death of the Claimant post passing of the Impugned Award by the learned Tribunal.

19. In ***Kahlon*** (supra), the Supreme Court has further held that the loss of income and future prospects which would have caused reasonable accretion to the estate would survive the death of the claimant. Therefore, the said claim of the Legal Heirs of the Claimant also does not abate on the death of the Claimant.

Functional Disability:

20. On merits of the above claim, it is important to first re-emphasise on the nature of the injuries that were suffered by the Claimant due to the accident. PW3 in his statement had deposed that the Claimant was suffering from ataxia (gait disturbance, that is, impaired balance and coordination), and was unable to read or write anything, could not walk without support, and his brain performance was impaired, including his intellectual capacity. The Claimant was found unable to perform the requisite test deemed necessary from neuropsychology department, and the disability suffered by him was found to be permanent in nature. The learned Tribunal assessed the functional disability of the claimant to the whole body as 100%,



observing as under:

“22. In present case, the record suggests that it being a case of mild Quadriplegia and cognitive intellectual impairment, the Claimant is entitled for Future Loss of Wages. This Court cannot overlook the fact that the Claimant belongs to lower middle strata of society and it is hard for him to raise the resources required for his ongoing medical expenses. I have considered that the fact that the Claimant will never be able to pursue his studies or to do any work/earn due to the disabilities sustained, his earning capacity being totally curtailed. Keeping in view the facts and circumstances, the functional disability of Claimant is taken as 100% in relation to his whole body, in view of dictum of “Raj Kumar V/s. Ajay Kumar & Anr. (2011) 1 SCC 343”.”

21. Though the learned counsel for the Insurance Company sought to contend that as the Claimant had suffered only 75% functional disability as assessed in his Disability Certificate and, therefore, the learned Tribunal has erred in assessing the claimant's functional disability with respect to the whole body as 100%, I find no merit in the same. From the nature of the above injuries suffered by the Claimant as a result of the accident, the assessment of the functional disability to the whole body as 100% by the learned Tribunal cannot be faulted. The challenge of the Insurance Company in this regard is therefore, rejected.

Quantum of compensation towards pain, shock and suffering; loss of amenities and enjoyment of life; and loss of studies

22. In *Lalan D. Alias Lal and Anr. v. Oriental Insurance Company Ltd* (2020) 9 SCC 805, the Supreme Court while placing



reliance on the judgment of the Supreme Court in ***Raj Kumar v. Ajay Kumar*** (2021) 1 SCC 343, has held that where the compensation is awarded by treating the loss of future earning capacity up to 100% or even more than 50%, the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and only a token or nominal amount has to be awarded under those heads. The Supreme Court, distinguished its earlier judgments in ***Master Mallikarjun v. Divisional Manager, the National Insurance Company Ltd. & Anr***, (2014) 14 SCC 396 and ***Kajal*** (Supra), by observing that there, the victims were minor children.

23. In ***Kajal*** (supra), the Supreme Court considering a case where injury was suffered by a 12 year old girl, on compensation to be awarded towards pain, suffering and loss of amenities, held as under:

“26. Coming to the non-pecuniary damages under the head of pain, suffering, loss of amenities, the High Court has awarded this girl only Rs.3,00,000/-. In Mallikarjun v. Divisional Manager, The National Insurance Company Limited and Ors., this Court while dealing with the issue of award under this head held that it should be at least Rs.6,00,000/-, if the disability is more than 90%. As far as the present case is concerned, in addition to the 100% physical disability the young girl is suffering from severe incontinence, she is suffering from severe hysteria and above all she is left with a brain of a nine month old child. This is a case where departure has to be made from the normal rule and the pain and suffering suffered by this child is such that no amount of compensation can compensate.”



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27. One factor which must be kept in mind while assessing the compensation in a case like the present one is that the claim can be awarded only once. The claimant cannot come back to court for enhancement of award at a later stage praying that something extra has been spent. Therefore, the courts or the tribunals assessing the compensation in a case of 100% disability, especially where there is mental disability also, should take a liberal view of the matter when awarding compensation. While awarding this amount we are not only taking the physical disability but also the mental disability and various other factors. This child will remain bed-ridden for life. Her mental age will be that of a nine month old child. Effectively, while her body grows, she will remain a small baby. We are dealing with a girl who will physically become a woman but will mentally remain a 9 month old child. This girl will miss out playing with her friends. She cannot communicate; she cannot enjoy the pleasures of life; she cannot even be amused by watching cartoons or films; she will miss out the fun of childhood, the excitement of youth; the pleasures of a marital life; she cannot have children who she can love let alone grandchildren. She will have no pleasure. Her's is a vegetable existence. Therefore, we feel in the peculiar facts and circumstances of the case even after taking a very conservative view of the matter an amount payable for the pain and suffering of this child should be at least Rs.15,00,000/-."

24. In **Master Ayush** (supra), the injured was a 5 year old child. The Supreme Court, relying upon its judgment in **Kajal** (supra), awarded compensation of Rs. 10,00,000/- towards pain, suffering and loss of amenities.

25. In the present case, the claimant was a minor at the time of the accident, aged about 13 years. Therefore, in fact, exception as carved



out in *Kajal* (supra) would become applicable especially keeping into account the similarity of the injuries suffered by the victims of the accident in the two cases, that is, in *Kajal* (supra) and in the present case.

26. It is reiterated that merely because the Claimant has unfortunately died during the pendency of the present appeal, this would give no reason to this court to reduce the amount of compensation. Life is uncertain and compensation is granted on basis of certain assumptions and what is found to be reasonable in the given fact situation. Compensation awarded cannot be revisited only because later some event transpires which may be contrary to such assumptions. If this is allowed, there shall be no finality to an Award. Even otherwise, the claimant would have suffered the pain and loss of amenities of life for these seven years. Even these cannot be measured in terms of money, however, as compensation can be granted only in terms of money, I find that the compensation awarded is reasonable and the same does not warrant any interference from this Court.

27. In view of the above, while enhancement of compensation cannot be granted, at the same time, no fault can be found in the learned Tribunal awarding a sum of Rs.1,50,000/-to the claimant towards pain, shock and suffering; Rs.1,50,000/- towards loss of amenities and loss of enjoyment of life and Rs.1,00,000/- towards loss of studies.

28. The challenge of the Insurance Company in this regard is, therefore, rejected.



Future Prospects:

29. As far as the claim of enhancement made on behalf of the Legal Heirs of the claimant is concerned, I find merit in such claim.

30. As noted hereinabove, in **Kahlon** (supra), the Supreme Court has held that the loss of income and future prospects which would have caused reasonable accretion to the estate would survive the death of the claimant.

31. In the present case, the learned Tribunal has awarded the loss of income without taking into account the loss of future prospects. In terms of the judgments of the Supreme Court in **National Insurance Company Limited v. Pranay Sethi and Others**, (2017) 16 SCC 680, and **Parminder Singh v. New India Assurance Co. Ltd. & Ors.**, (2019) 7 SCC 217, and **Lalan D.** (supra), the claimant was entitled to future prospects at the rate of 40% to be applied with the relevant multiplier, that is, 18. The compensation shall stand enhanced accordingly.

Attendant Charges

32. As far as the attendant charges are concerned, in terms of the Judgment of the Supreme Court in **Kahlon** (supra), such a claim of Legal Heirs of the claimant shall also survive his death.

33. Though the Legal Heirs of the Claimant have not led any evidence on any amount having been spent by them towards the attendant charges, at the same time, keeping in view the nature of the injuries suffered by the Claimant and his age, it is evident that the claimant would have required services of an attendant 24 hours a day.



Such services may be provided by the family members of the claimant, for which they also need to be adequately compensated. In *Lalan D.* (supra), the Supreme Court has held that even in absence of a caregiver being appointed on a regular basis for the injured, such caregiver's role would be fulfilled by a family member, who would be able to perform such a role only by diverting their own time from any form of gainful employment which would have generated some income. The Supreme Court held that, therefore, a lump-sum amount should be awarded towards the attendant charges.

34. In the present case, the learned Tribunal has erred in awarding only a meagre amount of Rs.20,000/- towards attendant charges. Keeping in view that the Claimant unfortunately has passed away on 16.06.2021, I deem it appropriate to award a lump-sum amount of Rs.3,50,000/- towards the attendant charges to the LR's of the claimant. The compensation shall stand enhanced accordingly.

Conclusion & Directions

35. In view of the above, the compensation amount in favour of the LR's of the Claimant is re-assessed as under:

1.	Future Loss of Income (8554 x 140/100 x 12 x 18)	Rs.25,86,729.60
2.	Towards Pain, Shock & Suffering	Rs.1,50,000.00
3.	Loss of Amenities & Enjoyment of Life	Rs.1,50,000.00
4.	Towards servant /attendant charges	Rs.3,50,000.00
5.	Towards conveyance & special diet	Rs.40,000.00
6.	Towards Medical bills	Rs.5,000.00
7.	Towards Loss of studies	Rs.1,00,000.00
	Total	Rs.33,81,729.60



36. Vide order dated 30.11.2016 of this Court, the Insurance Company was directed to deposit the entire awarded amount along with the interest with the learned Tribunal. The Insurance Company shall now deposit the enhanced amount with interest at the rate of 9% per annum and for the period as was awarded by the learned Tribunal, with the learned Tribunal within a period of eight weeks from today. The same shall be released in favour of the Legal Heirs of the Claimant in accordance with the schedule of the disbursal as prescribed in the Impugned Award.

37. With the above directions, the appeal filed by the Insurance Company shall stand dismissed, while the appeal filed by the claimant is partially allowed in the above terms.

38. The statutory amount deposited by the Insurance Company for its appeal shall be released in favour of the Insurance Company alongwith interest accrued thereon.

39. There shall be no order as to costs.

NAVIN CHAWLA, J.

NOVEMBER 21, 2023
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