



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

% **Judgment reserved on : 15 May 2024**
Judgment pronounced on: 05 July 2024

+ **MAC.APP. 739/2017**

MAGMA HDI GENERAL INSURANCE CO LTD

..... Appellant

Through: **Mr. Harsh Sharan, proxy**
counsel for Mr. Navneet Kumar,
Advocate.

versus

HARISH KUMAR SUKHIJA & ORS **..... Respondents**

Through: **Mr. S.N. Parashar, Advocate.**

+ **MAC.APP. 1043/2017**

HARISH KUMAR SUKHIJA THR KUNAL SUKHIJA

..... Appellant

Through: **Mr. S.N. Parashar, Advocate.**

versus

AJAY SINGH & ORS. **..... Respondents**

Through: **Mr. Harsh Sharan, proxy**
counsel for Mr. Navneet Kumar,
Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgment shall decide the cross-appeals instituted by the appellants/parties herein under Section 173 of the Motor Vehicles Act,



1988¹, challenging the impugned judgment-cum-award dated 22.05.2017 passed by the learned Motor Accident Claims Tribunal, Tis Hazari Courts (West), Delhi² in MACT No. 477382/2016³ titled as '*Harish Kumar Sukhija v. Ajay Singh & Ors.*'.

FACTUAL BACKGROUND:

2. Briefly stated, Mr. Harish Kumar Sukhija, through his son Mr. Kunal Sukhija (*hereinafter referred to as "claimant"*) filed a claim petition seeking compensation under section 166 read with section 140 of the MV Act before the learned Tribunal after sustaining grievous injuries in a motor accident dated 30.03.2015 at 9.30AM. The accident occurred while the claimant was riding his motorcycle on the Delhi Jal Board Service Road, Paschim Vihar, Delhi when the driver of one parked black Santro car bearing No. DL-9CJ-4088 (*hereinafter "the offending vehicle"*) suddenly opened his gate at the same time when the claimant was passing through the right side of the offending vehicle. As a result, the claimant lost balance and control over his motorcycle and fell on the road due to which he sustained grievous injuries in the nature of "*RTA with left fronto temporo parietal acute subdural hematoma, multiple brain contusion with diffuse axonal injury with midbrain infraction*" among other injuries. It is stated that the accident has rendered the claimant in a vegetative state as his body is entirely paralysed. As a result of the abovesaid accident, an FIR⁴ No. 244/2015 under Section 279/338 IPC⁵ was

¹ MV Act

² Tribunal/ MACT

³ Claim Petition

⁴ First Information Report



registered against the driver of the offending vehicle at Police Station Paschim Vihar, Delhi.

PROCEEDINGS BEFORE THE TRIBUNAL AND IMPUGNED AWARD DATED 22.05.2017:

3. On the service of notice of the claim petition, respondent No. 1 and 2 i.e., the registered owner and driver of the offending vehicle respectively, filed a joint written statement denying the allegations of the claimant and further stating that the claimant is himself responsible for causing the accident. Respondent No.3/Insurance Company in its written statement although acknowledged that the offending vehicle was duly insured with it at the time of the accident. However, it *inter alia* took the objection that the aforesaid FIR along with the DAR⁶ fail to bring out involvement of the offending vehicle in the accident in question; and it was alleged that the claimant has planted a false eyewitness and has falsely implicated the offending vehicle in order to claim compensation.

4. Based on the pleadings, the following issues were framed by the learned tribunal:

- “1. Whether the petitioner Sh. Harish Kumar Sukhija has sustained injuries in an accident which took place on 30.03.2015 at about 9:30 a.m., due to rash and negligent driving of respondent No.1 while driving vehicle No. DL-8CJ-4088 (Santro Car), owned by respondent no.2 and insured with respondent no.3? OPP.
2. Whether the petitioner is entitled for any compensation, if so, to what amount and from whom? OPP
3. Relief.”

⁵ Indian Penal Code, 1860

⁶ Detailed Accident Report



5. With regard to Issue No.1, relying upon the material placed on record and the evidence led by the parties, the learned Tribunal held that the testimony of the eye-witness to the accident had not been shaken even in his cross-examination and relying upon the decision of the Court in **National Insurance Company Limited v. Pushpa Rana**⁷, held that the Detailed Accident Report filed by the police u/s 173 CrPC in the present case was sufficient to prove that the driver of the offending vehicle acted rashly and negligently. Accordingly, the learned Tribunal decided the said issue in favour of the claimant.
6. The cross examination of the eyewitness produced by the claimant, Mr. Sanjay Kapoor, is reproduced herein below:

“I am a summoned witness. My affidavit was prepared by my Advocate Sh Ajay Kumar Malhotra, Chamber No. 574, Western Wing, Tis Hazari at my instance. I was directed by the court on the last date of hearing to appear today. I do not know the name of the owner of Khokha of Paan Shop where I was going regularly for about 6-7 months, In the service lane, only one Santro Car of black colour was parked which has just arrived. There are two gates of Delhi Jal Board. Black Santro car came from the left side of Delhi Jal Board i.e. from side of District Centre and was heading towards Peera Garhi. The paan shop where I was standing is at point A of the site plan which is Ex. PW 3/DA, Black colour Santro car was parked at point B of the site plan. Motor-cyclist came from the side of RBI Gate as shown in the site plan Ex. PW 3/DA. My face was towards the Radisson Hotel where the Santro car was parked. I saw the motor-cycle coming from inside the RBI Enclave Gate which was just 25 feet away from the place where I was standing. It is correct that I use glasses for my near vision. I saw that driver of Santro Car opened the door all of a sudden due to which the motor-cyclist struck and fell down on the road. The accident took place at about 9.15/9.30 a.m. I Immediately rushed to the spot along with other persons. I did not inform the police nor did I pick up the injured or tried to catch hold the driver. There are 5/6 persons gathered at the spot. I helped along with other persons to put the injured into the same car. Injured was not taken to Sanjivani

⁷ 2009 ACJ 287



Hospital which was just near to the spot. I do not know as to why he was not taken there. No effort was made by me to take the injured to the Sanjivani Hospital. I noted down the number of the offending vehicle. At this stage, witness has shown the mobile phone where he had saved the number of offending vehicle i.e. DL-8C J 4088. It is wrong to suggest that I have saved the number of the offending vehicle today itself. I wanted to see the number today before my evidence hence I had dialled at this number today at 1.25 p.m. I had not met the police on the day of accident nor I had given my address to anyone. I had told about the accident to my employer Mr. Surender Sachdeva R/o J-79 RBI Enclave. I was working with him as a driver.

I had not given my statement anywhere in the court earlier to this court. Vol. I have been summoned by the criminal court but i could not appear before the court that day. I do not know Kunal Sukhija (PW4) and injured Harish Sukhija. I had informed the police about the driver of the offending vehicle on 01.12.2015, Vol. I was told by my employer about a week later that the driver of the offending vehicle had left the injured in the hospital and had run away. I had not disclosed my employer that I had noted down the number of offending vehicle in my mobile nor did I supply the same to him at the time he told me about the factum of running away of driver of the offending vehicle.

I do not know whether my employer knew the injured prior to the accident. It is wrong to suggest that I have not seen the accident or that I am deposing falsely just to help the petitioner to get the false claim.”

7. At this stage, it would be apposite to note that pursuant to this Court’s order dated 10.05.2018, a Special Investigation Team was constituted by the Delhi Police to investigate the accident in question. As per order dated 24.04.2019 passed by this Court, the investigation revealed that the accident in question actually happened at the alleged site and that the injured person was taken to the hospital by the driver of the offending vehicle after which he fled from the hospital. It has also been recorded by this Court that after further investigation, the involvement of the driver of the offending vehicle was confirmed by



the Police on the basis of the statement made by another eyewitness to the accident who subsequently came forward.

8. As per the status report filed on 17.12.2019 by the Police Crime Branch, Rohini, the police, on 10.12.2019, examined one Mr. V. K. Walia, employee at Delhi Jal Board Office, Paschim Vihar and aged 62 years, who stated that on the day of the accident in question, at about 9.30 AM, when he reached his office, he saw a public gathering and came to know about the injured claimant lying unconscious at the site of the accident and upon his request, 2-3 persons took the injured to one Sehgal Nursing Home, Paschim Vihar in a black Santro Car. It is also submitted vide the said status report that the driver of the offending vehicle admitted that the accident happened because of he had negligently opening the door of the car. Accordingly, the police concluded that there is no other evidence to show that the eyewitness had been planted in this case, or that he has deposed falsely, or that the driver of the offending vehicle, the claimant, the eyewitness, and the police official are acting in connivance with each other.

9. As regards the Issue No.2 *qua* quantum of compensation, the learned Tribunal computed the total compensation amount payable to the claimant in the following manner as reproduced hereinbelow:

“40. Nature of injuries and reimbursement of medical bills

The petitioner has examined Sh. Inder Prakash from Fortis Hospital Shalimar, Delhi as PW1 and he has given various dates (stated herein above) on which the patient was admitted and discharged. He has filed on record the discharge summaries of the injured as Ex. PW1/B to Ex. PW1/E. He also filed on record the detailed bills as Ex. PW1/F to Ex. PW1/J. He has categorically stated that the told amount of Rs.26,71,073/- was charged from the petitioner but the patient had paid the amount of Rs. 20,23,360/- to



the Fortis Hospital and rest of the amount was paid by the Medi Claim policies.

The petitioner has also examined his son Sh. Kunal Sukhija as PW-4 and he has corroborated the testimony of PW-1. PW-4 has placed on record the entire bills, the details of which have already been given herein above.

The petitioner along with the written arguments has placed on record the list of the bills of Hospitals to the tune of Rs.20,70,688/. PW-1 has already deposed about the payment of the amount of Rs. 20,23,360/- by the injured to the Fortis Hospital. The bills from Jaipur Golden Hospital and Venkateshwar Hospital, the names of which have been mentioned in the list of bills of hospitals have not been proved, to my mind arid as such, the petitioner is entitled for the amount of Rs. 20,23,360/- on accounts of the bills paid to the Fortis Hospital.

The petitioner has also placed on record the list of bills of the Laboratory to the tune of Rs. 20,370/- along with written arguments. During the course of arguments, the said bills have not been disputed by the respondents. Otherwise also, the bills have been placed on record by the petitioner. As such, to my mind keeping in view the fact that the petitioner has suffered grievous injuries on account of which, his entire body has been paralyzed and he has been in a vegetative state, the petitioner is entitled for the amount of Rs. 20,370/- on account of the bills of Laboratory.

The petitioner has also placed on record the list of medicine bills to the tune of Rs. 5,34,356/- along with the written arguments. All the bills have been placed on record by the petitioner. The same have not been disputed at all. As such to my mind, keeping in view the nature of injuries received by the injured, the petitioner is entitled for the amount of Rs. 5,34,356/- on account of the medicine bills.

The petitioner has also placed on record the list of Physiotherapy bills to the tune of Rs. 2,83,900/-. All the bills have been placed on record by the petitioner. The petitioner has suffered 100% disability as per the disability certificate Ex. PW5/1 on record. The petitioner has been rendered in a vegetative state and petitioner is unable to move, or walk. PW-4 has placed on record the recent photographs of the petitioner as well. The petitioner has placed on record the bills issued by the Physiotherapist Dr. Shefaii Acharya, Dr. Amit Goyal and Cure 'n' Care but none has been summoned and examined by the petitioner to prove the abovesaid bills. However, keeping in view the vegetative state of the petitioner, I hereby award an amount of Rs. 1,00,000/- on this account to the petitioner. Accordingly, an amount of Rs. 2678086/- (Rs. 20,23,360/- + Rs. 5,34,356/- + Rs.20370/- +Rs. 1,00,000/-) is hereby awarded to the petitioner under this head.



41. Compensation towards attendant charges and Compensation towards future treatment

Id. Counsel for the petitioner in the written arguments has claimed the total compensation Rs. 3,68,38,060.63 whereas the present petition was filed for the total compensation of Rs. 9 crores.

It has been vehemently argued that an ICU has been set up for the petitioner at Home and an amount of Rs. 79800/- per month are the expenses of ICU. On the other hand, Ld. Counsel for the Insurance Company has argued that the expenses involving in setting up the ICU at the house of the petitioner cannot be treated into consideration as the same was never prescribed by the treating doctor.

The petitioner along with the written arguments has claimed an amount of Rs. 20,62,830/- on account of the attendant charges including the charges of the ICU. The petitioner has examined Sh. Sachin Sharma, Assistant Manager from Health Care at home as PW-8 on this count who have stated that his company had started the services w.e.f. 28.04.2015 at the request of Sh. Kunal Sukhija, PW-4.

It has to be seen that PW-4, in the cross examination has admitted that there is no written prescription whereby the treating doctor has recommended for setting up of ICU at Home. By way of volunteer, PW-4 states that the treating doctor had given oral recommendation. No such Doctor has been examined by the petitioner. As such, I am of the opinion that the petitioner is not entitled for the expenses on account of setting up of the ICU at Home. But at the same time, it has to be seen that in the discharge summaries from hospital Foley's Catheter, Tracheostomy and PEG Tube Care have been advised. The petitioner has suffered 100% disability and he has been rendered in a vegetative state unable to move and walk. Accordingly, to my mind, at least a nursing attendant is required for looking after the petitioner.

The petitioner has claimed an amount of Rs. 1 crore on account of future hospitalisation and an amount of Rs. 1.80 Crores on account of future treatment for 10 years as expected life. To my mind, the above said amount is absolutely exaggerated. No evidence has been placed on record by the petitioner to show that the life expectancy of the petitioner is 10 years. The age of the petitioner at the time of the accident is stated to be 58 years. As such, I am of the opinion that the just and reasonable charges for the attendant can be taken to be Rs.15,000/- per month. So far as the period is concerned, I am of the opinion that as per PW-8 the services at home were started on 28.04.2015 and accordingly, the petitioner is entitled for the attendant charges from 28.04.2015 and upto



22.05.2018 i.e. upto 1 year after the date of the award. The said period comes to 37 months approximately. Accordingly, the petitioner is entitled to an amount of Rs.5,55,000/- (Rs. 15000/- x 37).

42. Pain & sufferings

As per the disability certificate, the petitioner has suffered 100% disability and he has been totally rendered in a vegetative state. The disability certificate has been proved on record by PW-2, by PW-5 and by PW-7 as Ex. PW5/1. It has not been disputed that the petitioner is unable to walk and move.

It is settled law that a particular amount can not be fixed on pain and sufferings for all cases as it varies from case to case. Judicial notice can be taken of the fact that since the petitioner had got injuries as elicited above, he might have suffered acute pain and sufferings owing to the said injuries. Considering the nature of injuries as elicited above and facts and circumstances of the case, I hereby grant compensation of Rs. 30,000/- towards pain and sufferings.

43. Compensation for conveyance and special diet

Considering the nature of injuries suffered by the petitioner elicited above, I am of the opinion that petitioner must have spent some sum under this head. Hence, I hereby grant compensation of Rs. 50,000/- for expenses incurred on conveyance and special diet.

44. Compensation towards loss of income during treatment

The photocopy of Election ID Card of the injured is there on record and as per the said photocopy of the Election ID card, the injured is stated to be 52 years as on 01.01.2009. The date of accident is 30.03.2015. In the present claim petition, it has been stated that the petitioner was 58 years of age at the time of accident. To my mind, as per the photocopy of the election ID Card of the injured, the age of the petitioner on the date of the accident has to be taken as 58 years.

45. In the claim petition, the petitioner has claimed that he was working as a Electronics Businessman at Shop No. 13, old Lajpat Nagar Market, Delhi and earning Rs. 40,000/- per month at the time of the accident. The petitioner has examined PW-6 from the Income Tax Office and who has filed on record the Income tax returns of the petitioner from the year 2009-10 to the year 2014-15. Though, nothing has been placed on record by the petitioner to show his income or to show his educational qualification. But keeping in view the ratio of the Income Tax Returns and the minimum wages of an **unskilled** person on the date of the accident which is 30.03.2015, the monthly income of the petitioner has to be taken as Rs. 10,000/-.



Considering the facts and circumstances as well as nature of injuries as elicited above, the court is of the opinion that petitioner could not have worked for about 24 months. Accordingly, I hereby grant compensation for a sum of Rs. 2,40,000/- (Rs10,000/- x 24) towards loss of income during treatment period.

46. Compensation on account of disability

This court has received the disability certificate containing 100% permanent disability in the form of Ex, PW5/1. The patient is in a vegetative state with Tracheostomy, Foley's Catheter and PEG for Feeding. The disability certificate has not been disputed by the insurance company. As such, this court is of the opinion that the petitioner has been able to prove on record the disability certificate as Ex. PW5/1 and that he has sustained 100% permanent disability. Ld. Counsel for the insurance company has vehemently argued that there is no functional disability with the petitioner.

47. It is now the settled law that it is the percentage of functional disability arising out of physical disability which matters while assessing the compensation arising out of disability. On this aspect, I gain support from judgment of Hon'ble Supreme Court in "Raj Kumar Vs. Aiay Kumar & Ors. reported as 2011 ACJ" I.

In the case in hand, the functional disability of the petitioner, to my mind, is also 100% as is apparent from the disability certificate and the entire material available on record.

48. Ld. Counsel for petitioner has requested for balancing the income of the victim on the basis of Inflation trends and requested that 50% increase be made in the income of the victim on the basis of judgment of Hon'ble Supreme Court of India in "Rajesh & Ors. Vs. Rajbir Singh & Ors. 2013 (6) Scale 563". On this aspect, I am being guided by the judgment of Hon'ble High Court of Delhi in "Taslim Parvin & Anr. Vs. Jugendra Singh & Ors." in **MAC APP No. 88/16 & CM No. 3172/2016 decided on 29/01/2016** by Hon'ble Mr. Justice R.K. Gauba wherein it has been held as under:

"5. The law is well settled that in case of compensation on account of death, loss of dependency is to be computed by adopting the multiplier having regard to the age of the deceased or the claim whichever is higher [U.P State Road Transport Corporation and Ors vs Trilok Chandra and Ors, (1996) 4 SCC 362 and General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas & ors, (1994) 2SCC 176].

6. In the case reported as Saria Verma & Ors. Vs. Delhi Transport Corporation & Anr, (2009) 6 SCC 121, Supreme Court, inter-alia, ruled that the element of future



prospects of increase in income will not be granted in cases where the deceased was “self employed” or was working on a “fixed salary”. Though this view has affirmed by a bench of three Hon'ble Judges in Reshma Kumari & Ors Vs. Madan Mohan & Anr, (2013) 9SCC 65, on account of divergence of views, as arising from the ruling in Rajesh & Ors vs. Rajbir & Ors (2013) 9 SCC 65, on account of divergence of views, as arising from the ruling in Rajesh & Ors. vs. Rajbir & Ors., (2013) 9 SCC 54, the issue was later referred to a larger bench, inter-alia, by order dated 02/07/2014 in National Insurance Company Ltd. vs. Pushpa & Ors., (2015) 9 SCC166.

7. Against the above backdrop, by judgment dated 22.01.2016 passed in MAC Appeal No. 956/2012 (Sunil Kumar v. Pyar Mohd.), this Court has found it proper to follow the view taken earlier by a learned single judge in MAC Appeal No. 189/2014 (HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.) decided on 12.1.2015, presently taking the decision in Reshma Kumari (Supra) as the binding precedent, till such time the law on the subject of future prospects for those who are "self-employed" or engaged in gainful employment at a "fixed salary" is clarified by a larger bench of the Supreme Court.”

After going through the facts and circumstances of the present case and the aforesaid case laws laid down and also the age of the petitioner/injured, I am not inclined to grant future prospects on the income of the petitioner in this case.

49. In the present case, the petitioner was 58 years of age as on the date of accident for which the relevant multiplier ‘9’ (for the age group of 56 to 60 years) as mentioned in Sarla Verma (supra). In these circumstances, the total loss of earning capacity comes out to be Rs. 10,80,000/- = (Rs. 10,000/- x 12 x 9 x 100/100).

50. Compensation towards loss of amenities of life

Considering the facts and circumstances of the present facts; the nature of injuries suffered by the petitioner as elicited above, I hereby grant compensation of Rs. 20,000/- towards for loss of amenities of life.”

10. The same is presented in a tabular form hereinbelow:

S. No.	Head	Amount
1.	Reimbursement of medical bills	Rs.26,78,086/- (Rs. 20,23,360/- + Rs.



		5,34,356/- + Rs.20370/- +Rs. 1,00,000/-)
2.	Compensation on account of future treatment and attendant charges	Rs. 5,55,000/- (Rs. 15000/- x 37 months)
3.	Pain and Suffering	Rs. 30,000/-
4.	Special diet and conveyance	Rs. 50,000/-
5.	Loss of Income during treatment period	Rs. 2,40,000/- (Rs10,000/- x 24 months)
6.	Compensation on account of disability	Rs. 10,80,000/- (Rs. 10,000/- x 12 x 9 x 100/100)
7.	Loss of amenities of life	Rs. 20,000/-
	Total Compensation	Rs. 46,53,086/-

11. Thus, the learned Tribunal awarded total compensation of Rs. 46,53,086/- along with interest @ 9% per annum from the date of filing of the DAR i.e. 13.01.2016 till realisation. Lastly, as the offending vehicle was admittedly insured with the Oriental Insurance Company, the learned Tribunal held the driver and owner of the offending vehicle as well as the insurance company to be jointly liable to pay the compensation amount to the claimant and directed the insurance company to deposit the award amount along with interest within 30 days from the date of passing of the impugned judgment cum award i.e. 22.05.2017, failing which it shall be liable to pay interest @12% per annum for the period of delay.

GROUND OF APPEAL: BY THE APPELLANT/ INSURANCE CO. IN MAC. APP. 739/2017

12. The impugned judgment cum award has been assailed by the appellant/Insurance Company on the following grounds: -

- 12.1 That the learned Tribunal failed to appreciate that the FIR lodged does not mention any involvement of the offending vehicle nor does it make any mention of the alleged eyewitness



at the site of the accident or at the hospital. It is further contended that the Ld. Tribunal erred while relying upon such testimony as the eyewitness is a planted witness and his testimony itself is highly unreliable as it fails to establish the involvement of the offending vehicle in the motor accident dated 30.03.2015.

- 12.2 That the Ld. Tribunal failed to appreciate that the driver of the offending vehicle and the claimant have already settled the matter at Rs. 14,000 before the criminal court and have now approached the Ld. MACT in connivance with each other to unjustly enrich themselves.
- 12.3 As regards quantum of compensation, it is contended that the learned Tribunal erred in awarding Rs. 8,38,626/- to the claimant towards medical bills, laboratory bills and physiotherapy bills without satisfying itself with any valid/formal proof of the same. Secondly, the Ld. Tribunal erred in awarding compensation under 'Loss of income during treatment period' in a case where the claimant has suffered 100% permanent disability. Thirdly, the learned Tribunal erred when it awarded an exorbitant amount of Rs. 5,55,000/- towards 'attendant charges'. Lastly, it is contended that the compensation amount awarded by the Ld. Tribunal is not 'just and equitable', thus the impugned judgment cum award is liable to be set aside.

GROUND OF APPEAL: BY THE APPELLANT/ CLAIMANT IN MAC. APP. 1043/2017:

13. The impugned judgment cum award has been assailed by the claimant on the following grounds: -

- 13.1 That the learned Tribunal erred in assessing the compensation towards 'attendant charges' on a lump sum basis of Rs. 5,55,000/- instead of Rs. 20,62,830/- which is the actual amount incurred. It is contended that the learned Tribunal, in this regard, failed to consider the testimony of PW-8, Ass. Manager of M/s Health Care at Home India Pvt. Ltd. for providing ICU service at home who deposed that the expense of ICU service at home is approximately Rs. 79,800/- per month.
- 13.2 That the learned Tribunal erred in assessing the 'Future Loss of Income due to disability' without considering the Income Tax Returns filed by the claimant.



- 13.3 That the learned Tribunal erred in awarding an amount of only Rs. 1,00,000/- towards Physiotherapy bills under the head 'Reimbursement of medical bills' when in fact the bills raised and filed on record with regard to prescribed physiotherapy of the claimant are to the tune of Rs. 2,83,900/-.
- 13.4 That the learned Tribunal erred when it awarded "meagre amount" to the claimant towards 'pain and suffering' and 'loss of amenities and enjoyment of life' in view of the present physical and mental condition of the claimant. It is contended that the awarded amount under such heads is entitled to enhancement after the decision of this Court in "*Arvind Kumar Mishra v. New India Assurance Company Ltd.*, (2010) 10 SCC 254", "*Raj Kumar v. Ajay Kumar*, (2011) 1 SCC 343", and "*Govind Yadav v. The New India Insurance Co. Ltd.*, Civil Appeal No. 9014/ 2011 decided on 01.11.2011".
- 13.5 That the learned Tribunal erred in not awarding any amount to the claimant towards 'future medical expenses' in view of the poor medical condition of the claimant and continued requirement of the costly ICU services at home.

ANALYSIS AND DECISION:

14. I have given my thoughtful consideration to the submissions advanced by learned counsels for the rival parties at the Bar. I have also perused the relevant records of the case including the digitized Trial Court record.

15. At the outset, insofar as the appeal filed by the appellant/ insurance company is concerned, none of the grounds for challenge espoused, are tenable in law. On a careful perusal of the testimony of PW Sanjay Kapoor besides the report dated 17.12.2019 filed by the Crime Branch, Delhi, it is found that there are no grounds to disbelieve the version of the eye witness, and therefore, the finding recorded by the learned Tribunal in deciding issue No.1 in favour of the claimant are unassailable. Insofar as the quantum of compensation awarded to the claimant is concerned, this Court finds that the same requires to be



re-considered with regard to certain pecuniary and non pecuniary heads.

16. First things first, in so far as the compensation on account of reimbursement of medical expenses is concerned, the testimony of PW-4 with regard to the expenses incurred on the medical treatment of the claimant is substantiated by the testimony of PW-1 Mr. Inder Prakash from Fortis Hospital, Shalimar Bagh, Delhi and the documents in the nature of discharge summary, treatment/prescription slips and the bills of medicines purchased leave no scope for doubt that the learned Tribunal has not committed any illegality or perversity in awarding a total compensation of Rs. 26,78,086/- under the said head. Coming to compensation on account of attendant charges in the past and in future, considering that the claimant has been rendered in a vegetative state, there are sufficient grounds to assume that that the claimant has been requiring an attendant throughout the entire length and width of the period of his medical treatment, care and well being since the date of accident uptill now. Although, the learned Tribunal has rightly assumed that just and reasonable charges for one or two attendants can be taken to be about Rs. 15,000/- per month, the same has been confined for the period 28.04.2015 to 22.05.2018 and no provision is made for the future.

17. At the cost of repetition, the requirement of attendant is on a continuous basis and if one attendant is allowed 8 hours of work, at least three would be required round the clock but then we cannot overlook the ground situation that perhaps an attendant is required only during certain hours of the day, and therefore, taking a just and



reasonable view of the matter, it would be expedient that attendant charges are allowed for a period of 3 years @ Rs. 15,000/- plus provision for future in lump sum for two years which in total comes to Rs.9,00,000/-.

18. This brings the Court to assessment of compensation on account of loss of earning capacity or functional disability. The learned Tribunal has assumed the monthly notional income of the claimant @ Rs. 10,000/- per month, based on the testimony of PW-6 Mr. Dharamveer, Tax Assistant from ITO Ward No. 41(3), who produced the summoned record with regard to Income Tax Returns [“**ITR**”] filed by the claimant from the year 2009-10 to 2014-15. It would be relevant to refer to the testimony of the aforesaid witness, who brought out the details of the ITRs of the of the claimant as under:-

Sr. No.	Assessment year	Total Income	Tax Paid
1.	2010-11	Rs.1,20,000/-	Nil
2.	2011-12	Rs.1,27,810/-	Nil
3.	2012-13	Rs.2,60,500/-	Rs.1,152/-
4.	2013-14	Rs.2,60,910/-	Rs.1,212/-
5.	2014-15	Rs.1,23,840/-	Nil.

19. Now, it is our common experience that in our country ITRs do not reflect the true and real value of the assets and wealth of the assessee. However, in the absence of any testimony by PW-4 with regard to the income of the claimant/injured, the learned Tribunal has rightly assumed the notional income to be Rs. 10,000/- per month. At the same time, the learned Tribunal has overlooked the aspect of



prospects of future increase in the income of the claimant, which has to be reckoned at 10% since he was 58 years of age. Considering that the claimant has suffered 100% disability and has been rendered in a “vegetative state”, the compensation would work out to be Rs. 11,88,000/- i.e. $[(10000+1000) \times 9 \times 12]$.

20. Without further ado, the learned Tribunal has awarded meagre, unjust and unfair compensation towards pain and suffering @ Rs. 30,000/- as also loss of amenities of life @ Rs. 20,000/-. At the cost of repetition, having regard to the fact that the claimant has been rendered in a “vegetative state”, the same deserves to be enhanced and it would be just and reasonable to award Rs. 5,00,000/- under each of the above such heads.

21. Further, a reasonable provision has to be made towards expenses that would be incurred in future treatment of the claimant, which are fixed @ Rs. 7,50,000/- including special diet. Accordingly, the total amount of compensation is worked out as under:-

Sr. No.	Head	Compensation Awarded
1.	Reimbursement of Medical Bills	Rs. 26,78,086/-
2.	Attendant Charges	Rs. 9,00,000/-
3.	Pain & suffering	Rs. 5,00,000/-
4.	Loss of amenities of life	Rs. 5,00,000/-
5.	Future medical treatment including special diet	Rs. 7,50,000/-
6.	Loss of earning capacity	Rs. 11,88,000/-
7.	Loss of income during treatment period	Rs. 2,40,000/-
Total		Rs. 67,56,086/-



22. Before parting with these appeals, insofar as the award of compensation towards interest is concerned, the claim petition was instituted on 13.01.2016 and the impugned judgment-cum-award was passed in about one year and four months. In the aforesaid circumstances, there is no justification for awarding interest @ 9% per annum. This Court has been consistent in its view that the rate of interest should normally be 7.5% per annum.

23. Accordingly, the claimant is made entitled for total compensation of Rs. 67,56,086/- with interest @ 7.5% from the date of filing of DAR till realization. The amount of compensation already paid be adjusted and the balance amount with accrued interest be released/paid to the claimant in terms of directions of the learned Tribunal within four weeks from today, failing which, the appellant/insurance company shall be liable to pay penal interest @ 12% per annum from the date of this order till realization.

24. In view of the foregoing discussion, the appeal bearing MAC.APP. 739/2017 filed by the appellant/insurance company stands dismissed and the appeal bearing MAC.APP. 1043/2017 filed by the claimant stands allowed in terms of above directions.

25. The appeals are decided accordingly.

DHARMESH SHARMA, J.

JULY 05, 2024

Sadiq