



FAO-1356-2007 (O&M)

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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FAO-1356-2007 (O&M)
Date of Decision: February 18, 2025
.....Appellant

Ajay Kumar

Vs.

Jasbir Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Sandeep Kumar Yadav, Advocate for the appellant.

Mr. Ashwani Talwar, Advocate;
Mr. Rajneesh Malhotra, Advocate and
Ms. Manvi Verma, Advocate
for respondent No.3-Insurance Company.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 01.02.2007 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') by the learned Motor Accident Claims Tribunal, Narnaul (for short, 'the Tribunal') vide which the claim petition filed by the appellant/claimant, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on 31.5.2005 at about 3:00-3:30 P.M, appellant-claimant- Ajay Kumar along with Jasbir Singh (Respondent No.1) was going to attend a marriage in village Khairani on Motorcycle bearing registration No.HR-35-C-2485. The appellant-claimant was pillion rider on the motorcycle. The motor cycle was being driven by respondent No.1 in a rash and at fast speed as well as also in negligent and zig zag manner, without observing the traffic rules. It is further

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stated that the appellant-claimant had requested to respondent No.1 to drive the motorcycle at a slow speed but the respondent No.1 did not pay any heed to his request. When they reached near village Bewal, near the house of Ram Parshad, there was a crucial turn on the road and the respondent No. 1 could not control the motorcycle due to high speed. As a result of which, the motorcycle slipped and fell down alongwith the appellant on the road and the appellant received injuries. The accident was witnessed by Kanwar Singh and Dharam Pal residents of village Bewal. It is claimed that the accident took place due to rash and negligent driving of motorcycle by respondent No. 1.

3. Upon notice of the claim petition, respondents appeared and filed written reply denying the factum of accident/compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

- 1. Whether the motor vehicle accident that took place on 31.5.2005 at about 3.00/3.15 P.M is an outcome of rash and negligent driving of Motor Cycle No. HR-35C-2485 driven by respondent No.1 ?OPP*
- 2. Whether the petitioner is entitled to any compensation, for the injuries received by him in the aforesaid accident, if so to what amount and from whom ?OPP*
- 3. Whether the respondent No.3 is entitled to repudiate the contract of insurance on the grounds alleged ?OPR3*
- 4. Relief.*

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim-petition. Hence, the claimant/appellant filed the present appeal for grant of compensation.

**SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES**

6. Learned counsel for the appellant contends that the claim petition was dismissed only on the ground that the appellant-claimant himself was riding the offending vehicle and he failed to prove that the accident took place due to rash and negligent driving of respondent No.1. Therefore, he prays that the present appeal be allowed and compensation be granted to the appellant as per settled law.

7. Per contra, learned counsel for the respondent-Insurance Company has vehemently argued that the claim petition has rightly been dismissed. Therefore, he prays for dismissal of the appeal also.

8. I have the heard learned counsel for the parties and perused the whole record of this case.

9. The relevant paragraph of the award is reproduced as under:-

“ISSUE NO. 1

10. The claimant is not only to establish that he had received injuries in a motor vehicular accident which was caused due to negligent driving of the offending vehicle but direct nexus of the vehicle and the accident with consequent injuries to the claimant, is also to be established. Support may be had from the authorities reported as Shingara Singh Versus Ajit Singh and another 1992 (1) P.L.R 233 (P&H), Secretary, Communication Ministry. Government of India. Department of P&T New Delhi and others Versus Ramrao alias Ramdas and others 1991 ACJ 278 (Bombay). Smt. Rita Sharma Versus Pan Chand 1997 (3) R.C.R (Civil) 575 (P&H) and Mataji Bewa and others Versus Hemanta Kumar Jena and others, 1994 ACJ 1303 (Orissa).

11. Version of the claimant-injured appearing in the petition is as under:-

On 31.5.2005 claimant was going to village Khairani to attend a marriage on a motorcycle bearing No. HR-35C-2485 which was being driven by respondent No.1 Jasbir Singh at a rash and fast speed. The claimant was a pillion rider on it. As per the



claimant, when they had reached near the house of Ram Parshad in village Bewal, the motorcycle had slipped as it got unbalanced and the claimant had fallen down and had received multiple injuries.

12. To sustain and support his plea in the petition, the claimant in addition to examining himself as PW8 has also examined eye witnesses Kanwar Singh (PW5) and Dharampal (PW9). Sweeping statements have been made by both of them that the accident was caused by respondent Jasbir Singh by driving motorcycle No. HR-35C-2485 at a fast speed and in a rash and negligent manner. It is deposed that the injuries were sustained by the claimant due to negligent driving of the respondent No.1.

13. When the oculatory account given by the claimant is studied in the interface of the factual matrix available on record, it becomes clear that neither the claimant appearing as PW8 nor purported eye witnesses Kanwar Singh and Dharam Pal appearing as PW5 and PW9 respectively, are trustworthy witnesses.

14. First available version of the accident is found in DDR (Ex.P3) of 31.5.2005 of Police Post Dongra Ahir. Getting information on telephone that a young man had fallen with his motorcycle in front of house of Ram Parshad at village Bewal and had received injuries, ASI Hans Raj alongwith other police officials riding his motorcycle had reached the spot. Enquiries were made by him. He came to know that the injured had been shifted to General Hospital, Narnaul by Sarpanch Mahabir and other villagers. Thereafter, he had reached General Hospital, Narnaul and had collected ruka and MLR from the hospital. The doctor had found the injured unfit to make statement. Thereafter, ASI Hans Raj had gone back to the spot to record statement of eye witnesses. He met Ram Parshad in front of whose house, the accident had occurred. He was to have a bath. He had asked his wards to fetch him a bucket of water, he was getting ready for having a bath near the gate of his house. It was 3.15 P.M. He then had heard a noise on the road. He had come out of his gate and had found that a young boy was lying on the road with a motorcycle by his side. There was no other vehicle on the road. He thought the boy was no more. He was perplexed. He immediately rushed to the house of Sarpanch Mahabir. He informed the Sarpanch. Accompanied by the Sarpanch and many more villagers, he had reached the spot i.e in front of his house. The young boy was speaking. He was conscious. He disclosed his name



as Ajay Kumar. He had received injuries due to fall on the ground as he had lost balance on the motorcycle. He had head injuries as well. Making arrangement for his transportation, Sarpanch Mahabir had taken the injured boy to the Civil Hospital, Narnaul. It was found to be pure and simple accident which had occurred without fault of any one.

15. *On statement of Ram Parshad and enquiries made by him, ASI Hans Raj came to the conclusion that it was a pure and simple accident which had occurred without fault of any one. There was no other vehicle involved and the accident had occurred because the injured-rider had lost the balance and had fallen with his motorcycle on the road.*

16. *Version of the injured-claimant however is found in complaint (Ex.P1) which was lodged by Sajjan Singh his uncle on 22.7.2005. Sajjan Singh has entered the witness box as PW4 and has sworn his testimony on affidavit (Ex.PW4/A). He is not an eye witness. Then how and in what circumstances, he could give picturesque account of the accident, has not been disclosed by him. Hollowness of his comes comes to the surface when pointed and probing cross-examination was effected on him. He had not reported the matter to the Superintendent of Police. If the S.H.O was not lodging the FIR he was to approach the higher authorities of the police but neither the injured nor he had followed that path. If complaint (Ex.P1) which is pending adjudication in the Court of Shri Chander Hass, learned Judicial Magistrate 1st Class, Mohindergarh and is proved by Addl. Ahlmad Sushil Kumar (PWI), is taken into account it is found that the same has been filed against one Jasbir Singh son of Ram Chander a resident of village Gujarwas. Contents of the complaint (Ex.P1) are completely dichotomous with the first available neutral version coming in the statement of Ram Parshad a resident of village Bewal in front of whose house the accident had occurred and findings of ASI Hans Raj that it was pure and simple accident, which had occurred due to imbalance of the motorcycle driving by the driver himself.*

17. *Reading of contents of complaint (ExP1) further reveals that there is a clear introduction Jasbir (respondent No.1), Sajjan Singh (PW4), Dharam Pal (PW9) and Kanwar Singh (PW5). Version of the complainant that the police had not met them and had not registered their case, is hardly to be believed.*



Complainant Sajjan Singh who is author of the complaint had not seen anything. Injured Ajay Kumar had been discharged from S.M.S, Hospital, Jaipur on 24.6.2005. As per statement of Ram Parshad caged in DDR injured Ajay Kumar was conscious initially but had later fell unconscious through out. In any cae, he was discharged on 24.6.2005. The complaint was got typed on 22.7.2005 by Sajjan Singh uncle of the injured (who is not an eye witness). If the complaint was to be filed by some relatives of the injured who was not even an eye witness like Sajjan Singh, it could have been done on the date of accident itself viz. 31.5.2005.

18. Looking from another angle, MLR (Ex.P2) reveals that injured was taken to the hospital by one Roshan Lal son of Leela Ram a resident of village Bewal, but apparently the history of road side accident was given either by the injured or by the attendant. There is nothing in MLR (Ex.P2) to depict that Ajay Kumar was not conscious when he was medico-legally examined. Though later, when ASI Hans Raj had made an application for seeking an opinion of the treating doctor for recording statement of injured Ajay Kumar? he was found to be unfit to make statement. Till when he remained unconscious or unfit to make statement is not disclosed. There is no reason for non examination of Roshan Lal. Rather to cover up and practically to highjack the whole factual matrix, the claimant has examined Kanwar Singh projecting him as an eye witness. Neither he had accompanied the injured to the hospital nor he is mentioned as an eye witness in the earliest version coming in natural course of events from Ram Parshad in DDR (Ex.P3). In his affidavit (Ex.PW5/A), he has claimed himself to be an eye witness and has recited that driver of the motorcycle was driving it at a fast and rash speed as also negligently and having lost its balance due to a sharp turn, the driver had lost balance and had fallen down with his motorcycle and the pillion rider Ajay Kumar. Deposition of this witness does not inspire confidence for the following reasons:-

1. If Kanwar Singh (PW5) was the eye witness, he was expected to take steps for catching hold of the driver as also in providing immediate medical care to the injured, he did nothing;

2. His version that he had brought Sarpanch of the village, is also not supported from any cogent and convincing evidence;

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3. *Affidavit (Ex.PW5/A) discloses that Kanwar Singh and Dharam Pal PWs were standing there when the accident had taken place but when he appeared as PW5 he has mentioned that they were playing cards;*
4. *No reason is forth coming as to why Kanwar Singh (PW5) had not reported the matter to the police;*
5. *Had the motorcycle No. HR-35C-2485 been involved in the accident the same was to be taken into possession by the police but it was not;*
6. *Had the accident occurred in the manner disclosed by the claimant, respondent Jasbir who was allegedly driving the motorcycle could not have saved himself without injuries;*
7. *Dharam Pal (PW9) has neither been mentioned in DDR i.e the earlies version (Ex.P3) nor had taken the injured to the hospital for medical care. His version that he had given a chase to the driver of the offending vehicle but the driver had managed to escape, is not sustained and supported from any cogent evidence. How this witness came to know identity of the driver of the motorcycle to be Jasbir (now respondent No.1) has not been disclosed by him. He has nowhere mentioned that he had known the injured as also driver Jasbir, and;*
8. *Gauzing the contents of affidavit (Ex.PW9/A) in the interface of other material available on the file as also the evidence, his evidence is also very sweeping and general and does not inspire confidence; rather he is clearly an introduced witness by claimant.*
18. *At this stage, it is worth notice that the claimant has examined Ram Parshad son of Murari Lal (PW10). In his affidavit (Ex.PW10/A), he has tried to improve upon his earlier version mentioned in DDR (Ex.P3) by introducing names of Kanwar Singh and Dharam Pal as eye witnesses. He has also made drastic improvement in his version (Ex.PS) by introducing the number of the motorcycle, giving the manner in which the accident was allegedly caused and disclosing about identity of the alleged driver. When statement of Ram Parshad as Ex.PW10/A is mapped on his earlier version (Ex.P3), the version in Ex.PW10/A is proved to be clearly a made up one. In his pointed cross-examination,*



Ram parshad (PW10) conceding that he had seen claimant Ajay Kumar only when he had fallen on the ground, however considerably deflates his status of a purported eye witness which Ram Parshad (PW10/A) had assumed to himself. He has also conceded having given statement (Ex.P3) to the police and has not disowned it. His statement recorded in (Ex.P3) reveals thus the claimant had ventured to produce Ram Parshad PW10 in modulated form, but he could not advance the case of the claimant.

19. It is not understandable as to why the claimant had not examined Sarpanch Mahabir who had played a prominent part in arranging transport and providing him quick medical facilities. Be it the earliest version in (Ex.P3) or the later version emerging in the statements of Ram Parshad, Kanwar Singh and Dharam Pal PWs, role of Sarpanch Mahabir has not been questioned Examining Sarpanch Mahabir in the witness box could have clarified stand of the claimant more transparently but for the reasons best known, he was not examined.

20. Appreciating the entire evidence in a sequential order, it becomes clear that the claimant has suppressed the earliest version in Ex.P3 and has projected a version which in fact is non-existent. Neither presence of respondent Jasbir as driver of the motorcycle nor presence of any eye witnesses at the time of accident, is available in the neutral version (Ex.P3). Version of the complainant Sajjan Singh (uncle of the injured) is not only highly delayed but is clearly introduced to sustain and support the self interest notwithstanding the fact that ii has been ventured to be sweepingly supported by Ajay Kumar, Dharam Pal and Kanwar Singh Pws.

21. From the totality of facts and circumstances, it is not established that the claimant had received injuries by negligent driving of the motorcycle bearing No.HR-35C-2485 in the manner disclosed in the claim petition. This issue is decided against the petitioner and in favour of the respondents.

22. In view of the detailed discussion of evidence and the attending facts and circumstances of the case, authorities cited by the learned counsel for the claimant reported as New India Assurance Co. Ltd. Versus Bimla Devi and others 2006 (3) R.C.R (Civil) 682

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(P&H) Raju and others Versus Sukhwinder Singh and others 2006 (4) R.C.R (Civil) 82 (P&H). Ranjit Kaur Versus Chhinderpal Singh and others 2006 (4) R.C.R (Civil) 702 (P&H) and Smt. Rita Sharma Versus Pan Chand 1997 (3) R.C.R (Civil) 575 (P&H), with due deference to the law laid down in these authorities, facts of the case in hand being entirely different, do not advance the cause of the claimant.”

10. A perusal of the record shows that Respondent No.3 - Insurance Company in its written statement did not deny the factum of accident but denied its liability on the ground that the insured had violated the terms and conditions of the policy as driver of the offending vehicle was not in possession of a valid driving license.

11. **ANALYSIS OF EVIDENCE**

i) **Testimony of the Claimant (PW8):** The claimant, Ajay Kumar, deposed that he was a pillion rider on the motorcycle driven by respondent No. 1-Jasbir Singh, who was driving the vehicle at an excessive speed. The motorcycle purportedly lost balance near the residence of Ram Parshad in Village Bewal, leading to the claimant's fall and consequent injuries. His testimony is corroborated by medical record (Ex. P2) and the complaint (Ex. P1). The Tribunal erroneously rejected his deposition on the sole ground of its inconsistency with the DDR. The Tribunal's rejection of the claimant's testimony solely based on a contradiction with a preliminary police report constitutes a misapplication of legal principles governing motor vehicle accident assessment.

ii) **Testimony of Kanwar Singh (PW5):** Kanwar Singh, the eyewitness, deposed that the accident resulted from respondent No. 1's reckless and

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negligent driving. He stated that the motorcycle was being driven at an excessive speed and skidded while navigating a sharp turn. The Tribunal disregarded his testimony on the ground that he did not immediately report the incident to the police or provide assistance to the injured. However, the absence of immediate reporting does not automatically render an eyewitness unreliable, particularly where the priority is to ensure medical attention for the victim. His testimony, consistent with that of the claimant and supported by medical records, should not have been discarded.

iii) **Testimony of Dharampal (PW9):** Dharampal, another eyewitness, corroborated the claimant's version and stated that he pursued the motorcycle after the accident but could not apprehend the driver. The Tribunal discredited his testimony, reasoning that his name did not appear in the DDR and that he did not accompany the claimant to the hospital. However, a DDR is not an exhaustive account of all factual details, and the absence of a witness's name in it does not negate the reliability of their testimony.

iv) **Daily Diary Report (DDR, Ex. P3):** The DDR, recorded by ASI Hans Raj, indicates that the claimant fell from the motorcycle due to a loss of balance, without attributing fault to any particular individual. The Tribunal's excessive reliance on this preliminary report to the exclusion of direct eyewitness testimonies was legally flawed.

v) **Complaint (Ex. P1) :** The complaint, filed by Sajjan Singh (PW4), the claimant's uncle, attributes the accident to the rash and negligent driving of respondent No. 1. The Tribunal dismissed it citing delayed filing and the complainant's non-eyewitness status. However, delay in lodging a complaint in

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accident cases does not automatically render it unreliable, particularly when explained by the claimant's medical condition.

vi) **Medical (Ex. P2):** The medical confirm that the claimant sustained multiple injuries, including head trauma consistent with a vehicular accident. Further disability certificate Ex.P-4 shows that the appellant-claimant found to be disabled to the extent of 100 % qua his lower limb.

12. Appellant-claimant examined Sushil Kumar, Additional Ahlmed as PW1, who brought the summoned file titled as "Sajjan Singh versus Jasbir" and proved complaint Ex.P1.

13. Dr. Rattan Lal, who was examined as PW2, deposed that on 31.05.2005 (i.e the date of accident), he medico legally examined the appellant/claimant Ajay Kumar. He further proved MLR (Ex. P2).

14. EHC Ramesh (PW3) proved the Daily Diary Report (DDR) (Ex. P3).

15. Sajjan Singh (PW4), the author of complaint Ex. P1, corroborated the factum of the accident.

16. Kanwar Singh (PW5), an eye-witness of accident, further corroborated the appellant-claimant's version.

17. Dr. T.S. Bagri (PW6), a member of the Medical Board on Disability, proved the Disability Certificate (Ex. P4), which recorded the appellant-claimant as 100% permanent disabled with respect to his lower limb.

18. Madan Lal (PW7), an attendant, substantiated the appellant-claimant's statement.

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19. Ajay Kumar (PW8), the appellant-claimant examined himself while sitting in a chair, as he was unable to stand due to his injuries.

20. Dharam Pal (PW9), another eye-witness of accident, corroborated the statement of the appellant-claimant.

21. Ram Prashad (PW10), the author of the DDR, testified to the factum of the accident.

22. A perusal of the award reveals that the learned Tribunal, without assigning any reason, concluded that neither the appellant-claimant (PW8) nor the eyewitnesses, Kanwar Singh and Dharam Pal (examined as PW5 and PW9, respectively), were credible witnesses.

23. Perusal of the record further shows that learned Tribunal observed that complaint Ex.P1 was lodged by Sajjan Singh (i.e uncle of the appellant-claimant) on 22.07.2005, who was also examined as PW4, then why FIR was not lodged on the same very day of accident i.e on 31.05.2005 and if the SHO did not register the FIR why the higher authorities were not approached by Sajjan Singh himself. Learned Tribunal did not appreciate the very fact that DDR EX.P3 is dated 31.05.2005 and the complaint Ex.P1 was pending adjudication in the Court of Judicial Magistrate, Ist Class, Mohindergarh, which was proved by Additional Ahlmad Sushil Kumar, who was examined as PW1.

24. A bare perusal of the award shows that the learned Tribunal dismissed the claim petition on the basis of assumptions and presumptions without appreciation of evidence on record. Learned Tribunal has laid

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unnecessary stress on non-lodging of FIR on the same day and the lodging of the complaint by claimant himself, who was discharged on 24.06.2005, in stead of his uncle Sajjan Singh, without appreciating the fact that the appellant claimant became 100% disabled, which is proved by PW6 Dr. T.S Bagri and who proved the Disability Certificate Ex.P4 which is 100% qua lower limb.

25. The Learned Tribunal held that the deposition of witnesses did not inspire confidence, reasoning that Kanwar Singh (PW-5), an eyewitness, was expected to take steps to apprehend the driver and provide immediate medical assistance to the injured. Additionally, the Tribunal found the witness's failure to report the incident to the police to be a ground for doubting his testimony. However, this Court finds such reasoning to be legally untenable and unsustainable in law. Further the reasoning given is that version of complainant Sajjan Singh (uncle of the appellant-claimant) is highly delayed and for that the claim petition is dismissed, is also not acceptable to this Court.

26. The Tribunal erred in treating the DDR as an exclusive record of factual occurrences. The Hon'ble Supreme Court has consistently held that, in adjudicating claims arising from motor vehicle accidents, the emphasis should not be on identifying inconsistencies or infirmities in the testimony of the prime witness but on assessing the entire body of evidence to ascertain whether it satisfies the standard of proof based on the preponderance of probabilities. The reliance at this stage can be made to the judgment rendered by the Hon'ble Supreme Court in the case of Anita Sharma Vs. New India Assurance Co. Ltd. 2021(1) SCC (CrI) 473, wherein the Supreme Court has held as under :-



“22. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eye-witnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant’s version is more likely than not true. A somewhat similar situation arose in Dulcina Fernandes v. Joaquim Xavier Cruz (2013) 10 SCC 646, wherein this Court reiterated that:

“7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pickup van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt.”

27. Reference at this stage can be made to the judgment rendered by the Hon’ble Supreme Court in the case of Ravi Vs. Badrinarayan and Others 2011 AIR Supreme Court (Criminal) 594, wherein it has been held as under:-



“18. The cumulative effect of the aforesaid events clearly established that accident had taken place on 7.10.2001 at about 8.30 in the morning on account of rash and negligent reversing of the truck by driver Badrinarayan, owned by Respondent No. 2, Prahlad Singh. Under these circumstances, it cannot be said that delay in lodging the FIR could have proved fatal to the claim case filed by Ravi.

19. Narration of the aforesaid events would show the bona fides of Suresh. As mentioned hereinabove, a consistent stand has been taken right from the beginning till the lodging of the FIR. The chronological events narrated hereinabove inspire confidence and it does not smack of a concocted case which has been filed against the driver and the owner of the vehicle only with an intention to get compensation.

20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In



cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinised more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.

21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.”

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The complaint aligns with the claimant's deposition and supporting witness testimonies, further strengthening the claim.

28. In light of the foregoing analysis, this Court finds that the Tribunal erred in dismissing the claim petition. The appellant-claimant has successfully established, that the accident was caused by the rash and negligent driving of respondent No. 1. The testimonies of the appellant-claimant and the eyewitnesses are credible and consistent, and the medical records substantiate the claim-petition. Accordingly, the impugned award dated 01.02.2007 is set aside, and the present appeal is *allowed*.

29. With respect to determination of compensation, the record contains evidence of hospital admission, and expenses incurred for medical treatment and hospitalization. Consequently, this Court shall adjudicate the compensation in accordance with the documented evidence on the record.

30. A perusal of the award reveals that the appellant-claimant, a Class 11 student aged approximately 19 years at the time of the accident, sustained a compression fracture of D12 and D11 with cord contusion, resulting in paraplegia with bowel and bladder involvement, as confirmed by MRI reports. The disability certificate (Ex. P4) categorically establishes that the claimant has suffered 100% permanent disability concerning his lower limbs, although his upper limbs remain functional.

31. Assessing the pecuniary loss suffered by the claimant presents inherent difficulties, given that he was not engaged in any gainful employment at the time of the accident. However, the principles governing compensation under the Motor Vehicles Act, 1988, emphasize that assessment of

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compensation must be made not only with reference to actual financial loss but also keeping in view the permanent deprivation of earning capacity, the physical and psychological suffering, and the complete alteration of the claimant's life trajectory.

32. The Act is a beneficial piece of legislation intended to provide adequate and fair compensation to victims who suffer debilitating injuries due to road accidents. Reference at this stage can be made to the judgment passed by Hon'ble Apex Court in '**State of Haryana and another Vs. Jasbir Kaur and others, 2003 AIR Supreme Court 3696** held that statutory provisions clearly indicate that the compensation must be just and it cannot be bonanza; not a source of profit, but the same should not be a pittance. The observations made by Hon' ble Apex Court in the aforesaid judgment in Paragraph No. 7 are reproduced hereinbelow:-

"7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be



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just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness and non-arbitrary. If it is not so it cannot be just/see Helen C. Rebello v. Manarashtra State Road Transpon Corporation (AIR 1998 Supreme Court 3191): 1988(4) RCR (Civil 177 (SC))”

33. The doctrine of full restitution (*restitutio in integrum*) mandates that the compensation awarded should, as far as possible, restore the claimant to the financial position he would have been in had the accident not occurred. Given that the claimant, prior to the accident, was a bright student with an open-ended future, the catastrophic nature of his disability has effectively foreclosed numerous career opportunities and significantly diminished his employability. His dependency on caregivers for basic daily functions further exacerbates his economic and personal hardships.

34. In FAO-4284-2006, titled as ***Parvesh Vs. Satbir and others***, this Court, while dealing with a case involving a 16-year-old school-going minor, assessed the notional income at ₹10,000 per month. The relevant portion of the judgment is reproduced as under:-

“12. Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of V. Mekala vs. M. Malathi and arr, 2014(11) SCC 178 wherein in a motor accident, the victim was a student and bones of her both legs fractured. Hon'ble the Supreme Court assessed her notional monthly income at Rs.10,000/- and awarded her 50% future prospects. She was awarded Rs.3 lacs under the head Loss of enjoyment of life and marriage prospects. She was awarded Rs. 2 lacs under the head pain and suffering and Rs. 2 lacs under the head loss of amenity and attendant charges. The relevant extract of the judgment is reproduced as under:-



“17. The fact that the appellant was a brilliant student at the time of the accident should also be taken into consideration while awarding compensation to her. Therefore, taking Rs.6,000/- as monthly notional income by the Tribunal for the purpose of awarding compensation under this head is too meager an amount. The learned counsel appearing for the respondent No.2 contended that the appellant can still finish her education and find employment and therefore, there is no necessity to enhance the amount of compensation under the head of ‘loss of income’ and ‘future prospects’. It is pertinent to reiterate here that the claimant/appellant has undergone and undergoing substantial pain and suffering due to the accident which has rendered both her legs dysfunctional. This has reduced the scope of her future prospects including her marriage substantially. Moreover, a tortfeasor is not entitled to dictate the terms of the claimants-appellants career as has been held by the Karnataka High Court in the case of K. Narsimha Murthy v. The Manager, Oriental Insurance Company Ltd and Anr. ILR 2004 KARNATAKA 2471, the relevant paragraph of which reads as under:

“41. Further, it needs to be emphasized that it is not the right of the tortfeasor or a person who has taken over the liability of the tortfeasor in terms of and under the Act to dictate that the injured person should do some other work, manual or otherwise, it does not matter, may be with pain and discomfort, in order to minimize his or its liability. Such insistence is untenable in law and if such is the case, it would violate basic human rights of the injured person. In this case, the appellant is reduced to such a state that he is unable to do any work, manual otherwise, without subjecting himself to pain and suffering, agony and discomfort. In an accident, if a man is disabled for a work which he was doing before the accident, that he has no talents, skill, experience or training for anything else and he is unable to find any work, manual or clerical, such a man for all practical purposes has lost all earning capacity he possessed before and he is required to be compensated on the basis of total loss. In reaching this conclusion we may derive support



from the judgments in Daniels v. Sir Robert Mc Alpine and Sons Limited and Blair v. FJC Lilley (Marine) Limited. Secondly, the physical incapacity to earn income sustained by the appellant is not temporary, but permanent and complete as per Exhibit P. 43. Thirdly, it cannot be said that since the appellant has sustained only 54% permanent physical disability in respect of the whole body as per PW. 3, the Court should take into account functional disability also at 54% only while assessing the loss of earning capacity. Such hypothesis does not stand to reason nor can it be accepted as valid in terms of law. An injured person is compensated for the loss which he incurs as a result of physical injury and not for physical injury itself. In other words, compensation is given only for what is lost due to accident in terms of an equivalent in money insofar as the nature of money admits for the loss sustained. In an accident, if a person loses a limb or eye or sustains an injury, the Court while computing damages for the loss of organs or physical injury, does not value a limb or eye in isolation, but only values totality of the harm which the loss has entailed the loss of amenities of life and infliction of pain and suffering: the loss of the good things of life, joys of life and the positive infliction of pain and distress.”

18. Further, it has been held in the case of Reshma Kumari (*supra*) that certain relevant factors should be taken into consideration while awarding compensation under the head of future prospect of income. The relevant paragraph read as under:

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



tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guess work may be inevitable. That may be so.”

19. *Therefore, in the light of the principles laid down in the aforesaid case, it would be just and proper for this Court, and keeping in mind her past results we take Rs.10,000/- as her monthly notional income for computation of just and reasonable compensation under the head of loss of income. Further, the High Court has failed to take into consideration the future prospects of income based on the principles laid down by this Court in catena of cases referred to supra. Therefore, the appellant is justified in seeking for enhancement under this head as well and we hold that the claimant- appellant is entitled to 50% increase under this head as per the principle laid down by this Court in the case of Santosh Devi (supra). The relevant paragraph reads as under:*

“13. In Sarla Verma's case (supra), another two Judge Bench considered various factors relevant for determining the compensation payable in cases involving motor accidents, noticed apparent divergence in the views expressed by this Court in different cases, referred to large number of precedents including the judgments in U.P. SRTC v. Trilok Chandra (1996) 4 SCC 362, Nance v. British Columbia Electric Railway Company Ltd. 1951 AC 601, Davies v. Powell Duffryn Associated Collieries Ltd. 1942 AC 601 and made an attempt to limit the exercise of discretion by the Tribunals and the High Courts in the matter of award of compensation by laying down straightjacket formula under different headings, some of which are enumerated below:

(i) Addition to income for future prospects In Susamma Thomas this Court increased the income by nearly 100%, in Sarla Dixit the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40



years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances. Therefore, taking both the aspects into account, the total amount of compensation under this head is calculated as Rs.22,68,000/- [(Rs.10,000/-x 70/100 + 10,000 x 70/100 x 50/100) x 12 x 18].

20. The compensation under the head pain & suffering and mental agony was awarded by the High Court after recording concurrent finding with the award passed by the Tribunal. However, the courts below have not recorded the nature of the permanent disablement sustained by the appellant, while awarding Rs.1,00,000/- under this head which is too meager an amount and is contrary to the judgment of R.D. Hattangadi and Govind Yadav cases (supra). The relevant paragraphs of Govind Yadav case read as under:

"25. The compensation awarded by the Tribunal for pain, suffering and trauma caused due to the amputation of leg was meager. It is not in dispute that the appellant had remained in the hospital for a period of over three months. It is not possible for the tribunals and the courts to make a precise assessment of the pain and trauma suffered by a person whose limb is amputated as a result of accident. Even if the victim of accident gets artificial limb, he will suffer from different kinds of handicaps and social stigma throughout his life. Therefore, in all such cases, the tribunals and the courts should make a broad guess for the purpose of fixing the amount of compensation.



26. *Admittedly, at the time of accident, the appellant was a young man of 24 years. For the remaining life, he will suffer the trauma of not being able to do his normal work. Therefore, we feel that ends of justice will be met by awarding him a sum of Rs 1,50,000 in lieu of pain, suffering and trauma caused due to the amputation of leg.” Therefore, under this head the amount awarded should be enhanced to Rs.2,00,000/- as the Doctor-PW2 has opined that at the time of walking with support of crutches, the claimant-appellant will be suffering pain permanently. Therefore, under this head it has to be enhanced from Rs.1,00,000/- to Rs.2,00,000/-.*

21. *The loss of amenity and attendant charges awarded by the courts below at Rs.1,00,000/- is also too meager an amount as the appellant has permanently lost her amenity of both the legs. For the purpose of walking, squatting, running and also studying throughout her life and particularly, at the advanced age, she will be requiring the attendant for giving assistance to attend the nature’s call and also at the time of sitting or moving around. Therefore, the compensation at this head is required to be enhanced from Rs.1,00,000/- to Rs.2,00,000/- based upon the principle laid down by this court in Govind Yadav case (supra), the relevant paragraph of which reads as under:-*

“27. The compensation awarded by the Tribunal for the loss of amenities was also meagre. It can only be a matter of imagination as to how the appellant will have to live for the rest of his life with one artificial leg. The appellant can be expected to live for at least 50 years. During this period he will not be able to live like a normal human being and will not be able to enjoy life. The prospects of his marriage have considerably reduced. Therefore, it would be just and reasonable to award him a sum of Rs 1,50,000 for the loss of amenities and enjoyment of life.”

22. *The amount of compensation awarded under the head of ‘Loss of enjoyment of life and marriage prospects’ at Rs.2,00,000/- is totally inadequate since her marriage prospect has substantially reduced and on account of permanent disablement she will be deprived of enjoyment of life. Therefore, it would be just and proper to enhance the compensation*

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from Rs.2,00,000/- to Rs.3,00,000/-. In so far as, purchase of crutches periodically, it would be just and proper to award a sum of Rs.50,000/-.”

13. In view of the principles set forth in the V. Mekala's (supra) and considering his past results, it is just and appropriate for this Court to fix his notional monthly income at Rs.10,000/-”

35. In view of the above, since the claimant was a bright student of 19 years of age, further because of the accident he could not pursue his carrier/education qualifications, which could have given him bright future and employment, in the interest of justice, it would be appropriate to fix his notional income as Rs.15,000/- per month

ATTENDANT CHARGES

36. So far as attendant charges is concerned, the Hon'ble Apex Court in **Kajal Vs. Jagdish Chand and others, 2020(2)R.C.R.(Civil) 27**, held that where injured was a female child aged about 12 years and date of the accident was 18.10.2007 and it was observed by the Hon'ble Apex Court that **to determine the attendant charges, Multiplier system should be applied.**

Relevant paragraphs No. 22 and 25 of the aforesaid judgment are as under:

"22. The attendant charges have been awarded by the High Court at the rate of Rs.2,500 per month for 44 years, which works out to Rs. 13,20,000. Unfortunately, this system is not a proper system. Multiplier system is used to balance out various factors. When compensation is awarded in lump sum, various facts are taken into consideration. When compensation is paid in lump sum, this court has always followed the multiplier system. The multiplier system should be followed not only for determining the compensation on account of loss of income but also for determining the attendant



charges, etc. This system was recognized by this Court in Gobald Motor Service Ltd. v. R.M.K. Veluswami, 1958-65 ACJ 179 (SC). The multiplier system factors in the inflation rate, the rate of interest payable on the lump sum award, the longevity of the claimant, and also other issues such as the uncertainties of life. Out of all the various alternative methods, the multiplier method has been recognized as the most realistic and reasonable method. It ensures better justice between the parties and thus results in award of just compensation' within the meaning of the Act.

23. xxxxx

24. xxxxx

25. *Having held so, we are clearly of the view that the basic amount taken for determining attendant charges is very much on the lower side. We must remember that this little girl is severely suffering from incontinence meaning that she does not have control over her bodily functions like passing urine and faeces. As she grows older, she will not be able to handle her periods. She requires an attendant virtually 24 hours a day. She requires an attendant who though may not be medically trained but must be capable of handling a child who is bedridden. She would require an attendant who would ensure that she does not suffer from bed sores. The claimant has placed before us a notification of the State of Haryana of the year 2010, wherein the wages for skilled labourer is Rs.4,846 per month. We, therefore, assess the cost of one attendant at Rs.5,000 and she will require two attendants which works out to Rs.10,000/- per month, which comes to Rs. 1,20,000/- per annum, and using the multiplier of 18 it works out Rs. 21,60,000 for attendant charges for her entire life. This take care of all the pecuniary damages.*

37. In view of the above as per the Disability Certificate, which is 100% and which requires full-time attendant, therefore, it would be appropriate

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to decide the attendant charges accordingly. 100% disability would require day and night attendants, meaning thereby two attendants would be required. Further 100% disability of the appellant-claimant would require trained attendant i.e. who should have knowledge of nursing and experience as well. Further the minimum amount which an attendant would demand is Rs.10,000/-. Since two attendants are required for 100% disability, it would be appropriate to take the minimum amount of Rs.10,000/- each of two attendants i.e. amounting to Rs.20,000/- for two attendants.

38. In the instant case, there is substantial medical evidence establishing that the injured appellant-claimant has suffered from a 100% disability of the lower limb, as per Ex. P-4. Over the past 20 years since the accident on 31.05.2005, the injured has faced significant challenges in leading a normal life. Furthermore, medical testimony confirms that the injured person is unable to carry out daily activities independently.

39. Applying the principles laid down in **Kajal's case (supra)** it is evident that the appellant-claimant requires continuous assistance from two attendants for 24 hours a day. In **Kajal's case (supra)**, the Hon'ble Supreme Court emphasized that the multiplier system must be followed to determine attendant charges, taking into account factors such as longevity, inflation, interest rates, and the uncertainties of life. The Court also highlighted that an individual with severe disabilities requires dedicated attendants, even if they are not medically trained, to ensure proper care and prevent further complications such as bedsores.

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40. In the present case, the claimant's condition is such that he requires not only general attendants but also trained medical nurses to cater to his medical needs, including regular monitoring, assistance with mobility, hygiene, and prevention of secondary complications like bedsores and infections.

41. In the instant case, considering the minimum wages for skilled workers at ₹10,000 per month per attendant, the total attendant charges amount to ₹20,000 per month. This ensures just compensation, addressing the lifelong need for assistance in accordance with the principles laid down by the Hon'ble Supreme Court.

PAIN AND SUFFERINGS

42. So far as compensation towards pain and suffering is concerned, the Hon'ble Apex Court in **K.S Muralidhar Vs. R. Subbulakshmi and another**, 2024 INSC 886 held as under:-

"12. It is to be noted that both the Tribunal and the High Court have taken the disability suffered by the claimant-appellant to be at 100%. We find no ground to take a different view.

13. While acknowledging that 'pain and suffering', as a concept escapes definition, we may only refer to certain authorities, scholarly as also judicial wherein attempts have been made to set down the contours thereof.

13.1 The entry recording the term 'pain and suffering' in P. Ramanatha Iyer's Advanced Law Lexicon[9] reads as under:-

"Pain and suffering. The term 'Pain and suffering' mean physical discomfort and distress and include mental and emotional trauma for which damages can be recovered in an accident claim.



*This expression has become almost a term of art, used without making fine distinction between pain and suffering. Pain and suffering which a person undergoes cannot be measured in terms of money by any mathematical calculation. Hence the **Court** awards a sum which is in the nature of a conventional award [Mediana, The (1900) AC 113, 116]"*

13.2 Eric Cassell[10], an American Physician and Bioethicist, defines 'pain' not only as a sensation but also 'as experience embedded in beliefs about causes and diseases and their consequences', and 'suffering' as 'the state of severe distress associated with events that threaten the intactness of person'.

13.3 In a recent article[11] published in the journal of the International Association for the Study of Pain, it has been recorded that there is no consensus on what exactly the concept of pain-related suffering includes, and it is often not precisely operationalised in empirical studies. The authors in their systematic review analysed 111 articles across a variety of disciplines such as bioethics, medical ethics, psycho-oncology, anaesthesiology, philosophy, sociology etc., we may refer to few of them:

13.3.1 Eugene V. Boisaubin[12], who is currently a Professor at the University of Texas, at Houston, in a 1989 article defined it as "Suffering is experienced by individual and arises from threats to the integrity of the individual as a complex social and psychological entity."

13.3.2 Andrew Edgar, who is currently a Reader Emeritus in Philosophy at Cardiff University at UK has defined, in a 2007 article suffering as an "experience of life never getting better, revealing in the sufferer only vulnerability, futility, and impotence."

13.3.3 Arthur W. Frank[13], Professor Emeritus, Department of Sociology, University of Calgary in his well-known article "Can We Research Suffering?", published in 2001, observed that "at the core of suffering is the sense that something is irreparably wrong with our lives, and wrong is the negation of what could have been right. Suffering resists definition because it is the reality of what is not."

13.3.4 Daryl Pullman[14] who currently serves as University research Professor, Bioethics at the Memorial University of Newfoundland, Canada in his 2002 article defined suffering as the "product of [physical], psychological, economic, or other factors that frustrate an individual in the pursuit of significant life projects."

13.4 The Judicial Studies Board, now known as the Judicial College in the United Kingdom, produced guidelines in 1992 to produce greater



consistency of awards and make the judicial scale of values more easily accessible. They have been deduced from a study of past cases, examining the range of awards therein. The latest edition of these guidelines was published in 2021^[15]. They record the difficulty of computing 'pain and suffering' as under :-

[15 See : Hassam and Anr. v. Rabot and Anr. (2024) UKSC 11]

"It is widely accepted that making of an award of general damages for pain and suffering is a somewhat artificial task. It involves the Judge seeking to convert the pain and suffering of a given claimant into a monetary award which he or she considers to be reasonable by way of compensation. That is a difficult task and one which has historically led to judges making widely varying awards of damages in respect of relatively comparable injuries a result which not only offends the principle of equality before law but results in unnecessary appeals and the incurring of additional cost, apart altogether from the burden that such appeals place on the Court's own scarce resources."

13.5 In determining non-pecuniary damages, the artificial nature of computing compensation has been highlighted in **Heil v. Rankin [2001] QB 272**, as referred to in **Attorney General of St. Helena v. AB & Ors. Privy Council Appeal No. 0034 of 2018** as under:-

"23. This principle of 'full compensation' applies to pecuniary and non-pecuniary damage alike. But, as Dickson J indicated in the passage cited from his judgment in **Andrews v. Grand & Toy Alberta Ltd, 83 DLR (3d) 452, 475-476**, this statement immediately raises a problem in a situation where what is in issue is what the appropriate level of 'full compensation' for non-pecuniary injury is when the compensation has to be expressed in pecuniary terms. There is no simple formula for converting the pain and suffering, the loss of function, the loss of amenity and disability which an injured person has sustained, into monetary terms. Any process of conversion must be essentially artificial. Lord Pearce expressed it well in **H West & Son Ltd v. Shephard [1964] AC 326, 364** when he said:

'The **court** has to perform the difficult and artificial task of converting into monetary damages the physical injury and deprivation and pain and to give judgment for what it considers to be a reasonable sum. It does not look beyond the judgment to the spending of the damages.'

24. The last part of this statement is undoubtedly right. The injured person may not even be in a position to enjoy the



*damages he receives because of the injury which he has sustained. Lord Clyde recognised this in **Wells v. Wells [1999] 1 AC 345**, 394H when he said: 'One clear principle is that what the successful plaintiff will in the event actually do with the award is irrelevant.'*

13.6 In the context of the United States, the most important piece of legal literature regarding 'pain and suffering' is an article titled Valuing Life and Limb in Tort: Scheduling Pain and Suffering, published in the year 1989. Relevant extracts thereof read as under :

"Pain and suffering and other intangible or non-economic losses are even more problematic. Physical pain and attendant suffering have for centuries being recognised as legitimate elements of damages, and "modern" tort law has seen a marked expansion of the rights to recover for forms of mental anguish. Some Courts have even permitted recovery for emotional trauma unaccompanied by physical injury, including derivative losses stemming from injuries to family members. The precise elements of compensable non-economic loss vary by jurisdiction. Pain and suffering may be used as a catch-all category for the jury's consideration of all non-pecuniary losses in a case of a nonfatal injury, subsuming other qualitative categories such as mental anguish and humiliation. More commonly, though, other non-economic elements - such as "loss of enjoyment of life" are accorded independent standing ..."

Another important observation is that:

"Whatever the categories of non-economic damages allowed in a given jurisdiction, the law provides no objective benchmarks valuing them. As one commentator notes, "Courts have usually been content to say that pain and suffering damages should amount to 'fair compensation', or a 'reasonable amount', 'without any definite guide'."

13.7 Consideration of the above, underlines that while each discipline has its own conception of the meaning of pain/suffering, within its confines, the commonality that emerges is that a person's understanding of oneself is shaken or compromised at its very root at the hands of consistent suffering. In the present facts, it is unquestionable that the sense of something being irreparably wrong in life, as spoken by Frank (supra); vulnerability and futility, as spoken by Edgar, is present and such a feeling will be present for the remainder of his natural life.

*14. In respect of 'pain and suffering' in cases where disability suffered is at 100%, we may notice a few decisions of this **Court** :-*



14.1 In **R.D Hattangadi v. Pest Control (India) (P) Ltd. (1995) 1 SCC 551.**

It was observed :

"17. The claim under Sl. No. 16 for 'pain and suffering' and for loss of amenities of life under Sl. No. 17, are claims for non-pecuniary loss. The appellant has claimed lump sum amount of Rs.3,00,000 each under the two heads. The High Court has allowed Rs.1,00,000 against the claims of Rs.6,00,000. When compensation is to be awarded for 'pain and suffering' and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration. According to us, as the appellant was an advocate having good practice in different courts and as because of the accident he has been crippled and can move only on wheelchair, the High Court should have allowed an amount of Rs.1,50,000 in respect of claim for 'pain and suffering' and Rs.1,50,000 in respect of loss of amenities of life. We direct payment of Rs.3,00,000 (Rupees three lakhs only) against the claim of Rs.6,00,000 under the heads "pain and suffering" and "Loss of amenities of life".

(Emphasis Supplied)

14.2 This Judgment was recently referred to by this Court in **Sidram v. United India Insurance Company Ltd. (2023) 3 SCC 439** reference was also made to **Karnataka SRTC v. Mahadeva Shetty (2003) 7 SCC 197** (irrespective of the percentage of disability incurred, the observations are instructive), wherein it was observed :

"18. A person not only suffers injuries on account of accident but also suffers in mind and body on account of the accident through out his life and a feeling is developed that his no more a normal man and cannot enjoy the amenities of life as another normal person can. While fixing compensation for pain and suffering as also for loss of amenities, features like his age, marital status and unusual deprivation he has undertaken in his life have to be reckoned."

14.3 In **Kajal v. Jagdish Chand (2020) 4 SCC 413** considering the facts of the case, i.e., 100% disability, child being bedridden for life, her mental age being that of a nine-month-old for life - a vegetative existence, held that "even after taking a conservative view of the matter an amount payable for the 'pain and suffering' of this child should be at least Rs.15,00,000/-."



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14.4 In **Ayush v. Reliance General Insurance (2022) 7 SCC 738** relying on *Kajal (supra)* the amount awarded in 'pain and suffering' was enhanced to Rs.10,00,000. The child who had suffered the accident was five years old and the **Court** noted in paragraph 2 that :

"As per the discharge certificate, the appellant is not able to move both his legs and had complete sensory loss in the legs, urinary incontinence, bowel constipation and bed sores. The appellant was aged about 5 years as on the date of the accident, hence has lost his childhood and is dependent on others for his routine work."

14.5 In *Lalan (supra)* cited by the claimant-appellant, the Tribunal awarded Rs.30,000/- which was enhanced to Rs.40,000/- by the High **Court**. Considering the fact that the appellant therein has suffered extensive brain injury awarded compensation under 'pain and suffering' to the tune of Rs.3,00,000/-.

15. Keeping in view the above-referred judgment, the injuries suffered, the 'pain and suffering' caused, and the life-long nature of the disability afflicted upon the claimant-appellant, and the statement of the Doctor as reproduced above, we find the request of the claimant-appellant to be justified and as such, **award Rs.15,00,000/-** under the head 'pain and suffering', fully conscious of the fact that the prayer of the claimant-appellant for enhancement of compensation was 22 (2022) 7 SCC 738 15| SLP (C) NO. 18337 OF 2021 by a sum of Rs. 10,00,000/-, we find the compensation to be just, fair and reasonable at the amount so awarded.

43. Further, the Hon'ble Supreme Court in the case of **Baby Sakshi Greola Vs. Manzoor Ahmad Simon and anothers, 2025(1) RCR (Civil) 238**, where the injured was a female child aged 7 years and had suffered grievous injuries, learned Tribunal awarded Rs.50,000/-towards pain and suffering, but the same was enhanced by the Hon'ble High Court to Rs. 12,00,000/-. When the matter reached to the Hon'ble Apex Court, the same was enhanced to Rs. 15,00,000/-.

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44. In view of the settled law by Hon'ble Apex Court, since in the present case as well, the disability is 100% by applying the same parameters a compensation of Rs.15 lakhs is hereby awarded to the appellant-claimant towards pain and sufferings.

TRANSPORTATION

45. Considering the damages suffered by the appellant-claimant and the requirement for special transportation arrangements, an amount of Rs.1 lakh is hereby awarded to the appellant-claimant on account of the transportation.

MARRIAGE PROSPECTS

46. In *G. Ravindranath Vs. E. Srinivas and Another, 2013(3) RCR (Civil) 934*, Hon'ble Apex Court while granting compensation to the claimant considered the fact that due to the injuries in the pelvic region, injured has become impotent leading to loss of marital bliss and that he shall be required to undergo multiple surgeries in future. The relevant paragraphs No. 24, 25 and 26 of the aforesaid judgment reproduced as under:

"24. From the testimony of three witnesses, it is established that as a result of accident the appellant had suffered grievous injuries in the pelvic region and he has become impotent. It is also established that he has already undergone multiple surgeries and will have to take treatment in institutes like NIMS for at least 10 years.

25. Unfortunately, the Motor Accidents Claims Tribunal, Raichur did not give due weightage to the evidence produced by the



appellant and awarded meager compensation and that too by overlooking the documentary evidence produced by appellant regarding the expenses incurred by him at Bhandari Hospital, Raichur and NIMS at Hyderabad. The High Court also failed to properly analyse and evaluate the evidence produced by the appellant and did not adequately enhance the compensation determined by the Tribunal.

26. In our view, the appellant is entitled to Rs.2,20,000/- for the expenses incurred on the treatment including hospitalization charges, mess and lodging charges, transportation etc. For future medical expenses including hospitalization, medicines, attendant charges etc., the appellant is entitled to Rs.6,00,000/-. For pain, suffering and trauma, the appellant is entitled to a sum of Rs.3,00,000/-. For loss of amenities and prospects of marriage, the appellant is entitled to Rs.4,00,000/-. For the loss of expectation of life and loss of future earnings, the appellant is entitled to a sum of Rs.5,00,000/-."

47. In the instant case also, as per Disability Certificate (Ex.P/4), the appellant-claimant has suffered 100% permanent disability and due to the nature of injuries the overall normal life and other normal activities of the injured would definitely get affected. Thus, on this account also, the appellant-claimant is entitled to receive compensation as there is ample loss of amenities and marital prospects. Consequently, appellant-claimant is held entitled to



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compensation of **Rs.4,00,000/-** on account of loss of amenities and loss of marital prospects.

SETTLED LAW OF HON'BLE SUPREME COURT REGARDING GRANT OF COMPENSATION WITH RESPECT TO DIABILITY

48. Hon'ble Supreme Court has settled the law regarding grant of compensation with respect to the disability. The Apex Court in the case of **Raj Kumar Vs. Ajay Kumar and Another (2011) 1 Supreme Court Cases 343**, has held as under:-

General principles relating to compensation in injury cases

5. *The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 Supreme Court 376, R.D. Hattangadi v. Pest Control (India) Ltd., 1995 (1) SCC 551 and Baker v. Willoughby, 1970 AC 467).*

6. *The heads under which compensation is awarded in personal injury cases are the following :*



Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses. Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

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19. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of



evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

20. The assessment of loss of future earnings is explained below with reference to the following

Illustration 'A' : *The injured, a workman, was aged 30 years and earning Rs. 3000/- per month at the time of accident. As per Doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows:*

a) Annual income before the accident : Rs. 36,000/-.

b) Loss of future earning per annum

(15% of the prior annual income) : Rs. 5400/-.

c) Multiplier applicable with reference to age : 17

d) Loss of future earnings : (5400 x 17) : Rs. 91,800/-

Illustration 'B' : *The injured was a driver aged 30 years, earning Rs. 3000/- per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other*



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employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows :

a) Annual income prior to the accident : Rs. 36,000/- .

b) Loss of future earning per annum

(75% of the prior annual income) : Rs. 27000/-.

c) Multiplier applicable with reference to age : 17

d) Loss of future earnings : (27000 x 17) : Rs. 4,59,000/-

Illustration 'C' : *The injured was 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows :*

a) Minimum annual income he would have got if had been employed as an

Engineer : Rs. 60,000/-

b) Loss of future earning per annum

(70% of the expected annual income) : Rs. 42000/-

c) Multiplier applicable (25 years) : 18

d) Loss of future earnings : (42000 x 18) : Rs. 7,56,000/-

[Note : The figures adopted in illustrations (A) and (B) are hypothetical. The figures in Illustration (C) however are based on actuals taken from the decision in Arvind Kumar Mishra (supra)].

49. Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]** has clarified the law under Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988, on the following aspects:-



- (A) Deduction of personal and living expenses to determine multiplicand;
- (B) Selection of multiplier depending on age of deceased;
- (C) Age of deceased on basis for applying multiplier;
- (D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;
- (E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

The relevant portion of the judgment is reproduced as under:-

“ Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”

50. Hon'ble Supreme Court in the case of **Erudhaya Priya Vs. State Express Tran. Corpn. Ltd.** 2020 ACJ 2159, has held as under:-

“ 7. There are three aspects which are required to be examined by us:

(a) the application of multiplier of '17' instead of '18';

The aforesaid increase of multiplier is sought on the basis of age of the appellant as 23 years relying on the judgment in *National Insurance Company Limited v. Pranay Sethi and Others*, 2017 ACJ 2700 (SC). In para 46 of the said judgment, the Constitution Bench effectively affirmed the multiplier method to be used as mentioned in the table in the case of *Sarla Verma (Smt)*



and Others v. Delhi Transport Corporation and Another, 2009 ACJ 1298 (SC) . In the age group of 15-25 years, the multiplier has to be '18' along with factoring in the extent of disability.

The aforesaid position is not really disputed by learned counsel for the respondent State Corporation and, thus, we come to the conclusion that the multiplier to be applied in the case of the appellant has to be '18' and not '17'.

(b) Loss of earning capacity of the appellant with permanent disability of 31.1%

In respect of the aforesaid, the appellant has claimed compensation on what is stated to be the settled principle set out in Jagdish v. Mohan & Others, 2018 ACJ 1011 (SC) and Sandeep Khanuja v. Atul Dande & Another, 2017 ACJ 979 (SC). We extract below the principle set out in the Jagdish (supra) in para 8:

"8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:

- (i) Pain, suffering and trauma resulting from the accident;*
- (ii) Loss of income including future income;*
- (iii) The inability of the victim to lead a normal life together with its amenities;*
- (iv) Medical expenses including those that the victim may be required to undertake in future; and*
- (v) Loss of expectation of life."*

[emphasis supplied]

The aforesaid principle has also been emphasized in an earlier judgment, i.e. the Sandeep Khanuja case (supra) opining



that the multiplier method was logically sound and legally well established to quantify the loss of income as a result of death or permanent disability suffered in an accident.

In the factual contours of the present case, if we examine the disability certificate, it shows the admission/hospitalization on 8 occasions for various number of days over 1½ years from August 2011 to January 2013. The nature of injuries had been set out as under:

"Nature of injury:

- (i) compound fracture shaft left humerus*
- (ii) fracture both bones left forearm*
- (iii) compound fracture both bones right forearm*
- (iv) fracture 3rd, 4th & 5th metacarpals right hand*
- (v) subtrochanteric fracture right femur*
- (vi) fracture shaft femur*
- (vii) fracture both bones left leg*

We have also perused the photographs annexed to the petition showing the current physical state of the appellant, though it is stated by learned counsel for the respondent State Corporation that the same was not on record in the trial court. Be that as it may, this is the position even after treatment and the nature of injuries itself show their extent. Further, it has been opined in para 13 of Sandeep Khanuja case (supra) that while applying the multiplier method, future prospects on advancement in life and career are also to be taken into consideration.

We are, thus, unequivocally of the view that there is merit in the contention of the appellant and the aforesaid principles with regard to future prospects must also be applied in the case of the appellant taking the permanent disability as 31.1%. The quantification of the same on the basis of the judgment in National Insurance Co. Ltd. case



(supra), more specifically para 61(iii), considering the age of the appellant, would be 50% of the actual salary in the present case.

(c) The third and the last aspect is the interest rate claimed as 12%

In respect of the aforesaid, the appellant has watered down the interest rate during the course of hearing to 9% in view of the judicial pronouncements including in the Jagdish's case (supra). On this aspect, once again, there was no serious dispute raised by the learned counsel for the respondent once the claim was confined to 9% in line with the interest rates applied by this Court.

CONCLUSION

8. *The result of the aforesaid is that relying on the settled principles, the calculation of compensation by the appellant, as set out in para 5 of the synopsis, would have to be adopted as follows:*

<i>Heads</i>	<i>Awarded</i>
<i>Loss of earning power (Rs.14,648 x 12 x 31.1/100</i>	<i>Rs. 9,81,978/-</i>
<i>Future prospects (50 per cent addition)</i>	<i>Rs.4,90,989/-</i>
<i>Medical expenses including transport charges, nourishment, etc.</i>	<i>Rs.18,46,864/-</i>
<i>Loss of matrimonial prospects</i>	<i>Rs.5,00,000/-</i>
<i>Loss of comfort, loss of amenities and mental agony</i>	<i>Rs.1,50,000/-</i>



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<i>Pain and suffering</i>	<i>Rs.2,00,000/-</i>
<i>Total</i>	<i>Rs.41,69,831/-</i>

The appellant would, thus, be entitled to the compensation of Rs. 41,69,831/- as claimed along with simple interest at the rate of 9% per annum from the date of application till the date of payment.

RELIEF

51. In view of the law laid down by the Hon'ble Supreme Court in the above referred to judgments, the present appeal is allowed. The award dated 01.02.2007 is set aside. The appellant-claimant is held entitled to grant of compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Income	Rs.15,000/-
2	Loss of future prospects 40%	Rs.6,000/- (40% of 15000)
3	Annual Income	Rs.2,52,000/- (21,000 x12)
4	Loss of future earning per annum (100 % disability)	Rs.2,52,000/-
5	Multiplier 18	Rs.45,36,000/-(2,52,000x18)
6	Pain and Sufferings	Rs.15,00,000/-
7	Special diet	Rs.1,00,000/-
8	Medical expenses	Rs.1,00,000/-
9	Transportation charges	Rs.1,00,000/-
10	Attendant Charges	Rs.43,20,000/- (20,000 x 12 x 18)
11	Marriage prospects and loss of amenities	Rs.4,00,000/-
	Total Compensation	Rs.1,10,56,000/-



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52. So far as the interest part is concerned, as held by Hon'ble Supreme Court in **Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma** 2019 ACJ 3176 and **R.Valli and Others VS. Tamil Nandu State Transport Corporation** (2022) 5 Supreme Court Cases 107, the appellant-claimant is granted the interest @ 9% per annum on the amount from the date of filing of claim petition till the date of its realization.

53. On 27.03.2018, following order was passed by this Court:-

“ On written request circulated by learned counsel for the appellant, with no objection from other side, adjourned to 31.10.2018.

Appellant shall not be entitled to any interest from 13.02.2017, from which date repeated adjournments are sought by learned counsel for the appellant till the adjourned date, in case some enhancement is made in the compensation amount. A note given this respect on the page of memo of parties with red ink.”

As per order dated 27.03.2018, the appellant is not entitled to any interest from 13.02.2017 to 31.10.2018.

54. So far as issue No.2 , i.e. *“Whether the petitioner is entitled to any compensation, for the injuries received by him in the aforesaid accident, if so to what amount and from whom ,* is concerned, a perusal of the award reveals that as per Insurance Policy Ex.R-4, the policy was a 'Packaged Policy' and therefore, the respondent-Insurance Company is liable to pay the compensation.

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55. The respondent-Insurance Company is directed to deposit the amount of compensation alongwith interest with the Tribunal within a period of three months from today. The Tribunal is further directed to disburse the amount of compensation alongwith interest in the account of the claimant/appellant. The claimant/appellant is directed to furnish his bank account details to the Tribunal.

56. The Insurance Company is hereby directed to disburse the current scheduled fee to Mr. Ashwani Talwar, Advocate within a period of 20 days from the date of receipt of the copy of this judgment, in view of the order dated 18.07.2024 passed in FAO No.1682 of 2007 by this Court.

57. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

February 18, 2025

sonia arora/tripti

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/ No