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KAJAL

v.

JAGDISH CHAND & ORS.

(Civil Appeal No. 735 of 2020)

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FEBRUARY 05, 2020

[L. NAGESWARA RAO AND DEEPAK GUPTA, JJ.]

C *Motor Vehicles Act, 1988 – Just compensation – Personal injury cases – Victim (minor) was travelling on a tractor with her parents when it was hit by a truck – She suffered serious injuries resulting in damage to her brain – Disability was assessed as 100% – Disability certificate stated that as per assessment her I.Q. is less than 20% of a child of her age and her social age is only of a 9 month old child – Motor Accident Claims Tribunal (MACT) awarded Rs.11,08,501/- and held that since there was violation of terms of*

D *policy, the insurance company would pay the amount but would be entitled to recover the same from the owner – High Court enhanced it to Rs.25,78,501/- – On appeal, held: Injuries cause deprivation to the body which entitles the claimant to claim damages – Damages may vary according to the gravity of the injuries sustained by the*

E *claimant in an accident – Compensation should neither be assessed very conservatively, nor assessed in so liberal a fashion so as to make it a bounty to the claimant – Court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation – Such compensation is what is termed as just compensation – Rs.62,27,000/- is awarded to the*

F *claimant, inter alia under expenses relating to treatment; hospitalization and transportation; loss of earnings (family members); loss of future earnings; pain, suffering & loss of amenities etc., with interest @7.5% p.a. from the date of filing of the claim petition till payment of the amount – Insurance company*

G *entitled to adjust the amount already paid and to recover the amount from the owner in terms of the award of MACT, which was not challenged either before High Court or Supreme Court – Amount awarded is more than the amount claimed – In motor accident claim petitions, the Court must award just compensation and, in case, the just compensation is more than the amount claimed, that must be*

H *awarded especially where the claimant is a minor.*

Motor Vehicles Act, 1988 – Minor Claimant – Compensation – Guidelines for investment of – Discussed. A

Motor Vehicles Act, 1988 – Compensation – Grant of interest – Held: Normally interest should be granted from the date of filing of the petition and if in appeal enhancement is made the interest should again be from the date of filing of the petition– Only if the appeal is filed after an inordinate delay by the claimants, or the decision of the case has been delayed on account of negligence of the claimant, in such exceptional cases the interest may be awarded from a later date – While doing so, the tribunals/High Courts must give reasons why interest is not being paid from the date of filing of the petition. B C

Disposing of the appeal, the Court

HELD:1.1 Expenses relating to treatment, hospitalization, medicines, transportation etc.

Injuries cause deprivation to the body which entitles the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by the claimant in an accident. On account of the injuries, the claimant may suffer consequential losses such as (i) loss of earning; (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges etc., (iii) loss or diminution to the pleasures of life by loss of a particular part of the body, and (iv) loss of future earning capacity. Damages can be pecuniary as well as non-pecuniary, but all have to be assessed in Rupees and Paise. The court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by the victim. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. Such compensation is what is termed as just compensation. The compensation or damages assessed for personal injuries should be substantial to compensate the injured for the deprivation suffered by the injured throughout his/her life. They should not be just token damages. [Paras 5, 6][629-D-H] D E F G H

A **1.2 Expenses relating to treatment, hospitalization, medicines, transportation etc.** There is no dispute with regard to the long period of treatment and hospitalisation of this young girl. Limiting the amount only to the bills which have been paid in the name of the claimant only, would not be reasonable. Therefore, the amount payable for actual medical expenses is increased from Rs.1,38,501/- to Rs.2,00,000/-. The amount awarded for transportation at Rs.50,000/- is reasonable. Therefore, under this head Rs.2,50,000/- is awarded. [Para 19][634-E, G]

C **1.3 Loss of earnings**

 The appellant placed material to show that the minimum wages payable to a skilled workman is Rs.4846/- per month. This would be the minimum amount which she would have earned on becoming a major. Adding 40% for the future prospects, it works to be Rs.6784.40/- per month, i.e., 81,412.80 per annum. Applying the multiplier of 18 it works out to Rs.14,65,430.40, which is rounded off to Rs.14,66,000/-. Further, in the hospital the claimant would have had at least two attendants, and taking the cost of each at Rs.500/- per day for 51 days, Rs.51,000/- is awarded to her. [Paras 20, 21][635-B-C, F]

E **1.3 Attendant Charges**

 The cost of one attendant is assessed 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 to Rs.21,60,000/- for attendant charges for her entire life. [Para 25][637-D]

1.4 Pain, Suffering and Loss of Amenities

G The courts or the tribunals assessing the compensation in a case of 100% disability, especially where there is mental disability also, should take a liberal view of the matter when awarding compensation. In the peculiar facts and circumstances of the case even after taking a very conservative view of the matter an amount payable for the pain and suffering of this child should be at least Rs.15,00,000/. [Paras 26, 27][638-A, D]

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1.4 Loss of marriage prospects

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The Tribunal has awarded Rs.3,00,000/- for loss of marriage prospects. No reason to interfere with this finding. [Paras 28] [638-E]

1.5 Future medical treatment

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Keeping in view her young age and assuming she would live another 50-60 years, it would not be unjust to award her Rs.5,00,000/- for future medical expenses. [Paras 29][638-G]

1.6 How the compensation should be invested?

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The tribunal while awarding the compensation stated that the amount payable to the share of the minor victim would be kept in a Fixed Deposit till she attains the age of 18 years. The High Court while enhancing the amount of compensation directed that the enhanced amount be paid to the appellant within 45 days. This is totally contrary to the guidelines laid down by Supreme Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas and Ors.* These guidelines protect the rights of the minors, claimants who are under some disability and also widows and illiterate person who may be deprived of the compensation paid to them in lump sum by unscrupulous elements. These victims may not be able to invest their monies properly and in such cases the MACT as well the High courts must ensure that investments are made in nationalised banks to get a high rate of interest. The interest in most cases is sufficient to cover the monthly expenses. In special cases, for reasons to be given in writing, the MACT or the trial court may release such amount as is required. These guidelines are reiterated and it is directed that they should be followed by all the tribunals and High Courts to ensure that the money of the victims is not frittered away. [Para 30][638-H; 639-A; 640-D-F]

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General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas and Ors.
(1994) 2 SCC 176 – relied on.

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A **1.7 Interest**

Normally interest should be granted from the date of filing of the petition and if in appeal enhancement is made the interest should again be from the date of filing of the petition. It is only if the appeal is filed after an inordinate delay by the claimants, or the decision of the case has been delayed on account of negligence of the claimant, in such exceptional cases the interest may be awarded from a later date. However, while doing so, the tribunals/ High Courts must give reasons why interest is not being paid from the date of filing of the petition. Therefore, the entire amount of compensation including the amount enhanced by Supreme Court shall carry an interest of 7.5% per annum from the date of filing of the claim petition till payment/deposit of the amount. [Para 31][641-B-C]

1.8 Relief

D Rs.62,27,000/- is awarded to the claimant. This amount shall carry an interest @7.5% p.a. from the date of filing of the claim petition till payment/deposit of the amount. The insurance company shall be entitled to adjust the amount already paid. Further, the insurance company shall also be entitled to recover the amount from the owner in terms of the award of the MACT, which has not been challenged either before the High Court or us. The amount awarded is more than the amount claimed. However, in motor accident claim petitions, the Court must award just compensation and, in case, the just compensation is more than the amount claimed, that must be awarded especially where the claimant is a minor. [Paras 32, 33][641-D, G-H; 642-A]

G *M/s Concord of India Insurance Co. Ltd. v. Nirmala Devi and others* 1980 ACJ 55 (SC); *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd.* (1995) 1 SCC 551 : [1995] 1 SCR 75; *Raj Kumar v. Ajay Kumar and Others* (2011) 1 SCC 343 : [2010] 13 SCR 179; *K. Suresh v. New India Assurance Company Ltd. and Ors.* (2012) 12 SCC 274 : [2012] 11 SCR 414 – relied on.

Gobald Motor Service Ltd. v. R.M.K. Veluswami AIR 1962 SC 1 : [1962] SCR 929; *Municipal Corporation*

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of Delhi v. Subhagwati and Ors., **1966 ACJ 57**; *U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors.* **(1996) 4 SCC 362** : **[1996] 2 Suppl. SCR 443**; *Sandeep Khanduja v. Atul Dande and Ors.* **(2017) 3 SCC 351**; *Mallikarjun v. Divisional Manager, The National Insurance Company Limited and Ors.* **2013 (10) SCALE 668** – referred to.

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Phillips v. Western Railway Co. **(1874) 4 QBD 406**; *Mediana* **[1900] AC 113**; *H. West & Son Ltd. v. Shephard* **1963 2 WLR 1359**; *Ward v. James* **(1965) 1 All ER 563**; *Taylor v. O'Connor* **1971 AC 115** – referred to.

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Case Law Reference

1980 ACJ 55 (SC)	relied on	Para 14	
[1995] 1 SCR 75	relied on	Para 15	
[2010] 13 SCR 179	relied on	Para 16	D
[2012] 11 SCR 414	relied on	Para 17	
[1962] SCR 929	referred to	Para 22	
1966 ACJ 57	referred to	Para 24	E
[1996] 2 Suppl. SCR 443	referred to	Para 24	
(2017) 3 SCC 351	referred to	Para 24	
2013 (10) SCALE 668	referred to	Para 26	
(1994) 2 SCC 176	relied on	Para 30	F

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 735 of 2020.

From the Judgment and Order dated 05.04.2018 of the High Court for the States of Punjab & Haryana at Chandigarh in CM No. 23736 of 2017 in FAO No. 4863 of 2010.

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Dhruv Gautam, Ms. Charu Ambwani, Advs. for the Appellant.

S.L. Gupta, Kuldeep Singh Tomar, Varinder Kumar Sharma, Ms. Gunjan Sharma, Bikas Chandra, Advs. for the Respondents.

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A The Judgment of the Court was delivered by
DEEPAK GUPTA, J.

B 1. Kajal was a bright young girl. She used to attend school, play
with her friends and lead a normal life like anyother child. Unfortunately,
on 18th October, 2007, while Kajal was travelling on a tractor with her
parents, the tractor was hit by a truck which was driven rashly. In the
said accident, Kajal suffered serious injuries resulting in damage to her
brain. This has had very serious consequences on her. She was examined
at the Post Graduate Institute of Medical Education and Research,
Chandigarh (PGI, Chandigarh for short), for assessment of her disability.
C According to the said report, because of head injury Kajal is left with a
very low I.Q. and severe weakness in all her four limbs, suffers from
severe hysteria and severe urinary incontinence. Her disability has been
assessed as 100%.

D 2. Dr. Chhabra(PW-4), who was one of the members of the Board
which issued the disability certificate (Ex.P6) stated that as per the
assessment her I.Q. is less than 20% of a child of her age and her social
age is only of a 9 month old child. This means that Kajal while lying on
the bed will grow up to be an adult with all the physical and biological
attributes which a woman would get on attaining adulthood, including
menstruation etc., but her mind will remain of a 9 month old child.
E Basically, she will not understand what is happening all around her.

F 3. How does one assess compensation in such a case? No amount
of money can compensate this child for the injuries suffered by her. She
can never be put back in the same position. However, compensation has
to be determined in terms of the provisions of Motor Vehicles Act, 1988
(for short the Act). The Act requires determination of payment of just
compensation and it is the duty of the court to ensure that she is paid
compensation which is just.

G 4. Kajal through her father filed a claim petition, under the Act. The
Motor Accident Claims Tribunal (MACT for short) awarded
Rs.11,08,501/- and held that since there was violation of the terms of
policy the insurance company would pay the amount but would be entitled
to recover the same from the owner. The High Court enhanced the
award amount to Rs.25,78,501/- under the following heads:

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Heads	High Court
Age	12
Multiplier	-
Income (taken to be)	Rs. 15,000/-
Disability	100%
Loss of income and permanent disability compensation	Rs. 2,70,000/-
Pain, suffering loss of amenities	Rs. 3,00,000/-
Attendant charges	Rs. 3,20,000/- (Rs. 2500 for 44 years)
Future medical expenses	Rs. 2,00,000/-
Loss of marriage prospects	Rs. 3,00,000/-
Medical Treatment	Rs. 1,38,501/-
Transportation details / special diet	Rs. 50,000/-
Total	Rs.25,78,501/-

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Aggrieved by the award the claimant is before this Court.

5. The principles with regard to determination of just compensation contemplated under the Act are well settled. Injuries cause deprivation to the body which entitles the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by the claimant in an accident. On account of the injuries, the claimant may suffer consequential losses such as (i) loss of earning; (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges etc., (iii) loss or diminution to the pleasures of life by loss of a particular part of the body, and (iv) loss of future earning capacity. Damages can be pecuniary as well as non-pecuniary, but all have to be assessed in Rupees and Paise.

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6. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Act enjoins upon the courts to do. The court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by the victim. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. Such compensation is what is termed as just compensation. The compensation or damages assessed for personal injuries should be substantial to compensate the injured for the deprivation suffered by the injured throughout his/her life. They should not be just token damages.

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A 7. There are numerous cases where the principles for grant of compensation have been enunciated. It would be relevant to quote pertinent observations from a few.

8. In *Phillips v. Western Railway Co.*¹, Field, J., while emphasizing that damages must be full and adequate, held thus:

B “You cannot put the plaintiff back again into his original position,
but you must bring your reasonable common sense to bear, and
you must always recollect that this is the only occasion on which
compensation can be given. The plaintiff can never sue again for
it. You have, therefore, now to give him compensation once and
C for all. He has done no wrong, he has suffered a wrong at the
hands of the defendants and you must take care to give him full
fair compensation for that which he has suffered.” Besides, the
Tribunals should always remember that the measures of damages
in all these cases “should be such as to enable even a tortfeasor
to say that he had amply atoned for his misadventure”.

D 9. In the case of *Mediana*², Lord Halsbury held:
“Of course the whole region of inquiry into damages is one of
extreme difficulty. You very often cannot even lay down any
principle upon which you can give damages; nevertheless, it is
E remitted to the jury, or those who stand in place of the jury, to
consider what compensation in money shall be given for what is a
wrongful act. Take the most familiar and ordinary case: how is
anybody to measure pain and suffering in moneys counted?
Nobody can suggest that you can by any arithmetical calculation
F establish what is the exact amount of money which would
represent such a thing as the pain and suffering which a person
has undergone by reason of an accident. In truth, I think it would
be very arguable to say that a person would be entitled to no
damages for such thing. What manly mind cares about pain and
suffering that is past? But, nevertheless, the law recognizes that
G as a topic upon which damages may be given.”

10. The following observations of Lord Morris in his speech in *H. West & Son Ltd. v. Shephard*³, are very pertinent:

¹ (1874) 4 QBD 406

² [1900] AC 113

³ 1963 2 WLR 1359

“Money may be awarded so that something tangible may be procured to replace something else of the like nature which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that Judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards.”

In the same case Lord Devlin observed that the proper approach to the problem was to adopt a test as to what contemporary society would deem to be a fair sum, such as would allow the wrongdoer to “hold up his head among his neighbours and say with their approval that he has done the fair thing”, which should be kept in mind by the court in determining compensation in personal injury cases.

11. Lord Denning while speaking for the Court of Appeal in the case of *Ward v. James*⁴, laid down the following three basic principles to be followed in such like cases:

“Firstly, accessibility: In cases of grave injury, where the body is wrecked or brain destroyed, it is very difficult to assess a fair compensation in money, so difficult that the award must basically be a conventional figure, derived from experience or from awards in comparable cases. Secondly, uniformity: There should be some measure of uniformity in awards so that similar decisions may be given in similar cases; otherwise there will be great dissatisfaction in the community and much criticism of the administration of justice. Thirdly, predictability: Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceably and not brought to court, a thing very much to the public good.”

12. The assessment of damages in personal injury cases raises great difficulties. It is not easy to convert the physical and mental loss into monetary terms. There has to be a measure of calculated guess

⁴(1965) 1 All ER 563

A work and conjecture. An assessment, as best as can, in the circumstances, should be made.

13. In *McGregor's Treatise on Damages*, 14th Edn., para 1157, referring to heads of damages in personal injury actions states:

B “The person physically injured may recover both for his pecuniary losses and his non-pecuniary losses. Of these the pecuniary losses themselves comprise two separate items, viz., the loss of earnings and other gains which the plaintiff would have made had he not been injured and the medical and other expenses to which he is put as a result of the injury, and the courts have sub-divided the
C non-pecuniary losses into three categories, viz., pain and suffering, loss of amenities of life and loss of expectation of life.”

14. In *M/s Concord of India Insurance Co. Ltd. v. Nirmala Devi and others*⁵, this Court held:

D “2....The determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales.”

15. In *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd.*⁶, dealing with the different heads of compensation in injury cases this Court held thus:

E “9. Broadly speaking, while fixing the amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas
F non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include:

G (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in the future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury

⁵ 1980 ACJ 55 (SC)

H ⁶ (1995) 1 SCC 551

the claimant may not be able to walk, run or sit; (iii) damages for loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.” A

16. In **Raj Kumar v. Ajay Kumar and Others**⁷, this Court laid down the heads under which compensation is to be awarded for personal injuries. B

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

Pecuniary damages (Special damages) C

(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: D

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

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

(iii) Future medical expenses. E

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). F

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

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.”

⁷ (2011) 1 SCC 343

A 17. In *K. Suresh v. New India Assurance Company Ltd. and Ors.*⁸, this Court held as follows :

B “2...There cannot be actual compensation for anguish of the heart or for mental tribulations. The quintessentiality lies in the pragmatic computation of the loss sustained which has to be in the realm of realistic approximation. Therefore, Section 168 of the Motor Vehicles Act, 1988 (for brevity ‘the Act’) stipulates that there should be grant of “just compensation”. Thus, it becomes a challenge for a court of law to determine “just compensation” which is neither a bonanza nor a windfall, and simultaneously, should not be a pittance.”

C 18. Applying the aforesaid principles, we now proceed to assess the compensation.

Expenses relating to treatment, hospitalization, medicines, transportation etc.

D 19. The High Court under the two heads of medical treatment and transport has awarded Rs.1,88,501/-. Out of this an amount of Rs.1,38,501/- is the actual expense incurred on the treatment of Kajal. One must remember that amongst people who are not Government employees and belong to the poorer strata of society, bills are not retained.

E Some of the bills have been excluded by the courts below only on the ground that the name of the patient is not written on the bill. There is no dispute with regard to the long period of treatment and hospitalisation of this young girl. Immediately after the accident on 18.10.2007, she was admitted at a hospital in Karnal. From there, she was referred to the PGI, Chandigarh, where she remained admitted from 21.10.2007 till

F 12.11.2007 and, thereafter, she was again admitted in the hospital from 12.11.2007 till 08.12.2007. She was in the hospital for almost 51 days, and both Dr. Sameer Aggarwal (PW-3) from the hospital at Karnal and Dr. Rajesh Chhabra (PW-4), from PGI, Chandigarh, have supported this. Limiting the amount only to the bills which have been paid in the

G name of the claimant only, would not be reasonable. Therefore, the amount payable for actual medical expenses is increased from Rs.1,38,501/- to Rs.2,00,000/-. The amount awarded for transportation at Rs.50,000/- is reasonable. Therefore, under this head we award Rs.2,50,000/-.

H ⁸ (2012) 12 SCC 274

Loss of earnings

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20. Both the courts below have held that since the girl was a young child of 12 years only notional income of Rs.15,000/- per annum can be taken into consideration. We do not think this is a proper way of assessing the future loss of income. This young girl after studying could have worked and would have earned much more than Rs.15,000/- per annum. Each case has to be decided on its own evidence but taking notional income to be Rs.15,000/- per annum is not at all justified. The appellant has placed before us material to show that the minimum wages payable to a skilled workman is Rs.4846/- per month. In our opinion this would be the minimum amount which she would have earned on becoming a major. Adding 40% for the future prospects, it works to be Rs.6784.40/- per month, i.e., 81,412.80 per annum. Applying the multiplier of 18 it works out to Rs.14,65,430.40, which is rounded off to Rs.14,66,000/-

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21. Though the claimant would have been entitled to separate attendant charges for the period during which she was hospitalised, we are refraining from awarding the same because we are going to award her attendant charges for life. At the same time, we are clearly of the view that the tortfeasor cannot take benefit of the gratuitous service rendered by the family members. When this small girl was taken to PGI, Chandigarh, or was in her village, 2-3 family members must have accompanied her. Even if we are not paying them the attendant charges they must be paid for loss of their wages and the amount they would have spent in hospital for food etc. These family members left their work in the village to attend to this little girl in the hospital at Karnal or Chandigarh. In the hospital the claimant would have had at least two attendants, and taking the cost of each at Rs.500/- per day for 51 days, we award her Rs.51,000/-.

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Attendant charges

22. The attendant charges have been awarded by the High Court @ 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 factors 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

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A of income but also for determining the attendant charges etc. This system was recognised by this Court in ***Gobald Motor Service Ltd. v. R.M.K. Veluswami***⁹. 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 recognised 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. It would be apposite at this stage to refer to the observation of Lord Reid in ***Taylor v. O'Connor***¹⁰:

C “Damages to make good the loss of dependency over a period of years must be awarded as a lump sum and that sum is generally calculated by applying a multiplier to the amount of one year’s dependency. That is a perfectly good method in the ordinary case but it conceals the fact that there are two quite separate matters involved, the present value of the series of future payments, and the discounting of that present value to allow for the fact that for one reason or another the person receiving the damages might never have enjoyed the whole of the benefit of the dependency. It is quite unnecessary in the ordinary case to deal with these matters separately. Judges and counsel have a wealth of experience which is an adequate guide to the selection of the multiplier and any expert evidence is rightly discouraged. But in a case where the facts are special, I think, that these matters must have separate consideration if even rough justice is to be done and expert evidence may be valuable or even almost essential. The special factor in the present case is the incidence of Income Tax and, it may be, surtax.”

24. This Court has reaffirmed the multiplier method in various cases like ***Municipal Corporation of Delhi v. Subhagwati and Ors.***¹¹, ***U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors.***¹², ***Sandeep Khanduja v. Atul Dande and Ors.***¹³. This Court has also recognised that Schedule II of the Act can be used as a guide for

⁹ AIR 1962 SC 1

¹⁰ 1971 AC 115

¹¹ 1966 ACJ 57

¹² (1996) 4 SCC 362

H ¹³ (2017) 3 SCC 351

the multiplier to be applied in each case. Keeping the claimant's age in mind, the multiplier in this case should be 18 as opposed to 44 taken by the High Court. A

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 bed ridden. 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.4846/- 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 to Rs.21,60,000/- for attendant charges for her entire life. This takes care of all the pecuniary damages. B C D

Pain, Suffering and Loss of Amenities

26. Coming to the non-pecuniary damages under the head of pain, suffering, loss of amenities, the High Court has awarded this girl only Rs.3,00,000/-. In *Mallikarjun v. Divisional Manager, The National Insurance Company Limited and Ors.*¹⁴, this Court while dealing with the issue of award under this head held that it should be at least Rs.6,00,000/-, if the disability is more than 90%. As far as the present case is concerned, in addition to the 100% physical disability the young girl is suffering from severe incontinence, she is suffering from severe hysteria and above all she is left with a brain of a nine month old child. This is a case where departure has to be made from the normal rule and the pain and suffering suffered by this child is such that no amount of compensation can compensate. E F

27. One factor which must be kept in mind while assessing the compensation in a case like the present one is that the claim can be awarded only once. The claimant cannot come back to court for enhancement of award at a later stage praying that something extra has G

¹⁴ 2013 (10) SCALE 668

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

Loss of marriage prospects

28. The Tribunal has awarded Rs.3,00,000/- for loss of marriage prospects. We see no reason to interfere with this finding.

E **Future medical treatment**

29. The claimant has been awarded only Rs.2,00,000/- under this head. This amount is a pittance. Keeping in view the nature of her injuries and the fact that she is bed-ridden this child is bound to suffer from a lot of medical problems. True it is that there is no evidence in this regard but
- F there can hardly be such evidence. She may require special mattress which will have to be changed frequently. In future as this girl grows, she may face many other medical issues because of the injuries suffered in the accident. Keeping in view her young age and assuming she would live another 50-60 years, it would not be unjust to award her
- G Rs.5,00,000/- for future medical expenses.

How the compensation should be invested?

30. The tribunal while awarding the compensation had stated that the amount payable to the share of Kajal would be kept in a Fixed Deposit till she attains the age of 18 years. The High Court while enhancing the
- H

amount of compensation has directed that the enhanced amount be paid to the appellant within 45 days. This is totally contrary to the guidelines laid down by this Court in ***General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas and Ors.***¹⁵, wherein it has been held clearly that the amount payable to the minors should not be normally released. The guidelines in this case were as follows :

“17....(i) The Claims Tribunal should, in the case of minors, invariably order the amount of compensation awarded to the minor be invested in long term fixed deposits at least till the date of the minor attaining majority. The expenses incurred by the guardian or next friend may, however, be allowed to be withdrawn;

(ii) In the case of illiterate claimants also the Claims Tribunal should follow the procedure set out in (i) above, but if lump sum payment is required for effecting purchases of any movable or immovable property such as, agricultural implements, rickshaw, etc., to earn a living, the Tribunal may consider such a request after making sure that the amount is actually spent for the purpose and the demand is not a ruse to withdraw money;

(iii) In the case of semi-literate persons the Tribunal should ordinarily resort to the procedure set out at (i) above unless it is satisfied, for reasons to be stated in writing, that the whole or part of the amount is required for expanding and existing business or for purchasing some property as mentioned in (ii) above for earning his livelihood, in which case the Tribunal will ensure that the amount is invested for the purpose for which it is demanded and paid;

(iv) In the case of literate persons also the Tribunal may resort to the procedure indicated in (i) above, subject to the relaxation set out in (ii) and (iii) above, if having regard to the age, fiscal background and strata of society to which the claimant belongs and such other considerations, the Tribunal in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded to him thinks it necessary to do order;

(v) In the case of widows the Claims Tribunal should invariably follow the procedure set out in (i) above;

¹⁵ (1994) 2 SCC 176

- A (vi) In personal injury cases if further treatment is necessary the Claims Tribunal on being satisfied about the same, which shall be recorded in writing, permit withdrawal of such amount as is necessary for incurring the expenses for such treatment;
- B (vii) In all cases in which investment in long term fixed deposits is made it should be on condition that the Bank will not permit any loan or advance on the fixed deposit and interest on the amount invested is paid monthly directly to the claimant or his guardian, as the case may be;
- C (viii) In all cases Tribunal should grant to the claimants liberty to apply for withdrawal in case of an emergency. To meet with such a contingency, if the amount awarded is substantial, the Claims Tribunal may invest it in more than one Fixed Deposit so that if need be one such F.D.R. can be liquidated....”

D These guidelines protect the rights of the minors, claimants who are under some disability and also widows and illiterate person who may be deprived of the compensation paid to them in lump sum by unscrupulous elements. These victims may not be able to invest their monies properly and in such cases the MACT as well the High courts must ensure that investments are made in nationalised banks to get a high rate of interest. The interest in most cases is sufficient to cover the monthly expenses. In special cases, for reasons to be given in writing, the MACT or the trial court may release such amount as is required. We reiterate these guidelines and direct that they should be followed by all the tribunals and High Courts to ensure that the money of the victims is not frittered away.

F **Interest**

G 31. The High Court enhanced the amount of compensation by Rs.14,70,000/- and awarded interest @ 7.5% per annum but directed that the interest of 7.5% shall be paid only from the date of filing of the appeal. This is also incorrect. We are constrained to observe that the High Court was not right in awarding interest on the enhanced amount only from the date of filing of the appeal. Section 171 of the Act reads as follows :

H “171. Award of interest where any claim is allowed.—Where any Claims Tribunal allows a claim for compensation made under

this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.” A

Normally interest should be granted from the date of filing of the petition and if in appeal enhancement is made the interest should again be from the date of filing of the petition. It is only if the appeal is filed after an inordinate delay by the claimants, or the decision of the case has been delayed on account of negligence of the claimant, in such exceptional cases the interest may be awarded from a later date. However, while doing so, the tribunals/High Courts must give reasons why interest is not being paid from the date of filing of the petition. Therefore, we direct that the entire amount of compensation including the amount enhanced by us shall carry an interest of 7.5% per annum from the date of filing of the claim petition till payment/deposit of the amount. B C

Relief

 D

32. In view of the above, we award a sum of Rs.62,27,000/- to the claimant under the following heads :

S.No.	Heads	Amount
(i)	Expenses relating to treatment, hospitalisation and transportation	Rs. 2,50,000/-
(ii)	Loss of earnings (family members)	Rs. 51,000/-
(iii)	Loss of future earnings	Rs.14,66,000/-
(iv)	Attendant charges	Rs.21,60,000/-
(v)	Pain, suffering, loss of amenities	Rs.15,00,000/-
(vi)	Loss of Marriage prospects	Rs. 3,00,000/-
(vii)	Future medical treatment	Rs. 5,00,000/-

This amount shall carry an interest @7.5% p.a. from the date of filing of the claim petition till payment/deposit of the amount. Obviously, the insurance company shall be entitled to adjust the amount already paid. Further, the insurance company shall also be entitled to recover the amount from the owner in terms of the award of the MACT, which has not been challenged either before the High Court or us. E F G H

- A 33. We are aware that the amount awarded by us is more than the amount claimed. However, it is well settled law that in motor accident claim petitions, the Court must award just compensation and, in case, the just compensation is more than the amount claimed, that must be awarded especially where the claimant is a minor.
- B 34. The insurance company shall deposit the enhanced amount before the MACT in terms of the judgment after deducting the amount already paid by the insurance company within a period of 3 months from today. The MACT shall keep the entire amount in a fixed deposit in a nationalised bank, for a period of 5 years, giving highest rate of interest.
- C The interest payable on this amount shall be released on quarterly basis to the father of the child. This amount shall be spent for paying the attendants and for the care of the child alone. Even after 5 years since this child for all intents and purpose shall remain a person under a disability, the MACT shall keep renewing the amount on these terms. We, however,
- D further direct that in case the parents or the guardian moves an application for release of some amount to meet some special medical expenses, then MACT may consider release of the same.

35. The appeal is disposed of in the aforesaid terms. No order as to costs. Pending application(s), if any, also stand(s) disposed of.

Divya Pandey

Appeal disposed of.