Balram Prasad vs Kunal Saha & Ors on 24 October, 2013

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Bench: V. Gopala Gowda, Chandramauli Kr. Prasad

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2867 OF 2012

Dr. Balram Prasad … Appellant

Vs.

Dr. Kunal Saha & Ors. … Respondents

WITH

CIVIL APPEAL No.692 of 2012

Advanced Medicare & Research
Institute Ltd. … Appellant

Vs.

Dr. Kunal Saha & Ors. … Respondents

WITH

CIVIL APPEAL No.2866 of 2012

Dr. Kunal Saha …Appellant

Vs.

Dr. Sukumar Mukherjee & Ors. … Respondents

WITH

CIVIL APPEAL No.731 of 2012

Dr. Baidyanath Haldar … Appellant

Vs.

Dr. Kunal Saha & Ors. … Respondents

AND

CIVIL APPEAL No.858 of 2012

Dr. Sukumar Mukherjee … Appellant

Vs.

Dr. Kunal Saha & Ors. … Respondents

J U D G M E N T

V. Gopala Gowda, J.

The Civil Appeal Nos.2867, 731 and 858 of 2012 are filed by the appellant-doctors, Civil Appeal No. 692 of 2012 is filed by the appellant-AMRI Hospital and Civil Appeal No. 2866 of 2012 is filed by the claimant-appellant – Dr. Kunal Saha (hereinafter referred to as 'the claimant'), questioning the correctness of the impugned judgment and order dated 21.10.2011 passed by the National Consumer Disputes Redressal Commission (hereinafter referred to as the 'National Commission') in Original Petition No.240 of 1999.

2. The appellant-doctors are aggrieved by the quantum of compensation awarded by the National Commission and the liability fastened upon them for the negligence on their part and have prayed to set aside the same by allowing their appeals. In so far as the appellant-AMRI Hospital is concerned, it has also questioned the quantum of compensation awarded and has prayed to reduce the same by awarding just and reasonable compensation by modifying the judgment by allowing its appeal.

So far as the claimant is concerned, he is aggrieved by the said judgment and the compensation awarded which, according to him, is inadequate, as the same is contrary to the admitted facts and law laid down by this Court in catena of cases regarding awarding of compensation in relation to the proved medical negligence for the death of his wife Anuradha Saha (hereinafter referred to as the 'deceased').

3. The brief relevant facts and the grounds urged on behalf of the appellant-doctors, AMRI Hospital and the claimant in seriatim are adverted to in this common judgment for the purpose of examining the correctness of their respective legal contentions urged in their respective appeals with a view to pass common judgment and award.

4. Brief necessary and relevant facts of the case are stated hereunder:

> The claimant filed Original Petition No. 240 of 1999 on 09.03.1999 before the National Commission claiming compensation for Rs.77,07,45,000/- and later the same was amended by claiming another sum of Rs.20,00,00,000/-. After the case of Malay Kumar Ganguly Vs. Dr. Sukumar Mukherjee[1] was remanded by this Court to the National Commission to award just and reasonable compensation to the claimant by answering the points framed in the said case, the National Commission held the doctors and the AMRI Hospital negligent in treating the wife of the claimant on account of which she died.

Therefore, this Court directed the National Commission to determine just and reasonable compensation payable to the claimant. However, the claimant, the appellant-Hospital and the doctors were aggrieved by the amount of compensation awarded by the National Commission and also the manner in which liability was apportioned amongst each of them. While the claimant was aggrieved by the inadequate amount of compensation, the appellant-doctors and the Hospital found the amount to be excessive and too harsh. They further claimed that the proportion of liability ascertained on each of them is unreasonable. Since, the appellant-Hospital and the doctors raised similar issues before the Court; we intend to produce their contentions in brief as under:

> On granting the quantum of compensation based on the income of the deceased:

5. It is the claim of the learned counsel on behalf of the appellant- doctors and the Hospital that there is no pleading in the petition of the claimant that the deceased had a stable job or a stable income, except in paragraph 2A of the petition which states that the deceased was a Post-Graduate student and she had submitted her thesis. The only certificate produced by the claimant shows that she was just a graduate in Arts (English). Further, it is urged by the learned counsel that the document produced by the claimant - a computer generated sheet, does not explain for what work the remuneration, if at all was received by the deceased. Also, whether the same was a onetime payment of stipend or payment towards voluntary work, is not explained by the claimant. Further, it is stated by the learned counsel that there is no averment in the petition of the claimant as to on what account the said payment was received by the deceased and whether she has received it as a Child Psychologist as claimed by the claimant or otherwise.

6. It is also the case of the appellant-doctors and the Hospital that the claimant had not led any oral evidence with regard to the income of the deceased and further he has not explained why just a single document discloses the payment made sometime in the month of June 1988 in support of the income of the deceased when admittedly, the couple came to India in the month of March-April, 1998. Therefore, the learned counsel for the appellant-doctors and the Hospital have urged that the

said document is a vague document and no reliance could have been placed by the National Commission on the same to come to the conclusion that the deceased in fact had such an income to determine and award the compensation as has been awarded in the impugned judgment and order. From a perusal of the said document, it could be ascertained that it shows just one time payment received for some odd jobs. Therefore, it is contended by the appellant-doctors and the Hospital that the claimant has not been able to discharge his onus by adducing any positive evidence in this regard before the National Commission.

7. It is further contended by the learned counsel that the assertion of the claimant in the petition and in his evidence before the National Commission that the income of the deceased was $30,000 per annum is not substantiated by producing cogent evidence. No appointment letter of the deceased to show that she was employed in any organization in whatsoever capacity had been produced nor has the claimant produced any income certificate/salary sheet. No evidence is produced by the claimant in support of the fact that the deceased was engaged on any permanent work. No Income Tax Return has been produced by the claimant to show that she had been paying tax or had any income in U.S.A.

8. It is further submitted that even if it is assumed that the annual income of the deceased was $30,000 per annum, apart from deduction on account of tax, it is also essential for the National Commission to ascertain the personal living expenses of the deceased which was required to be deducted out of the annual income to determine the compensation payable to the claimant. The National Commission was required to first ascertain the style of living of the deceased- whether it was Spartan or Bohemian to arrive the income figure of $30,000 per annum. In India, on account of style and standard of living of a person, one–third of the gross income is required to be deducted out of the annual income as laid down in the decision of this Court in the case of Oriental Insurance Company Ltd. Vs. Jashuben & Ors[2].

It is further contended by the learned counsel for the appellant- doctors and the Hospital that no yardstick is available about the expenditure of the deceased in the U.S.A. The claimant has not adduced any evidence in this regard. The evidence given by the so-called expert, Prof. John F. Burke Jr. also does not say anything on this score.

Even if it is assumed that the annual income of the deceased was $30,000 per annum for which there is no evidence, 25% thereof is required to be deducted towards tax. The deduction of tax is much more as is apparent from the case reported in United India Insurance Co. Ltd. & Others Vs. Patricia Jean Mahajan & Ors[3]. In fact, the claimant has neither adduced any evidence in this regard nor has he produced the relevant statute from which the percentage of tax deduction can be ascertained.

The claimant was last examined by video conferencing conducted under the supervision of Justice Lokeshwar Prasad (retired Judge of Delhi High Court) as local Commissioner. The AMRI Hospital-appellant's witness Mr. Satyabrata Upadhyay was cross-examined by the claimant.

9. The claimant filed M.A. No.1327 of 2009 before the National Commission after remand order was passed by this Court in the case of Malay Kumar Ganguly (supra). The claimant now claimed enhancement of compensation at Rs.78,14,00,000/- under the heads of pecuniary damages and non-pecuniary damages.

The prayer made in the application was to admit the claim for compensation along with supporting documents including the opinions of the foreign experts and further prayed for issuing direction to the appellant-doctors and the Hospital to arrange for cross-examination of the foreign experts, if they wish, through video conferencing at their expenses as directed by this Court in the remand order in Malay Kumar Ganguly's case (supra) and for fixing the matter for a final hearing as soon as possible on a firm and fixed date as the claimant himself want to argue his petition as was done before this Court, as he being the permanent resident of U.S.A.

10. The learned senior counsel appearing for the claimant on 9.2.2010 prayed for withdrawal of the application stating that he would file another appropriate application. Thereafter, on 22.2.2010 the claimant filed M.A. No.200 of 2010 seeking direction to the National Commission to permit him to produce affidavit of four foreign experts and their reports. The National Commission dismissed the same vide order dated 26.4.2010 against which special leave petition No.15070/2010 was filed before this Court which was withdrawn later on. Again, the claimant filed M.A. No.594 of 2010 before the National Commission for examination of four foreign experts to substantiate his claim through video conferencing at the expense of the appellant-doctors and the Hospital. The National Commission vide order dated 6.9.2010 dismissed the application of the claimant for examining foreign experts. Against this order, the claimant preferred SLP (C) No.3173 of 2011 before this Court praying for permission to examine two foreign experts, namely, Prof. John F. Burke Jr. and Prof. John Broughton through video conferencing and he undertook to bear the expenses for such examination. The claimant had given up examination of other two foreign experts, namely, D. Joe Griffith and Ms. Angela Hill. Prof. John F. Burke Jr. was examined on 26.4.2011 as an Economics Expert to prove the loss of income of the deceased and the claimant relied upon an affidavit dated 21.9.2009 and his report dated 18.12.2009 wherein he has stated that if the deceased would have been employed through the age of 70, her net income could have been $3,750,213.00. In addition, the loss of service from a domestic prospective was an additional amount of $1,258,421.00. The said witness was cross examined by the learned counsel for the doctors and AMRI Hospital. The learned Counsel for the appellant-doctors placed reliance upon the following questions and answers elicited from the above Economics Expert witness, which are extracted hereunder:-

> "Q.16. Can you tell me what was the wages of Anuradha in 1997?
>
> A.16. May I check my file (permitted). I don't know.
>
> Q.17. Are you aware whether Anuradha was an income tax payee or not?
>
> A.17. Anu and her husband were filing joint return.
>
> Q.18. Did Anu have any individual income?

A.18. I don't know.

Q.19. Did Kunal Saha provide you the earning statement of Anuradha Saha, wherein her gross monthly pay was shown as $ 1060 as on 16.1.1998?

A.19. I don't believe that I have that information. ... Q.21. What documents have you taken into consideration of Anu's income for giving your opinion?

A.21. None.

Q.22. Whether Anu was employed at the time of her death?

A.22. I don't think so; I don't believe so."

11. The claimant on the other hand, had placed strong reliance upon the evidence of the Economics Expert Prof. John F. Burke to prove the income of the deceased as on the date of her death and actual income if she would have lived up to the age of 70 years as he had also examined Prof. John Broughton in justification of his claim.

The learned counsel for the appellant-doctors contended that Prof. John F. Burke, who was examined through video conferencing in the presence of the Local Commissioner, has estimated the life time income of the deceased to be 5 million and 125 thousand US dollars without any supporting material. The said foreign expert witness did not know whether the deceased had any individual income. He did not know about the earning statement of the deceased produced by the claimant. He has also stated that the deceased was not employed at the time of her death.

12. The learned counsel for the appellant-doctors also submitted that the earning statement issued by Catholic Home Bureau stating the income of the deceased at $1060.72 for the period ending 15th January, 1998 cannot be relied upon for the following reasons :-

a) The earning statement was not proved in accordance with law since only the affidavit of claimant was exhibited and not the documents before Justice Lokeshwar Prasad (Retired) i.e. the Local Commissioner on 5.12.2003 during the cross-

examination.

b) There is nothing to show that Anuradha Saha was under

employment at Catholic Home Bureau.

c) Letter of appointment has not been annexed.

d) Federal Tax record has not been produced. The Economics expert has stated that Anuradha and the claimant were filing joint tax return.

e) It does not show weekly income of the deceased as has been treated by NCDRC.

f) Nature of appointment, even if presumed, has not been stated, i.e., whether it was temporary or permanent, contractual or casual and period of employment.

It is further submitted by the learned counsel that the evidence of Prof. John F. Burke, Jr. has not been relied upon to prove the loss of income of the deceased as it shows that the deceased was not paying income tax. Therefore, the National Commission has erred in partly allowing the claim of the claimant while computing the compensation on the basis of the earning of the deceased.

On awarding compensation under the head of 'loss of consortium':

13. The learned senior counsel and other counsel for the appellant- doctors submitted that the National Commission has erred in awarding Rs.10,00,000/- towards loss of consortium. This Court in various following decisions has awarded Rs.5,000/- to Rs.25,000/- on the aforesaid account:-

CASE LAW	AMOUNT
1. Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421	Rs.10,000
2. New India Assurance Company Limited v. Yogesh Devi, (2012) 3 SCC 613	Rs.10,000
3. National Insurance Company Limited v. Sinitha, (2012) 2 SCC 356	Rs.5,000
4. Sunil Sharma v. Bachitar Singh, (2011) 11 SCC 425	Rs.25,000
5. Pushpa v. Shakuntala, (2011) 2 SCC 240	Rs.10,000
6. Arun Kumar Agrawal v. National Insurance Company Limited, (2010) 9 SCC 218	Rs.15,000
7. Shyamwati Sharma v. Karam Singh, (2010) 12 SCC 378	Rs.5,000
8. Reshma Kumari v. Madan Mohan, (2009) 13 SCC 422 in Sarla Dixit v. Balwant Yadav	Rs.15,000
9. Raj Rani v. Oriental Insurance Company Limited, (2009) 13 SCC 654	Rs.7,000
10. Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121	Rs.10,000
11. Rani Gupta v. United India Insurance Company Limited, (2009) 13 SCC 498	Rs.25,000
12. National Insurance Company Limited v. Meghji Naran Soratiya, (2009) 12 SCC 796	Rs.10,000
13. Oriental Insurance Company Limited v. Angad Kol, (2009) 11 SCC 356	Rs.10,000
14. Usha Rajkhowa v. Paramount Industries, (2009) 14 SCC 71	Rs.5,000
15. Laxmi Devi v. Mohammad. Tabbar, (2008) 12 SCC 165	Rs.5,000
16. Andhra Pradesh State Road Transport Corporation v. M. Ramadevi, (2008) 3 SCC 379	Rs.5,000
17. State of Punjab v. Jalour Singh, (2008) 2 SCC 660	Rs.5,000

18. Abati Bezbaruah v. Dy. Director General, Geological Survey of India, (2003) 3 SCC 148	Rs.3,000
19. Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala, (2001) 5 SCC 175	Rs.5,000
20. Sarla Dixit v. Balwant Yadav, (1996) 3 SCC 179	Rs.15,000
21. G.M., Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176	Rs.15,000
22. National Insurance Co. Ltd. v. Swaranlata Das, 1993 Supp (2) SCC 743	Rs.7,500

14. Further, the senior counsel and other counsel for the appellant- doctors contended that the case of Nizam Institute of Medical Sciences Vs. Prasanth S. Dhananka & Ors.[4] relied upon by the claimant is misconceived as that case relates to the continuous pain and suffering of the victim, who had lost control over his lower limb and required continuous physiotherapy for rest of his life. It was not the amount for loss of consortium by the husband or wife. Hence, it is submitted by them that the National Commission erred in granting Rs.10 lakhs under the head of 'loss of consortium'.

On the objective and pattern of payment of compensation cases:

15. It is further contended by the learned counsel for the appellant- doctors that the compensation awarded by the National Commission should be meant to restore the claimant to the pre-accidental position and in judging whether the compensation is adequate, reasonable and just, monetary compensation is required to be arrived at on the principle of restitutio-in-integram. The National Commission while calculating the just monetary compensation, the earnings of the claimant who himself is a doctor, is also required to be taken into consideration. Regarding the contention of the claimant that in allowing compensation the American standard is required to be applied, it has not been disclosed before the Commission as to what is the American standard. On the contrary, the National Commission was directed by this Court to calculate the compensation in the case as referred to in Malay Kumar Ganguly's case (supra) and on the basis of the principles laid-down by this Hon'ble Court in various other judgments. The two judgments which have been referred to in Malay Kumar Ganguly's case (supra) are Oriental Insurance Company Ltd. Vs. Jashuben & Ors. (supra) and R.K. Malik Vs. Kiran Pal[5], where this Court has not directed assessment of compensation according to American standard. Therefore, the contention of the claimant that compensation has to be assessed according to American standard is wholly untenable in law and the same is liable to be rejected.

16. Further, it is contended by the senior counsel and other counsel for the appellant-doctors and Hospital that the reliance placed by the claimant upon the decision of this Court reported in Patricia Jean Mahajan's case (supra) clearly shows that the multiplier method applicable to claim cases in India was applied after taking note of contribution by the deceased for his dependants. The said case is a clear pointer to the fact that even if a foreigner dies in India, the basis of calculation has to be applied according to Indian Standard and not the American method as claimed by the claimant.

17. Further, the word 'reasonable' implies that the appellant-doctors and AMRI Hospital cannot be saddled with an exorbitant amount as damages - which cannot either be treated as an obvious or natural though not foreseeable consequence of negligence.

18. Further, the learned senior counsel has placed reliance on the judgment of this Court in Nizam Institute of Medical Sciences (supra) wherein this Court enhanced the original compensation awarded to the claimant-victim who had been paralyzed due to medical negligence from waist down, under the heads: requirement of nursing care; need for driver-cum-attendant, as he was confined to a wheel chair; and he needed physiotherapy.

In the present case, the negligence complained of is against the doctors and the Hospital which had resulted in the death of the wife of the claimant. In that case, the extent of liability ought to be restricted to those damages and expenses incurred as a direct consequence of the facts complained of, while setting apart the amount to be awarded under the head 'loss of dependency'. The relevant portion of the aforesaid judgment of this Court in the Nizam's Institute of Medical Sciences is quoted hereunder:

> "..... The adequate compensation that we speak of, must to some extent, be a rule of thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned." (paragraph 88)

19. It is further contended by the learned senior counsel and other counsel for the appellant-doctors that the claimant failed to produce any document by taking recourse to Order XLI Rule 27 of Code of Civil Procedure and Order LVII of Supreme Court Rules to justify his claims of approximately an additional amount of Rs.20 crores including the cost of filing of the claim for compensation to the amount of compensation demanded for medical negligence which is a far-fetched theory and every negative happening in the claimant's life post-death of his wife Anuradha Saha cannot be attributed as the consequence due to medical negligence. Therefore, the enhancement of compensation as prayed for by the claimant stood rightly rejected by the National Commission by recording reasons. Therefore, this Court need not examine the claim again.

On the use of multiplier method for determining compensation :

20. It is contended by the senior counsel and other counsel for the appellants that the multiplier method has enabled the courts to bring about consistency in determining the loss of dependency more particularly, in cases of death of victims of negligence, it would be important for the courts to harmoniously construct the aforesaid two principles to determine the amount of compensation under the heads:

> expenses, special damages, pain and suffering.

21. In Sarla Verma's case (supra), this Court, at Paragraphs 13 to 19, held that the multiplier method is the proper and best method for computation of compensation as there will be uniformity and consistency in the decisions. The said view has been reaffirmed by this Court in Reshma Kumari &

Ors. Vs. Madan Mohan & Anr., Civil Appeal No.4646 of 2009 decided on April 2, 2013.

22. It is further submitted by the learned counsel that in capitalizing the pecuniary loss, a lesser multiplier is required to be applied inasmuch as the deceased had no dependants. In support of his contention, reliance is placed upon the decision of this Court reported in Patricia Mahajan's case (supra) in which this Court having found a person who died as a bachelor, held that a lesser multiplier is required to be applied to quantify the compensation.

23. It is further contended by the senior counsel and other counsel for the appellant-doctors that in Susamma Thomas (supra) this Court has observed that "in fatal accident cases, the measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependant as a result of the death". This means that the court while awarding damages in a fatal accident case took into account the pecuniary loss already suffered as a result of the negligence complained of, and the loss of dependency based on the contributions made by the deceased to the claimant until her death. While the former may be easily ascertainable, the latter has been determined by the National Commission by using the multiplier method and in respect of the use of the multiplier method for the purpose of calculating the loss of dependency of the claimant, in paragraph No. 16 of the aforesaid judgment this Hon'ble Court observed as follows:

> "16. It is necessary to reiterate that the multiplier method is logically sound and legally well-established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage there from towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific...."

24. In Sarla Verma's case (supra) this Court sought to define the expression 'just compensation' and opined as under:

> "16.....Just Compensation" is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit.
>
> 17. Assessment of compensation though involving certain hypothetical considerations should nevertheless be objective.

Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision-making process and the decisions. While it may not be possible to have mathematical precision or identical awards in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the formula/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation."

(Emphasis laid by this Court)

25. It was also contended by the learned counsel for the appellant- doctors that apart from accident cases under the Motor Vehicles Act, 1988, the multiplier method was followed in Lata Wadhwa & Ors. Vs. State of Bihar[6] by a three Judge Bench of this Court, which is a case where devastating fire took place at Jamshedpur while celebrating the birth anniversary of Sir Jamshedji Tata. Even in M.S. Grewal & Anr. Vs. Deep Chand Sood and Ors.[7], the multiplier method was followed wherein school children were drowned due to negligence of school teachers. In the Municipal Corporation of Delhi Vs. Uphaar Tragedy Victims Association & Ors.[8] the multiplier method was once again followed where death of 59 persons took place in a cinema hall and 109 persons suffered injury.

26. Therefore, it is contended by the senior counsel and other counsel for the appellant-doctors that multiplier method should be used while awarding compensation to the victims because it leads to consistency and avoids arbitrariness.

On contributory negligence by the claimant

27. The learned senior counsel and other counsel for the appellant- doctors submitted that the National Commission in the impugned judgment should have deducted 25% of the compensation amount towards contributory negligence of the claimant caused by his interference in the treatment of the deceased. Instead, the National Commission has deducted only 10% towards the same. According to the learned senior counsel and other counsel for the appellants, the National Commission erred in not adhering to the tenor set by this Court while remanding the case back to it for determining the compensation to arrive at an adequate amount which would also imply an aspect of contributory negligence, individual role and liability of the Hospital and the doctors held negligent. Therefore, this Court is required to consider this aspect and deduct the remaining 15% out of the compensation awarded by the National Commission towards negligence by the claimant.

On enhancement of compensation claimed by the claimant :

28. The learned senior counsel and other counsel for the appellant- doctors and the Hospital contended that enhanced claim of the claimant in his appeal is without any amendment to the pleadings and therefore, is not maintainable in law. The claimant in his written submission filed during the course of arguments in July, 2011 before the National Commission, has made his claim of Rs.97,56,07,000/- which the National Commission has rightly rejected in the impugned judgment holding that it was legally impermissible for it to consider that part of the evidence which is strictly not in conformity with the pleadings in order to award a higher compensation as claimed by the claimant. In justification of the said conclusion and finding of the National Commission, the learned counsel have placed reliance upon the principle analogous to Order II Rule 2 of C.P.C., 1908 and further contended that the claimant who had abandoned his claim now cannot make new claims under different heads. Further, it is submitted by Mr. Vijay Hansaria, the learned senior counsel on behalf of AMRI Hospital that though the claimant had filed an application on 9.11.2009 in M.A. No.1327 of 2009 for additional claim; the said application was withdrawn by him on 9.2.2010. Therefore, his claim for enhancing compensation is not tenable in law. In support of the said

contention, he has placed reliance upon the judgment of this Court in National Textile Corporation Ltd. Vs. Nareshkumar Badrikumar Jagad[9], wherein it is stated by this Court that the pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial.

In support of the said proposition of law, reliance was also placed upon other judgment of this Court in Maria Margarida Sequeria Fernandes Vs. Erasmo Jack de Sequeria[10], wherein this Court, at paragraph 61, has held that :-

> "in civil cases, pleadings are extremely important for ascertaining title and possession of the property in question." The said view of this Court was reiterated in A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandavana Paripalanai Sangam[11],

29. Further, the learned senior counsel for the appellant-doctors and AMRI Hospital placed reliance upon the provisions of the Consumer Protection Act, 1986 and the Motor Vehicles Act, 1988 to urge that though the Consumer Courts have pecuniary jurisdiction for deciding the matters filed before it whereby the pecuniary jurisdiction of the District Forum is Rs.20 lakhs, State Commission is from Rs.20 lakhs to Rs.1 crore, whereas for National Commission, it is above Rs.1 crore, the Motor Accident Claims Tribunal have unlimited jurisdiction. In the Consumer Protection Act, 1986 there is a provision for limitation of 2 years for filing of complaint under Section 24-A of the Act and there is no limitation prescribed in the Motor Vehicles Act, 1988.

30. Sections 12 and 13 of the Consumer Protection Act, 1986 provide as to how the complaint has to be made and the procedure to be followed by the claimant for filing the complaint. Rule 14(c) of the Consumer Protection Rules, 1987 and the Consumer Protection Regulations, 2005 require the complainant to specify the relief which he claims. The filing of the complaint/appeal/revision is dealt with Consumer Protection Regulations, 2005. Under the Motor Vehicles Act, 1988, a victim or deceased's legal representative does not have to specify the amount claimed as held by this Court in the case of Nagappa Vs. Gurudayal Singh[12].

31. Under Section 158(6) of the Motor Vehicles Act, 1988, the report forwarded to the Claims Tribunal can be treated as an application for compensation even though no claim is made or specified amount is claimed whereas under the Consumer Protection Act, a written complaint specifying the claim to be preferred before the appropriate forum within the period of limitation prescribed under the provision of the Act is a must.

32. Under Section 163-A of the Motor Vehicles Act, 1988 a claimant is entitled to compensation under the structured formula even without negligence whereas no such provision exists under the Consumer Protection Act.

33. In this regard, the learned senior counsel and other counsel for the appellant-doctors and Hospital placed reliance upon the judgment of this Court in the case of Ibrahim Vs. Raju.[13] and submitted that the said case does not apply to the fact situation for two reasons, namely, it was a case under the Motor Vehicles Act, 1988, whereas this case involves the Consumer Protection Act.

Secondly, this Court in the previous case, enhanced the compensation observing that due to financial incapacity the claimant could not avail the services of the competent lawyer, which is not the case in hand, in as much as the claimant had hired the services of an advocate who is Bar-at-Law and the President of the Supreme Court Bar Association.

34. Further, the learned counsel for the appellant-doctors placed reliance upon the judgment of this Court in the case of Sanjay Batham Vs. Munnalal Parihar[14], which is a case under the Motor Vehicles Act, 1988. This Court enhanced the compensation following the judgment in Nagappa's case (supra). The learned counsel also placed reliance upon the judgment of this Court in Nizam Institute's case (supra) where the complainant had made a claim of Rs.7.50 crores. This Court enhanced the compensation from Rs.15.50 lakhs to Rs.1 crore. But, the Nizam Institute's case is not a case for the proposition that a claimant can be awarded compensation beyond what is claimed by him. On the other hand, it was a case of peculiar facts and circumstances since the claimant had permanent disability which required constant medical attention, medicines, services of attendant and driver for himself. The cases referred to by the claimant regarding medical negligence in his written submission are distinguishable from the present case and in none of these cases upon which reliance has been placed by the claimant, this Court has awarded compensation beyond what is claimed. Therefore, the reliance placed upon the aforesaid judgments by the claimant does not support his claim and this Court need not accept the same and enhance the compensation as has been claimed by him since he is not entitled to the same.

Death of the claimant's wife due to cumulative effect of negligence :

35. This Court vide its judgment in Malay Kumar Ganguly's case (supra) has held that:

> "186. A patient would feel the deficiency in service having regard to the cumulative effect of negligence of all concerned. Negligence on the part of each of the treating doctors as also the hospital may have been the contributing factors to the ultimate death of the patient. But, then in a case of this nature, the court must deal with the consequences the patient faced, keeping in view the cumulative effect. In the instant case, negligent action has been noticed with respect to more than one respondent. A cumulative incidence, therefore, has led to the death of the patient." The two words "may" and "cumulative incidence" in the abovesaid observations of this Court is relevant for determining the quantification of compensation. It is submitted that this Court is also not sure that the negligence solely has contributed to the death of the claimant's wife. At the most, this Court is of the view that the negligence may have contributed to the death of the claimant's wife. The incidences leading to or contributing to the death of the deceased are:
>
> i) Disease TEN itself is a fatal disease which has very high mortality rate.
>
> ii) TEN itself produces septicemic shock and deceased Anuradha died because of such consequence.

iii) No direct treatment or treatment protocol for TEN.

iv) Negligence of many in treating deceased Anuradha.

v) Contributory negligence on the part of Dr.Kunal Saha and his brother.

Furthermore, it is observed factually that lethal combination of Cisapride and Fluconazole had been used for a number of days at Breach Candy Hospital during her stay which leads to cardiac arrest. Therefore, the National Commission ought to have considered different incidences as aforesaid leading to the death of the claimant's wife so as to correctly apportion the individual liability of the doctors and the AMRI Hospital in causing the death of the wife of the claimant.

36. Further, with regard to the liability of each of the doctors and the AMRI Hospital, individual submissions have been made which are presented hereunder:

37. It is the case of the appellant-AMRI Hospital that the National Commission should have taken note of the fact that the deceased was initially examined by Dr. Sukumar Mukherjee and the alleged medical negligence resulting in the death of the deceased was due to his wrong medication (overdose of steroid). Therefore, the Hospital has little or minimal responsibility in this regard, particularly, when after admission of the deceased in the Hospital there was correct diagnosis and she was given best possible treatment. The National Commission erred in apportioning the liability on the Hospital to the extent of 25% of the total award. This Court in the earlier round of litigation held that there is no medical negligence by Dr. Kaushik Nandy, the original respondent No.6 in the complaint, who was also a doctor in the appellant-Hospital.

38. Further, the learned senior counsel for the AMRI Hospital submitted that the arguments advanced on behalf of the appellants- doctors Dr. Balram Prasad in C.A. No.2867/2012, Dr. Sukumar Mukherjee in C.A. No.858/2012 and Dr. Baidyanath Haldar in C.A. 731/2012 with regard to percentage, on the basis of costs imposed in paragraph 196 of the judgment in the earlier round of litigation is without any basis and further submitted that under the heading – 'Individual Liability of Doctors' findings as to what was the negligence of the doctors and the appellant AMRI Hospital is not stated. If the said findings of the National Commission are considered, then it cannot be argued that the appellant AMRI Hospital should pay the highest compensation. Further, the learned senior counsel rebutted the submission of the claimant contending that since he had himself claimed special damages against the appellant-doctors, the Hospital and Dr. Abani Roy Choudhary in the complaint before the National Commission, therefore, he cannot now contend contrary to the same in the appeal before this Court.

CIVIL APPEAL NO. 858 OF 2012

39. It is the case of the appellant- Dr. Sukumar Mukherjee that the National Commission while apportioning the liability of the appellant, has wrongly observed that :

> "Supreme Court has primarily found Dr.Sukumar Mukherjee and AMRI hospital guilty of negligence and deficient in service on several counts. Therefore, going by the said findings and observations of Supreme Court we consider it appropriate to apportion the liability of Dr. Sukumar Mukherjee and AMRI hospital in equal proportion, i.e. each should pay 25% i.e. 38,90,000/- of the awarded amount of 1,55,60,000/-."

40. It is submitted by the learned counsel for the appellant - Dr. Sukumar Mukherjee that scrutiny of the judgment in Malay Kumar Ganguly's case (supra) will show that at no place did the Hon'ble Supreme Court made any observation or recorded any finding that the appellant Dr. Mukherjee and the Hospital are primarily responsible. On the contrary, under the heading "Cumulative Effect of Negligence" under paras 186 and 187, this Hon'ble Court has held as under:

> "186. A patient would feel the deficiency in service having regard to the cumulative effect of negligence of all concerned. Negligence on the part of each of the treating doctors as also the hospital may have been contributing factors to the ultimate death of the patient. But, then in a case of this nature, the court must deal with the consequences the patient faced keeping in view the cumulative effect. In the instant case, negligent action has been noticed with respect to more than one respondent. A cumulative incidence, therefore, has led to the death of the patient.
>
> 187. It is to be noted that doctrine of cumulative effect is not available in criminal law. The complexities involved in the instant case as also differing nature of negligence exercised by various actors, make it very difficult to distil individual extent of negligence with respect to each of the respondent. In such a scenario finding of medical negligence under Section 304-A cannot be objectively determined."

41. It is further submitted by the learned counsel for the appellant- Dr. Sukumar Mukherjee that the wife of the claimant was suffering from rash/fever from April 1998, she was seen by the appellant-Dr.Sukumar Mukherjee only on three occasions before his pre- planned visit to the U.S.A. for attending a medical conference i.e. on 26.4.1998, 7.5.1998 and on the night of 11.5.1998 and then the appellant-Dr.Mukherjee left India for USA and returned much after the demise of the claimant's wife. On her first examination on 26.4.1998 the appellant suggested a host of pathological tests. The patient was requested to visit the Doctor with these reports. No drugs were prescribed by the appellant-Dr.Mukherjee at this examination. On 7.5.1998, Anuradha Saha walked into the clinic of the appellant-Dr.Mukherjee at 9.30 p.m. and reported that she was uncomfortable because she had consumed food of Chinese cuisine. The appellant-Dr.Mukherjee noticed that there was a definite change in the nature of the rash. Based on the information furnished and the status and condition of the patient, she was diagnosed to be suffering from allergic vasculitis and the appellant-Dr.Mukherjee commenced treating the patient with Depomedrol, which is a drug belonging to the family of steroids. The appellant-Dr.Mukherjee recommended Depomedrol 80 mg.IM twice daily for 3 days to be reconsidered after Anuradha Saha was subject to further review. Depomedrol is very much indicated in Vasculitis (USPDI 1994): "Depomedrol is anti-inflammatory, anti- allergic drug. Therefore, it is Doctor's judgment to use the drug." The appellant-Dr.Mukherjee

administered one injection of Depomedrol on the night of 7.5.1998. He did not administer any other injections to the deceased thereafter. It is further submitted that much higher dose of Depomedrol have been recommended in USPDI 1994 and CDRom Harisons Principles of Medicine 1998 in by pass skin diseases like multiple sclerosis with a dose of 177.7 mg daily for 1 week and 71 mg on every other day for one month.

42. On 11.5.1998 when the appellant-Dr.Mukherjee examined Anuradha Saha at the AMRI Hospital prior to his departure to U.S.A., he prescribed a whole line of treatment and organized reference to different specialists/consultants. He recommended further pathological tests because on examining the patient at the AMRI, he noticed that she had some blisters which were not peeled off. There was no detachment of skin at all. He also requested in writing the treating consultant physician of AMRI Dr. Balram Prasad, MD to organize all these including referral to all specialists. The appellant-Dr.Mukherjee suspected continuation of allergic Vasculitis in aggravated form and prescribed steroids in a tapering dose on 11.5.1998 and advised other tests to check infection and any immuno abnormalities. It is stated that the appellant-Dr.Mukherjee did not examine the patient thereafter and as aforementioned, he left on a pre-arranged visit to U.S.A. for a medical conference. No fees were charged by the appellant- Dr.Mukherjee. It is further submitted that before the appellant- Dr.Mukherjee started the treatment of the deceased, Dr.Sanjoy Ghose on 6.5.1998 treated her and during the period of treatment of the appellant-Dr. Mukherjee from 7.5.1998 to 11.5.1998, on 9.5.1998 Dr.Ashok Ghosal (Dermatologist) treated Anuradha Saha. These facts were not stated in the complaint petition and concealed by the claimant. To this aspect, even this Hon'ble Court has also recorded a finding in the case referred to supra that the patient was also examined by two consultant dermatologists Dr.A.K. Ghosal and Dr. S. Ghosh who diagnosed the disease to be a case of vasculitis.

43. It is further submitted by the learned counsel for the appellant- Dr. Mukherjee that the cause of death as recorded in the death certificate of the deceased is "septicemic shock with multi system organ failure in a case of TEN leading to cardio respiratory arrest". Blood culture was negative prior to death. There was no autopsy to confirm the diagnosis at Breach Candy Hospital, Mumbai. Dr. Udwadia observed on 27.5.1998 that the patient has developed SIRS in absence of infection in TEN. The patient expired on 28.5.1998 and the death certificate was written by a junior doctor without the comments of Dr. Udwadia. It is submitted by the learned counsel that there is neither any allegation nor any finding by this Court that the doctors of the AMRI Hospital had contributed to septicemia. The mere finding that the patient was not properly dressed at AMRI Hospital where she stayed for only 6 days of early evocation of the disease do not justify contribution to septicemic shock of the deceased. Further, there is no record to show that at AMRI Hospital the skin of the patient had peeled out thereby leading to chance of developing septicemia. On the other hand, it is a fact borne out from record that the patient was taken in a chartered flight to Breach Candy Hospital, Bombay against the advice of the doctors at Kolkata and further nothing is borne out from the records as what precaution were taken by the claimant while shifting the patient by Air to Breach Candy Hospital thereby leading to the conclusion that during the travel by chartered flight she might have contracted infection of the skin leading to septicemia. It is further submitted by the learned counsel for the appellant- Dr. Sukumar Mukherjee that the fact that the disease TEN requires higher degree of care since there is no definite treatment, such high degree of care will be relatable to

comfort but not definitely to septicemia that occurred at Breach Candy Hospital. Hence, negligence has to be assessed for damages for failure to provide comfort to the patient and not a contributory to septicemia shock suffered by the deceased.

44. It is submitted by the learned counsel for appellant-Dr. Sukumar Mukherjee that there is no finding or allegation that the drug Depomedrol prescribed by the appellant-Dr.Mukherjee caused the disease TEN. The appellant advised a number of blood tests on 11.5.98 in AMRI Hospital to detect any infection and immune abnormality due to steroids and to foresee consequences. It is further submitted that Breach Candy Hospital records show that the patient was haemo-dynamically stable. Even Dr.Udwadia of Breach Candy Hospital on 17.5.1998 doubted with regard to the exact disease and recorded the disease as TEN or Steven Johnson Syndrom.

Therefore, the National Commission ought to have considered different incidences as aforesaid leading to the death of the claimant's wife and the quantum of damages shall have to be divided into five parts and only one part shall be attributed to the negligence of the appellant-Dr.Mukherjee.

45. It is the case of Dr. Balram Prasad-appellant in Civil Appeal No. 2867 of 2012 that on 11.05.1998, Dr. Sukumar Mukherjee, before leaving for U.S.A., attended the patient at the AMRI Hospital at 2.15 p.m. and after examining the deceased, issued the second and last prescription on the aforesaid date without prescribing anything different but re-assured the patient that she would be fine in a few weeks' time and most confidently and strongly advised her to continue with the said injection for at least four more days. This was also recorded in the aforesaid last prescription of the said date. Further, it is stated that without disclosing that he would be out of India from 12.05.1998, he asked the deceased to consult the named Dermotologist, Dr. B.Haldar @ Baidyanath Haldar, the appellant in Civil Appeal No. 731 of 2012, and the physician Dr. Abani Roy Chowdhury in his last prescription on the last visit of the deceased. Most culpably, he did not even prescribe I.V. Fluid and adequate nutritional support which was mandatory in that condition. Dr. Haldar took over the treatment of the deceased as a Dermatologist Head and Dr. Abani Roy Chowdhury as Head of the Medical Management from 12.05.1998 with the positive knowledge and treatment background that the patient by then already had clear intake of 880 mg of Depomedrol injection as would be evident from AMRI's treatment sheet dated 11.05.1998.

46. It is further stated by the claimant in the complaint lodged before National Commission that it contained specific averments of negligence against the appellant-doctors. The only averment of alleged negligence was contained in paragraph 44 of the complaint which reads as under:

> "44. That Dr. Balram Prasad as attending physician at AMRI did do nothing better. He did not take any part in the treatment of the patient although he stood like a second fiddle to the main team headed by the opposite party No. 2 and 3. He never suggested even faintly that AMRI is not an ideal place for treatment of TEN patient; on the converse, he was full of praise for AMRI as an ideal place for the treatment of TEN patients knowing nothing how a TEN patient should be treated."

47. The claimant has also placed strong reliance upon the answer given by him to question No. 26 in his cross examination which reads thus:

> "Q.No.26. Dr. Prasad says that Depomedrol dose according to the treatment sheet of the AMRI Hospital, he made a specific suggestion that the dose should be limited to that particular day only. Is it correct?
>
> Ans. It is all matter of record. Yeah, he said one day in AMRI record."

48. Though, the appellant-Dr. Balram Prasad was accused in the criminal complaint lodged by the claimant he was neither proceeded against as an accused in the criminal complaint nor before the West Bengal Medical Council but was named as a witness. Further, it is stated by the claimant that he urged before the National Commission as well as before this Court in unequivocal terms that the bulk of the compensation awarded would have to be in the proportion of 80% on the AMRI Hospital, 15% on Dr. Sukumar Mukherjee and balance between the rest. Despite the aforesaid submission before the National Commission, the claimant claims that it has erred in awarding the proportion of the liability against each of the appellant-doctors in a manner mentioned in the table which is provided hereunder:

NAME OF THE PARTY	AMOUNT TO BE PAID
Dr. Sukumar Mukherjee	Compensation:Rs.38,90,000
	Cost of litigation:1,50,000
Dr. Baidyanath Haldar	Compensation:Rs.25,93,000
	Cost of litigation: Rs.1,00,000
Dr. Abani Roy Chowdhury (since deceased) (claim foregone)	Compensation: 25,00,000
AMRI Hospital	Compensation: Rs.38,90,000
	Cost of litigation: Rs.1,50,000
Dr. Balram Prasad	Compensation: Rs.25,93,000
	Cost of litigation: Rs.1,00,000

49. The appellant-Dr. Balram Prasad in Civil Appeal No.2867/2012 contends that he was the junior most attending physician attached to the Hospital, he was not called upon to prescribe medicines but was only required to continue and/or monitor the medicines prescribed by the specialist in the discipline. But realizing the seriousness of the patient, the appellant had himself referred the patient to the three specialists and also suggested for undertaking a skin biopsy. The duty of care ordinarily expected of a junior doctor had been discharged with diligence by the appellant. It is further contended that in his cross-examination before the National Commission in the enquiry proceeding, the claimant himself has admitted that the basic fallacy was committed by three physicians, namely, Dr. Mukherjee, Dr. Haldar and Dr. Roy Chowdhury. The above facts would clearly show that the role played by the appellant-Doctors in the treatment of the deceased was only secondary and the same had been discharged with reasonable and due care expected of an attending physician in the given facts and circumstances of the instant case.

50. In the light of the above facts and circumstances, the contention of the claimant that the death of the claimant's wife was neither directly nor contributorily relatable to the alleged negligent act of the appellant- Dr. Balram Prasad, it is most respectfully submitted that the National Commission was not justified in apportioning the damages in the manner as has been done by the National Commission to place the appellant on the same footing as that of Dr. Baidyanath Haldar, who was a senior doctor in-charge of the management/treatment of the deceased.

51. The learned senior counsel for the appellant-Dr. Balram Prasad further urged that the National Commission has also erred in not taking into account the submissions of the claimant that 80% of the damages ought to have been levied on the Hospital, 15% on Dr. Sukumar Mukherjee and the balance between the rest. It is urged that the proportion of the compensation amount awarded on the appellant is excessive and unreasonable which is beyond the case of the claimant himself.

CIVIL APPEAL NO. 731 OF 2012

52. The learned counsel Mr. Ranjan Mukherjee appearing on behalf of the appellant in this appeal has filed the written submissions on 15.4.2013. He has reiterated his submission in support of his appeal filed by the said doctor and has also adopted the arguments made in support of the written submissions filed on behalf of the other doctors and AMRI Hospital by way of reply to the written submissions of the claimant. Further, he has submitted that the appellant Dr. Baidyanath Haldar is about 80 years and is ailing with heart disease and no more in active practice. Therefore, he requested to set aside the liability of compensation awarded against him by allowing his appeal.

All the doctors and the Hospital urged more or less the same grounds.

53. This appeal has been filed by the claimant. It is the grievance of the claimant that the National Commission rejected more than 98% of the total original claim of Rs.77.7 crores which was modified to Rs.97.5 crores later on by adding "special damages" due to further economic loss, loss of employment, bankruptcy etc. suffered by the claimant in the course of 15-year long trial in relation to the proceedings in question before the National Commission and this Court. The National Commission eventually awarded compensation of only Rs.1.3 crores after reducing from the total award of Rs.1.72 crores on the ground that the claimant had "interfered" in the treatment of his wife and since one of the guilty doctors had already expired, his share of compensation was also denied.

54. Therefore, the present appeal is filed claiming the just and reasonable compensation urging the following grounds:

a) The National Commission has failed to consider the pecuniary, non-pecuniary and special damages as extracted hereinbefore.

b) The National Commission has made blatant errors in mathematical calculation while awarding compensation using the multiplier method which is not the correct approach.

c) The National Commission has erroneously used the multiplier method to determine compensation for the first time in Indian legal history for the wrongful death caused by medical negligence of the appellant-doctors and the AMRI Hospital.

d) The National Commission has reinvestigated the entire case about medical negligence and went beyond the observations made by this Court in Malay Kumar Ganguly's case (supra) by holding that the claimant is also guilty for his wife's death.

e) The National Commission has failed to grant any interest on the compensation though the litigation has taken more than 15 years to determine and award compensation.

f) The National Commission has failed to consider the devaluation of money as a result of "inflation" for awarding higher compensation that was sought for in 1998.

g) It is also vehemently contended by the claimant that the National Commission has made blatant and irresponsible comment on him stating that he was trying to "make a fortune out of a misfortune." The said remark must be expunged.

55. The appellant-doctors and the AMRI Hospital contended that the compensation claimed by the claimant is an enormously fabulous amount and should not be granted to the claimant under any condition. This contention ought to have been noticed by the National Commission that it is wholly untenable in law in view of the Constitution Bench decision of this Court in the case of Indian Medical Association Vs. V.P. Shantha & Ors[15], wherein this Court has categorically disagreed on this specific point in another case wherein "medical negligence" was involved. In the said decision, it has been held at paragraph 53 that to deny a legitimate claim or to restrict arbitrarily the size of an award would amount to substantial injustice to the claimant.

56. Further, in a three Judge Bench decision of this Court in Nizam Institute's case(supra) it has been held that if a case is made out by the claimant, the court must not be chary of awarding adequate compensation. Further, the claimant contends that this Court has recently refused to quash the defamation claim to the tune of Rs.100 crores in Times Global Broadcasting Co. Ltd. & Anr. Vs. Parshuram Babaram Sawant [SLP (Civil) No(s) 29979/2011 decided on 14-11-2011], suggesting that in appropriate cases, seemingly large amount of compensation is justified.

57. The claimant further urged that this is the fundamental principle for awarding "just compensation" and this Court has categorically stated while remanding the case back to the National Commission that the principle of just compensation is based on "restitutio in integrum", i.e. the claimant must receive the sum of money which would put him in the same position as he would have been if he had not sustained the wrong. It is further contended that the claimant had made a claim referred to supra under specific headings in great detail with justification for each of the heads. Unfortunately, despite referring to judicial notice and the said claim-table in its final judgment, the National Commission has rejected the entire claim on the sole ground that since the additional claim was not pleaded earlier, none of the claims made by the claimant can be

considered. Therefore, the National Commission was wrong in rejecting different claims without any consideration and in assuming that the claims made by the claimant before the Tribunal cannot be changed or modified without prior pleadings under any other condition. The said view of the National Commission is contrary to the numerous following decisions of this Court which have opined otherwise:-

> Ningamma and Anr. Vs. United India Insurance Company Ltd.[16], Malay Kumar Ganguly's case referred to supra, Nizam Institute's case (supra), Oriental Insurance Company Ltd. Vs. Jashuben & Ors. (supra), R.D. Hattangadi Vs. Pest Control (India) Pvt. Ltd. & Ors[17], Raj Rani & Ors Vs. Oriental Insurance Company Ltd. & Ors[18]., Laxman @ Laxman Mourya Vs. Divisional Manager Vs. Oriental Insurance Co. Ltd.

& Anr.[19] and Ibrahim Vs. Raju & Ors. (supra).

58. The claimant has further argued that the just compensation for prospective loss of income of a student should be taken into consideration by the National Commission. In this regard, he has contended that this Court while remanding the case back to the National Commission only for determination of quantum of compensation, has made categorical observations that compensation for the loss of wife to a husband must depend on her "educational qualification, her own upbringing, status, husband's income, etc." In this regard, in the case of R.K. Malik & Anr. (supra) (paragraphs 30-32) this Court has also expressed similar view that status, future prospects and educational qualification must be judged for deciding adequate compensation. It is contended by the claimant that it is an undisputed fact that the claimant's wife was a recent graduate in Psychology from a highly prestigious Ivy League School in New York who had a brilliant future ahead of her. Unfortunately, the National Commission has calculated the entire compensation and prospective loss of income solely based on a pay receipt of the victim showing a paltry income of only $ 30,000 per year, which she was earning as a graduate student. This was a grave error on the part of the National Commission, especially, in view of the observations made by this Court in the case of Arvind Kumar Mishra Vs. New India Assurance Co.[20], wherein this Court has calculated quantum of compensation based on 'reasonable' assumption about prospective loss as to how much an Engineering student from BIT might have earned in future even in the absence of any expert's opinion (paragraphs 13,14). The principles of this case were followed in many other cases namely, Raj Kumar Vs. Ajay Kumar & Anr.[21], Govind Yadav Vs. New India Insurance Co. Ltd.[22], Sri Ramachandrappa Vs. Manager, Royal Sundaram Alliance Insurance[23], Ibrahim Vs. Raju & Ors. (supra),Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Co. Ltd. (supra) and Kavita Vs. Dipak & Ors.[24]

59. In view of the above said decisions of this Court, the prospective loss of income for the wrongful death of claimant's wife must be reasonably judged based on her future potential in the U.S.A. that has also been calculated scientifically by economic expert, Prof. John F. Burke.

60. It is further the case of the claimant that the National Commission has completely failed to award "just compensation" due to non consideration of all the following critical factors:

1) The Guidelines provided by Supreme Court: This Court has provided guidelines as to how the National Commission should arrive at an "adequate compensation" after consideration of the unique nature of the case.

2) Status and qualification of the victim and her husband.

3) Income and standard of living in the U.S.A.: As both the deceased and the claimant were citizens of U.S.A. and permanently settled as a "child psychologist" and AIDs researcher, respectively, the compensation in the instant case must be calculated in terms of the status and standard of living in the U.S.A.. In Patricia Mahajan's case (supra), where a 48 year old US citizen died in a road accident in India, this Court has awarded a compensation of more than Rs. 16 crores after holding that the compensation in such cases must consider the high status and standard of living in the country where the victim and the dependent live.

4) Economic expert from the U.S.A.:

The claimant initially filed a complaint before the National Commission soon after the wrongful death of his wife in 1998 with a total claim of Rs.77.7 crores against the appellant- doctors and AMRI Hospital which was rejected and this Court remanded this matter to the National Commission for determination of the quantum of compensation with a specific direction in the final sentence of judgment that "foreign experts" may be examined through video conferencing.

5) Scientific calculation of loss of income: The National Commission should have made scientific calculation regarding the loss of income of the claimant. This direction has been given by this Court in a number of cases. Further, he has contended that the claimant moved this Court for video conferencing. The claimant examined Prof. John F. Burke, a U.S.A. based Economist of international repute, in May-June, 2011. Prof John F. Burke was also cross-examined by the appellant-doctors and the AMRI Hospital. Prof. Burke scientifically calculated and testified himself under direct as well as cross-examination as to how he came to calculate the prospective loss of income for a similarly situated person in U.S.A. as Anuradha, the deceased and categorically stated that the direct loss of income for Anuradha's premature death would amount to "5 million and 125 thousand dollars". This loss of income was calculated after deduction of 1/3rd of the amount for her personal expenses. 1/3rd deduction of income for personal expenses has also been recommended in a judgment of this Court in the case of Sarla Verma (supra).

Prof. Burke has also explained how he calculated the loss of income due to the premature death of Anuradha and further testified that his calculation for loss of Anuradha's income was a "very conservative forecast" and that to some other estimates, the damages for Anuradha's death could be "9 to 10 million dollars. While the loss of income would be multi million dollars as direct loss for wrongful death of Anuradha, it may appear as a fabulous amount in the context of India. This is

undoubtedly an average and legitimate claim in the context of the instant case. And further, it may be noted that far bigger amounts of compensation are routinely awarded by the courts in medical negligence cases in the U.S.A. In this regard this Court also made very clear observation in Indian Medical Association Vs. V.P. Shanta & Ors.(supra), that to deny a legitimate claim or to restrict arbitrarily the size of an award would amount to substantial injustice.

6) Loss of income of claimant:

> The National Commission has ignored the loss of income of the claimant though this Court has categorically stated while remanding the case to the National Commission that pecuniary and non-pecuniary losses and future losses "up to the date of trial" must be considered for the quantum of compensation. The claimant had incurred a huge amount of expenses in the course of the more than 15 years long trial in the instant case. These expenses include the enormous cost for legal expenses as well as expenses for the numerous trips between India and the U.S.A. over the past more than 12 years. In addition to that the claimant has also suffered huge losses during this period, both direct loss of income from his job in U.S.A. as well as indirect loss for pain and intense mental agony for tenure denial and termination of his employment at Ohio State University (OSU) which was a direct result of the wrongful death of Anuradha in India as would be evident from the judgment passed by the Court of Claims in Ohio which was filed by the AMRI Hospital on July 18, 2011. The claimant also submitted an affidavit as directed by the National Commission in which the detailed description about the loss that he suffered in his personal as well as professional career in U.S.A. over the past 12 years for the wrongful death of Anuradha, has been mentioned. Needless to say that these additional damages and financial losses the claimant has suffered since he filed the original complaint against the appellant-doctors could not possibly be a part of the original claim filed by him 15 years ago.

61. In view of the circumstances narrated above, the claimant has referred a revised quantum of claim which also includes a detailed break-up of the individual items of the total claim in proper perspective under separate headings of pecuniary, non-pecuniary, punitive and special damages. The individual items of claim have also been justified with appropriate references and supporting materials as needed. The total quantum of claim for the wrongful death of the claimant's wife now stands at Rs.97,56,07,000/- including pecuniary damages of Rs.34,56,07,000/-, non pecuniary damages of Rs.31,50,00,000/-, special damages of US $ 1,000,000/- for loss of job in Ohio and punitive damages of US $ 1,000,000/. This updated break-up of the total claim has been shown in the claim-table referred to in the later part of the judgment. The claimant respectfully submits that the National Commission should have considered this total claim in conjunction with the affidavit filed by him during the course of making final arguments. The National Commission also should have taken into consideration the legal principles laid down in the case of Nizam Institute (supra) wherein this Court allowed the claim of compensation which was substantially higher than the original claim that he initially filed in the court. Further, the National Commission ought to have taken into consideration the observations made in the remand order passed by this Court while

determining the quantum of compensation and the legitimate expectation for the wrongful death of a patient 'after factoring in the position and stature of the doctors concerned as also the Hospital'. This Court also held in Malay Kumar Ganguly's case (supra) that AMRI is one of the best Hospitals in Calcutta, and that the doctors were the best doctors available. Therefore, the compensation in the instant case may be enhanced in view of the specific observations made by this Court.

62. Appellant-doctors Dr. Sukumar Mukherjee and Dr. Baidyanath Haldar have attempted to claim in their respective appeals that they cannot be penalized with compensation because they did not charge any fee for treatment of the deceased. Such a claim has no legal basis as in view of the categorical observations made by this Court in Savita Garg Vs. Director, National Heart Institute[25] and in Malay Kumar Ganguly's case (supra) wherein this Court has categorically stated that the aforesaid principle in Savita Garg's case applies to the present case also insofar as it answers the contentions raised before us that the three senior doctors did not charge any professional fees.

63. Further, it is contended by the claimant that from a moral and ethical perspective, a doctor cannot escape liability for causing death of a patient from medical negligence on the ground that he did not charge any fee. If that was true, poor patients who are sometimes treated for free and patients in many charitable Hospitals would be killed with impunity by errant and reckless doctors. It is urged that the National Commission ought to have considered the claim made for prospective loss of income of the appellant's wife and has committed error in rejecting the same and it has also rejected the amount of the pecuniary losses of this claimant under separate headings which are mentioned in the table referred to supra including expenses that were paid at the direction of the National Commission, namely, expenses relating to video-conferencing or payment for the Court Commissioners. Most of these direct losses were suffered by the claimant as a result of the wrongful death of his wife in the long quest for justice over the past 15 years as a result of the wrongful death of his wife. The National Commission did not provide any reason as to why the said claims were denied to him, as per this Court's decision in Charan Singh Vs. Healing Touch Hospital[26].

64. It is further urged by the claimant that the National Commission, in applying the multiplier method as provided in the Second Schedule under Section 163 A of the Motor Vehicles Act, is erroneous to calculate compensation in relation to death due to medical negligence.

65. Further, the claimant has taken support from the following medical negligence cases decided by this Court. It was contended by the claimant that out of these cases not a single case was decided by using the multiplier method, such as, Indian Medical Assn. Vs. V.P. Shanta & Ors.(supra), Spring Meadows Hospital & Anr Vs. Harjol Ahluwalia[27], Charan Singh Vs. Healing Touch Hospital and Ors.(supra), J.J. Merchants & Ors. Vs. Srinath Chaturbedi (supra), Savita Garg Vs. Director National Heart Institute (supra), State of Punjab Vs. Shiv Ram & Ors.(supra), Samira Kohli Vs. Dr. Prabha Manchanda & Anr.(supra), P.G. Institute of Medical Sciences Vs. Jaspal Singh & Ors., (supra) Nizam Institute Vs. Prasant Dhananka (supra) Malay Kumar Ganguly Vs. Sukumar Mukherjee & Ors. (supra) and V. Kishan Rao Vs. Nikhil Superspeciality Hospital & Anr. (supra).

66. In fact, the National Commission or any other consumer court in India have never used the multiplier system to calculate adequate compensation for death or injury caused due to medical

negligence except when the National Commission decided the claimant's case after it was remanded back by this Court. Reliance was placed upon Sarla Verma's case (supra) at paragraph 37, wherein the principle laid down for determining compensation using multiplier method does not apply even in accident cases under Section 166 of the MV Act. In contrast to death from road or other accident, it is urged that death or permanent injury to a patient caused from medical negligence is undoubtedly a reprehensible act. Compensation for death of a patient from medical negligence cannot and should not be compensated simply by using the multiplier method. In support of this contention he has placed reliance upon the Nizam Institute's case (supra) at paragraph 92, wherein the Court has rejected the specific claim made by the guilty Hospital that multiplier should be used to calculate compensation as this Court has held that such a claim has absolutely no merit.

67. The multiplier method was provided for convenience and speedy disposal of no fault motor accident cases. Therefore, obviously, a "no fault" motor vehicle accident should not be compared with the case of death from medical negligence under any condition. The aforesaid approach in adopting the multiplier method to determine the just compensation would be damaging for society for the reason that the rules for using the multiplier method to the notional income of only Rs.15,000/- per year would be taken as a multiplicand. In case, the victim has no income then a multiplier of 18 is the highest multiplier used under the provision of Sections 163 A of the Motor Vehicles act read with the Second Schedule. Therefore, if a child, housewife or other non-working person fall victim to reckless medical treatment by wayward doctors, the maximum pecuniary damages that the unfortunate victim may collect would be only Rs.1.8 lakh. It is stated in view of the aforesaid reasons that in today's India, Hospitals, Nursing Homes and doctors make lakhs and crores of rupees on a regular basis. Under such scenario, allowing the multiplier method to be used to determine compensation in medical negligence cases would not have any deterrent effect on them for their medical negligence but in contrast, this would encourage more incidents of medical negligence in India bringing even greater danger for the society at large.

68. It is further urged by the claimant that the National Commission has failed to award any compensation for the intense pain and suffering that the claimant's wife had to suffer due to the negligent treatment by doctors and AMRI Hospital but the National Commission had made a paltry award equivalent to $ 20,000 for the enormous and life-long pain, suffering, loss of companionship and amenities that the unfortunate claimant has been put throughout his life by the negligent act of the doctors and the AMRI Hospital.

69. The claimant further contended that he is entitled to special damages for losses that he suffered upto the date of trial as held by this Court while remanding this matter in Malay Kumar Ganguly's case back to the National Commission. Thus, the claimant filed a legitimate claim for special damages for the losses sustained by him in the course of 15 years long trial including the loss of his employment at the Ohio State University and resultant position of bankruptcy and home foreclosure. The National Commission did not provide any reason for rejecting the said claim which is in violation of the observations made in Charan Singh's case (supra).

70. Further, this Court has affirmed the principle regarding determination of just compensation in the following cases that inflation should be considered while deciding quantum of compensation:

Reshma Kumari & Ors. Vs. Madan Mohan & Anr. (supra), Govind Yadav Vs. New Indian Insurance Co. Ltd. (supra)and Ibrahim Vs. Raju & Ors. (supra).

71. Using the cost of inflation index (in short C.I.I.) as published by the Govt. of India, the original claim of Rs.77.7 crores made by the claimant in 1998 would be equivalent to Rs.188.6 crores as of 2012-2013. The mathematical calculation in this regard has been presented in the short note submitted by the claimant. Thus, the compensation payable for the wrongful death of claimant's wife would stand today at Rs.188.6 crores and not Rs.77.7 crores as originally claimed by him in 1998 without taking into consideration the various relevant aspects referred to supra and proper guidance and advice in the matter.

72. Further, it is urged by the claimant that he is entitled to interest on the compensation at reasonable rate as the National Commission has awarded interest @ 12% but only in case of default by the appellant- doctors and the AMRI Hospital to pay the compensation within 8 weeks after the judgment which was delivered on October 21, 2011. That means, the National Commission did not grant any interest for the last 15 years long period on the compensation awarded in favour of the claimant as this case was pending before the judicial system in India for which the claimant is not responsible. The said act is contrary to the decision of this Court in Thazhathe Purayil Sarabi & Ors. Vs. Union of India & Anr.[28].

73. He has also placed reliance upon in justification of his claim of exemplary or punitive damages. A claim of US $ 1,000,000 as punitive damages has been made against the AMRI Hospital and Dr. Sukumar Mukherjee as provided in the table. In support of this contention he placed strong reliance on Landgraf Vs. USI Film Prods[29] and this Court's decision in Destruction of Public and Private Properties Vs. State of A.P.[30], wherein it is held that punitive or exemplary damages have been justifiably awarded as a deterrent in the future for outrageous and reprehensible act on the part of the accused. In fact punitive damages are routinely awarded in medical negligence cases in western countries for reckless and reprehensible act by the doctors or Hospitals in order to send a deterrent message to other members of the medical community. In a similar case, the Court of Appeals in South Carolina in Welch Vs. Epstein[31] held that a neurosurgeon is guilty for reckless therapy after he used a drug in clear disregard to the warning given by the drug manufacturer causing the death of a patient. This Court has categorically held that the injection Depomedrol used at the rate of 80 mg twice daily by Dr. Sukumar Mukherjee was in clear violation of the manufacturer's warning and recommendation and admittedly, the instruction regarding direction for use of the medicine had not been followed in the instant case. This Court has also made it clear that the excessive use of the medicine by the doctor was out of sheer ignorance of basic hazards relating to the use of steroids as also lack of judgment. No doctor has the right to use the drug beyond the maximum recommended dose.

74. The Supreme Court of Ohio in Dardinger Vs. Anthem Blue Cross Shield et al[32]. had judged that since $ 49 million punitive damages was excessive it still awarded US $19 million in a case of medical negligence. The aforesaid judgments from the U.S.A. clearly show that punitive damages usually are many times bigger than the compensatory damages. A nominal amount of US $ 1,000,000 has been claimed as punitive damages in the instant case to send a deterrent message to

the reckless doctors in India keeping in view the major difference in the standard of living between India and U.S.A. In fact, this Court in a well-known case of Lata Wadhwa (supra) in which a number of children and women died from an accidental fire, awarded punitive damages to send a message against the unsafe condition kept by some greedy organizations or companies in the common public places in India.

75. It was further contended by the claimant that this Court remanded the case back to the National Commission for determination of the quantum of compensation only but the National Commission in clear disregard to the direction issued by this Court, has re-examined the issues involved for medical negligence. Further, in Malay Kumar Ganguly's case, this Court has rejected the assertion made by the doctors of the Hospital that the claimant had interfered with the treatment of his wife or that other doctors and/ or the Hospital i.e. Breach Candy Hospital in Bombay should also be made a party in this case.

76. It is further contended by the claimant that the National Commission has wrongfully apportioned the total amount of compensation by losing sight of the observations made by this Court while remanding the case back to it for determination of the quantum of compensation. This Court did not make any observation as to how the compensation should be divided, as awarded by the National Commission. Except for the appellant-Dr. Sukumar Mukherjee who was imposed with a cost of Rs.5,00,000/- this Court did not impose cost against any other doctors even though the Court found other appellant-doctors also guilty for medical negligence.

77. It is further contended that the National Commission on 31st March, 2010 in S.P. Aggarwal Vs. Sanjay Gandhi P.G. Institute (FA No.478/2005) held that "in view of the fact that several doctors and paramedical staff of the appellant institute were involved, it is the appellant institute which has to be held vicariously liable to compensate the complainant to the above extent."

78. It is further urged that in Nizam Institute's case (supra) this Court imposed the entire compensation against the Hospital despite holding several doctors responsible for causing permanent injury to the patient. While remanding back the issue of quantifying the quantum of compensation to the National Commission, this Court has observed that the standard of medical nursing care at the AMRI Hospital was abysmal. It is further submitted that 80% of the total compensation should be imposed against the AMRI Hospital and 20% against Dr. Sukumar Mukherjee. The claimant has claimed the damages as under :-

PECUNIARY DAMAGES:		
A Cost associated with the victim, Anuradha Saha		
1	Loss of prospective/future earning upto to 70 years	Rs.9,25,00,000/-
2	Loss of US Social Security income up to 82 years	Rs.1,44,00,000/-
3	Paid for treatment at AMRI/Breach Candy Hospital	Rs.12,00,000/-
4	Paid for chartered flight to transfer Anuradha	Rs. 9,00,000/-
5	Travel/hotel/other expenses during	Rs. 7,00,000/-

	Anuradha's treatment in Mumbai/ Kolkata in 1998	
6	Paid for court proceedings including video conferencing from U.S.A.	Rs.11,57,000/-
B	Cost associated with Anuradha's husband, Dr. Kunal Saha	
1	Loss of income for missed work	Rs.1,12,50,000/-
2	Travel expenses over the past 12 years	Rs.70,00,000/-
C	Legal expenses	
1	Advocate fees	Rs.1,50,00,000/-
2	other legal expenses	Rs.15,00,000/-
Total pecuniary damages	Rs.34,56,07,000/-	
Non-Pecuniary Special Damages		
1	Loss of companionship and life amenities	Rs.13,50,00,000/-
2	Emotional distress, pain and suffering for husband	Rs.50,00,000/-
3	Pain/suffering endured by the victim during therapy	Rs.4,50,00,000/-
Total non pecuniary damages	Rs.31,50,00,000/-	
D	PUNITIVE/EXEMPLARY DAMAGES	Rs.13,50,00,000/-
E	SPECIAL DAMAGES	Rs.18,00,00,000/-
Total	Rs.97,56,07,000/-	

Therefore, the claimant has prayed for allowing his appeal by awarding just and reasonable compensation under various heads as claimed by him.

79. On the basis of the rival legal factual and contentions urged on behalf of the respective doctor-appellants, Hospital and the claimant, the following points would arise for consideration of this Court:-

> 1) Whether the claim of the claimant for enhancement of compensation in his appeal is justified. If it is so, for what compensation he is entitled to?
>
> 2) While making additional claim by way of affidavit before the National Commission when amending the claim petition, whether the claimant is entitled for compensation on the enhanced claim preferred before the National Commission?

3(a) Whether the claimant seeking to amend the claim of compensation under certain heads in the original claim petition has forfeited his right of claim under Order II Rule 2 of CPC as pleaded by the AMRI Hospital?

3(b) Whether the claimant is justified in claiming additional amount for compensation under different heads without following the procedure contemplated under the provisions of the Consumer Protection Act and the Rules?

4. Whether the National Commission is justified in adopting the multiplier method to determine the compensation and to award the compensation in favour of the claimant?

5. Whether the claimant is entitled to pecuniary damages under the heads of loss of employment, loss of his property and his traveling expenses from U.S.A. to India to conduct the proceedings in his claim petition?

6. Whether the claimant is entitled to the interest on the compensation that would be awarded?

7. Whether the compensation awarded in the impugned judgment and the apportionment of the compensation amount fastened upon the doctors and the hospital requires interference and whether the claimant is liable for contributory negligence and deduction of compensation under this head?

8. To what Order and Award the claimant is entitled to in these appeals?

80. It would be convenient for us to take up first the Civil Appeal No. 2866 of 2012 filed by Dr. Kunal Saha, the claimant, as he had sought for enhancement of compensation. If we answer his claim then the other issues that would arise in the connected appeals filed by the doctors and the AMRI Hospital can be disposed of later on. Therefore, the points that would arise for consideration in these appeals by these Court have been framed in the composite. The same are taken up in relation to the claimants' case in-seriatum and are answered by recording the following reasons:

Answer to Point nos. 1, 2 and 3

81. Point Nos. 1, 2 and 3 are taken up together and answered since they are inter related.

The claim for enhancement of compensation by the claimant in his appeal is justified for the following reasons:

> The National Commission has rejected the claim of the claimant for "inflation" made by him without assigning any reason whatsoever. It is an undisputed fact that the claim of the complainant has been pending before the National Commission and this Court for the last 15 years. The value of money that was claimed in 1998 has been devalued to a great extent. This Court in various following cases has repeatedly affirmed that inflation of money should be considered while deciding the quantum of compensation:-
>
> In Reshma Kumari and Ors. Vs. Madan Mohan and Anr. (supra), this Court at para 47 has dealt with this aspect as under:
>
> "47.One of the incidental issues which has also to be taken into consideration is inflation. Is the practice of taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up. In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality. No hard-and-fast rule, however, can be laid down therefor." In Govind Yadav Vs. New India Insurance

Company Ltd.(supra), this court at para 15 observed as under which got re-iterated at paragraph 13 of Ibrahim Vs. Raju & Ors. (supra):-

"15. In Reshma Kumari v. Madan Mohan this Court reiterated that the compensation awarded under the Act should be just and also identified the factors which should be kept in mind while determining the amount of compensation. The relevant portions of the judgment are extracted below: (SCC pp. 431-32 & 440-41, paras 26-27 & 46-47) '26. The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms.

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 (sic situation) 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 guesswork may be inevitable. That may be so.' * * *

46. In the Indian context several other factors should be taken into consideration including education of the dependants and the nature of job. In the wake of changed societal conditions and global scenario, future prospects may have to be taken into consideration not only having regard to the status of the employee, his educational qualification; his past performance but also other relevant factors, namely, the higher salaries and perks which are being offered by the private companies these days. In fact while determining the multiplicand this Court in Oriental Insurance Co. Ltd. v. Jashuben held that even dearness allowance and perks with regard thereto from which the family would have derived monthly benefit, must be taken into consideration.

47. One of the incidental issues which has also to be taken into consideration is inflation. Is the practice of taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up. In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality. No hard- and-fast rule, however, can be laid down therefor."

82. The C.I.I. is determined by the Finance Ministry of Union of India every year in order to appreciate the level of devaluation of money each year. Using the C.I.I. as published by the Government of India, the original claim of Rs.77.7 crores preferred by the claimant in 1998 would be

equivalent to Rs.188.6 crores as of 2013 and, therefore the enhanced claim preferred by the claimant before the National Commission and before this Court is legally justifiable as this Court is required to determine the just, fair and reasonable compensation. Therefore, the contention urged by the appellant-doctors and the AMRI Hospital that in the absence of pleadings in the claim petition before the National Commission and also in the light of the incident that the subsequent application filed by the claimant seeking for amendment to the claim in the prayer of the complainant being rejected, the additional claim made by the claimant cannot be examined for grant of compensation under different heads is wholly unsustainable in law in view of the decisions rendered by this Court in the aforesaid cases. Therefore, this Court is required to consider the relevant aspect of the matter namely, that there has been steady inflation which should have been considered over period of 15 years and that money has been devalued greatly. Therefore, the decision of the National Commission in confining the grant of compensation to the original claim of Rs.77.7 crores preferred by the claimant under different heads and awarding meager compensation under the different heads in the impugned judgment, is wholly unsustainable in law as the same is contrary to the legal principles laid down by this Court in catena of cases referred to supra. We, therefore, allow the claim of the claimant on enhancement of compensation to the extent to be directed by this Court in the following paragraphs.

83. Besides enhancement of compensation, the claimant has sought for additional compensation of about Rs.20 crores in addition to his initial claim made in 2011 to include the economic loss that he had suffered due to loss of his employment, home foreclosure and bankruptcy in U.S.A which would have never happened but for the wrongful death of his wife. The claimant has placed reliance on the fundamental principle to be followed by the Tribunals, District Consumer Forum, State Consumer Forum, and the National Commission and the courts for awarding 'just compensation'. In support of this contention, he has also strongly placed reliance upon the observations made at para 170 in the Malay Kumar Ganguly's case referred to supra wherein this Court has made observations as thus:

> "170. Indisputably, grant of compensation involving an accident is within the realm of law of torts. It is based on the principle of restitutio in integrum. The said principle provides that a person entitled to damages should, as nearly as possible, get that sum of money which would put him in the same position as he would have been if he had not sustained the wrong. (See Livingstone v. Rawyards Coal Co.)" The claimant made a claim under specific heads in great detail in justification for each one of the claim made by him. The National Commission, despite taking judicial notice of the claim made by the claimant in its judgment, has rejected the entire claim solely on the ground that the additional claim was not pleaded earlier, therefore, none of the claims made by him can be considered. The rejection of the additional claims by the National Commission without consideration on the assumption that the claims made by the claimant before the National Commission cannot be changed or modified without pleadings under any condition is contrary to the decisions of this Court rendered in catena of cases. In support of his additional claim, the claimant places reliance upon such decisions as mentioned hereunder:
>
> (a) In Ningamma's case (supra), this Court has observed at para 34 which reads thus:

"34. Undoubtedly, Section 166 of the MVA deals with "just compensation" and even if in the pleadings no specific claim was made under Section 166 of the MVA, in our considered opinion a party should not be deprived from getting "just compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty- bound and entitled to award "just compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not.

(b) In Malay Kumar Ganguly's case, this Court by placing reliance on the decision of this Court in R.D. Hattangadi Vs. Pest Control (India) (P) Ltd.,(supra) made observation while remanding back the matter to National Commission solely for the determination of quantum of compensation, that compensation should include "loss of earning of profit up to the date of trial" and that it may also include any loss "already suffered or is likely to be suffered in future". Rightly, the claimant has contended that when original complaint was filed soon after the death of his wife in 1998, it would be impossible for him to file a claim for "just compensation" for the pain that the claimant suffered in the course of the 15 years long trial.

c) In Nizam Institute's case supra, the complainant had sought a compensation of Rs.4.61 crores before the National Commission but he enhanced his claim to Rs 7.50 crores when the matter came up before this Court. In response to the claim, this Court held as under:

"82. The complainant, who has argued his own case, has submitted written submissions now claiming about Rs 7.50 crores as compensation under various heads. He has, in addition sought a direction that a further sum of Rs 2 crores be set aside to be used by him should some developments beneficial to him in the medical field take place. Some of the claims are untenable and we have no hesitation in rejecting them. We, however, find that the claim with respect to some of the other items need to be allowed or enhanced in view of the peculiar facts of the case."

d) In Oriental Insurance Company Ltd. Vs. Jashuben & Ors. (supra), the initial claim was for Rs.12 lakhs which was subsequently raised to Rs.25 lakhs. The claim was partly allowed by this Court.

e) In R.D. Hattangadi Vs. Pest Control (India) (supra) the appellant made an initial compensation claim of Rs.4 lakhs but later on enhanced the claim to Rs.35 lakhs by this Court.

f) In Raj Rani & Ors. Vs. Oriental Insurance Company Ltd. & Ors.,(supra) this Court has observed that there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. The relevant paragraph reads as under:

"14. In Nagappa v. Gurudayal Singh this Court has held as under: (SCC p. 279, para 7)
"7. Firstly, under the provisions of the Motor Vehicles Act, 1988, (hereinafter referred to as 'the MV Act') there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is—it should be 'just' compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the MV Act."

g) In Laxman @ Laxaman Mourya Vs. Divisional Manager, Oriental Insurance Co. Ltd. & Anr.,(supra) this Court awarded more compensation than what was claimed by the claimant after making the following categorical observations:-

"In the absence of any bar in the Act, the Tribunal and for that reason, any competent court, is entitled to award higher compensation to the victim of an accident"

h) In Ibrahim Vs. Raju & Ors.,(supra) this Court awarded double the compensation sought for by the complainant after discussion of host of previous judgments.

84. In view of the aforesaid decisions of this Court referred to supra, wherein this Court has awarded 'just compensation' more than what was claimed by the claimants initially and therefore, the contention urged by learned senior counsel and other counsel on behalf of the appellant-doctors and the AMRI Hospital that the additional claim made by the claimant was rightly not considered by the National Commission for the reason that the same is not supported by pleadings by filing an application to amend the same regarding the quantum of compensation and the same could not have been amended as it is barred by the limitation provided under Section 23 of the Consumer Protection Act, 1986 and the claimant is also not entitled to seek enhanced compensation in view of Order II Rule 2 of the CPC as he had restricted his claim at Rs.77,07,45,000/-, is not sustainable in law. The claimant has appropriately placed reliance upon the decisions of this Court in justification of his additional claim and the finding of fact on the basis of which the National Commission rejected the claim is based on untenable reasons. We have to reject the contention urged by the learned senior counsel and other counsel on behalf of the appellant-doctors and the AMRI Hospital as it is wholly untenable in law and is contrary to the aforesaid decisions of this Court referred to supra. We have to accept the claim of the claimant as it is supported by the decisions of this Court and the same is well founded in law. It is the duty of the Tribunals, Commissions and the Courts to consider relevant facts and evidence in respect of facts and circumstances of each and every case for awarding just and reasonable compensation. Therefore, we are of the view that the claimant is entitled for enhanced compensation under certain items made by the claimant in additional claim preferred by him before the National Commission. We have to keep in view the fact that this Court while remanding the case back to the National Commission only for the purpose of determination of quantum of compensation also made categorical observation that:

> "172. Loss of wife to a husband may always be truly compensated by way of mandatory compensation. How one would do it has been baffling the court for a long time. For compensating a husband for loss of his wife, therefore, the courts consider the loss of income to the family. It may not be difficult to do when she had been earning. Even otherwise a wife's contribution to the family in terms of money can always be worked out. Every housewife makes a contribution to his family. It is capable of being measured on monetary terms although emotional aspect of it cannot be. It depends upon her educational qualification, her own upbringing, status, husband's income, etc." [Emphasis laid by this Court] In this regard, this Court has also expressed similar view that status, future prospects and educational qualification of the deceased must be judged for deciding adequate, just and fair compensation as in the case of R.K. Malik & Anr. (supra).

85. Further, it is an undisputed fact that the victim was a graduate in psychology from a highly prestigious Ivy League school in New York. She had a brilliant future ahead of her. However, the National Commission has calculated the entire compensation and prospective loss of income solely based on a pay receipt showing a paltry income of only $30,000 per year which she was earning as a graduate student. Therefore, the National Commission has committed grave error in taking that figure to determine compensation under the head of loss of dependency and the same is contrary to the observations made by this Court in the case of Arvind Kumar Mishra Vs. New India Assurance which reads as under:

> "14. On completion of Bachelor of Engineering (Mechanical) from the prestigious institute like BIT, it can be reasonably assumed that he would have got a good job. The appellant has stated in his evidence that in the campus interview he was selected by Tata as well as Reliance Industries and was offered pay package of Rs. 3,50,000 per annum. Even if that is not accepted for want of any evidence in support thereof, there would not have been any difficulty for him in getting some decent job in the private sector. Had he decided to join government service and got selected, he would have been put in the pay scale for Assistant Engineer and would have at least earned Rs. 60,000 per annum. Wherever he joined, he had a fair chance of some promotion and remote chance of some high position. But uncertainties of life cannot be ignored taking relevant factors into consideration. In our opinion, it is fair and reasonable to assess his future earnings at Rs. 60,000 per annum taking the salary and allowances payable to an Assistant Engineer in public employment as the basis."

86. The claimant further placed reliance upon the decisions of this Court in Govind Yadav Vs. New India Insurance Co. Ltd.(supra), Sri Ramachandrappa Vs. Manager, Royal Sundaram Alliance Insurance (supra), Ibrahim Vs. Raju & Ors., Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Co. Ltd. (supra) and Kavita Vs. Dipak & Ors (supra) in support of his additional claim on loss of future prospect of income. However, these decisions do not have any relevance to the facts and circumstances of the present case. Moreover, these cases mention about 'future loss of income' and not 'future prospects of income' in terms of the potential of the victim and we are inclined to distinguish between the two.

87. We place reliance upon the decisions of this Court in Arvind Kumar Mishra's case (supra) and also in Susamma Thomas (supra), wherein this Court held thus:

> "24. 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."

88. Further, to hold that the claimant is entitled to enhanced compensation under the heading of loss of future prospects of income of the victim, this Court in Santosh Devi Vs. National Insurance Company and Ors. (supra), held as under:

> "18. Therefore, we do not think that while making the observations in the last three lines of para 24 of Sarla Verma judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes the victim of an accident then the same formula deserves to be applied for calculating the amount of compensation."

89. In view of the aforesaid observations and law laid down by this Court with regard to the approach by the Commission in awarding just and reasonable compensation taking into consideration the future prospects of the deceased even in the absence of any expert's opinion must have been reasonably judged based on the income of the deceased and her future potential in U.S.A. However, in the present case the calculation of the future prospect of income of the deceased has also been scientifically done by economic expert Prof. John F. Burke. In this regard, the learned counsel for the other appellant-doctors and the Hospital have contended that without amending the claim petition the enhanced claim filed before the National Commission or an application filed in the appeal by the claimant cannot be accepted by this Court. In support of this contention, they have placed reliance upon the various provisions of the Consumer Protection Act and also decisions of this Court which have been adverted to in their submissions recorded in this judgment. The claimant strongly contended by placing reliance upon the additional claim by way of affidavit filed

before the National Commission which was sought to be justified with reference to the liberty given by this Court in the earlier proceedings which arose when the application filed by the claimant was rejected and this Court has permitted him to file an affidavit before the National Commission and the same has been done. The ground urged by the claimant is that the National Commission has not considered the entire claim including the additional claim made before it. He has placed strong reliance upon V.P. Shantha's case (supra) in support of his contention wherein it was held as under:

> "53. Dealing with the present state of medical negligence cases in the United Kingdom it has been observed:
>
> "The legal system, then, is faced with the classic problem of doing justice to both parties. The fears of the medical profession must be taken into account while the legitimate claims of the patient cannot be ignored.
>
> Medical negligence apart, in practice, the courts are increasingly reluctant to interfere in clinical matters. What was once perceived as a legal threat to medicine has disappeared a decade later. While the court will accept the absolute right of a patient to refuse treatment, they will, at the same time, refuse to dictate to doctors what treatment they should give. Indeed, the fear could be that, if anything, the pendulum has swung too far in favour of therapeutic immunity. (p. 16) It would be a mistake to think of doctors and hospitals as easy targets for the dissatisfied patient. It is still very difficult to raise an action of medical negligence in Britain; some, such as the Association of the Victims of Medical Accidents, would say that it is unacceptably difficult. Not only are there practical difficulties in linking the plaintiff's injury to medical treatment, but the standard of care in medical negligence cases is still effectively defined by the profession itself. All these factors, together with the sheer expense of bringing legal action and the denial of legal aid to all but the poorest, operate to inhibit medical litigation in a way in which the American system, with its contingency fees and its sympathetic juries, does not.
>
> It is difficult to single out any one cause for what increase there has been in the volume of medical negligence actions in the United Kingdom. A common explanation is that there are, quite simply, more medical accidents occurring — whether this be due to increased pressure on hospital facilities, to falling standards of professional competence or, more probably, to the ever-increasing complexity of therapeutic and diagnostic methods." (p. 191) A patient who has been injured by an act of medical negligence has suffered in a way which is recognised by the law — and by the public at large — as deserving compensation. This loss may be continuing and what may seem like an unduly large award may be little more than that sum which is required to compensate him for such matters as loss of future earnings and the future cost of medical or nursing care. To deny a legitimate claim or to restrict arbitrarily the size of an award would amount to substantial injustice. After all, there is no difference in legal theory between the plaintiff injured through medical negligence and the plaintiff injured in an industrial or motor accident." (pp. 192-93) (Mason's Law and Medical

> Ethics, 4th Edn.)" [Emphasis laid by this Court]

90. He has also placed reliance upon the Nizam Institute of Medical Sciences's case referred to supra in support of his submission that if a case is made out, then the Court must not be chary of awarding adequate compensation. The relevant paragraph reads as under:

> "88. We must emphasise that the court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the court must not be chary of awarding adequate compensation. The "adequate compensation" that we speak of, must to some extent, be a rule of thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned."

91. He has further rightly contended that with respect to the fundamental principle for awarding just and reasonable compensation, this Court in Malay Kumar Ganguly's case (supra) has categorically stated while remanding this case back to the National Commission that the principle for just and reasonable compensation is based on 'restitutio in integrum' that is, the claimant must receive sum of money which would put him in the same position as he would have been if he had not sustained the wrong.

92. Further, he has placed reliance upon the judgment of this Court in the case of Ningamma's case (supra) in support of the proposition of law that the Court is duty-bound and entitled to award "just compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not. The relevant paragraph reads as under:

> "34. Undoubtedly, Section 166 of the MVA deals with "just compensation" and even if in the pleadings no specific claim was made under Section 166 of the MVA, in our considered opinion a party should not be deprived from getting "just compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty-bound and entitled to award "just compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not."

93. He has also rightly placed reliance upon observations made in Malay Kumar Ganguly's case referred to supra wherein this Court has held the appellant doctors guilty of causing death of claimant's wife while remanding the matter back to the National Commission only for determination of quantum of compensation for medical negligence. This Court has further observed that compensation should include "loss of earning of profit up to the date of trial" and that it may also include any loss "already suffered or likely to be suffered in future". The claimant has also rightly submitted that when the original complaint was filed soon after the death of his wife in 1998, it would be impossible to file a claim for "just compensation". The claimant has suffered in the course of the 15 years long trial. In support of his contention he placed reliance on some other cases

also where more compensation was awarded than what was claimed, such as Oriental Insurance Company Ltd. Vs. Jashuben & Ors., R.D. Hattangadi , Raj Rani & Ors, Laxman @ Laxaman Mourya all cases referred to supra. Therefore, the relevant paragraphs from the said judgments in-seriatum extracted above show that this Court has got the power under Article 136 of the Constitution and the duty to award just and reasonable compensation to do complete justice to the affected claimant.

In view of the aforesaid reasons stated by us, it is wholly untenable in law with regard to the legal contentions urged on behalf of the AMRI Hospital and the doctors that without there being an amendment to the claim petition, the claimant is not entitled to seek the additional claims by way of affidavit, the claim is barred by limitation and the same has not been rightly accepted by the National Commission.

94. Also, in view of the above reasoning the contention that the claimant has waived his right to claim more compensation in view of the Order II Rule 2 of CPC as pleaded by the AMRI Hospital and the appellant-doctors is also held to be wholly unsustainable in law. The claimant is justified in claiming additional claim for determining just and reasonable compensation under different heads. Accordingly, the point Nos. 1, 2, and 3 are answered in favour of the claimant and against the appellant-doctors and the Hospital.

Answer to point no. 4

95. With regard to point no. 4, the National Commission has used the "multiplier" method under Section 163A read with the second schedule of the Motor Vehicles Act to determine the quantum of compensation in favour of the claimant applying the multiplier method as has been laid down by this Court in Sarla Verma's case(supra). Consequently, it has taken up multiplier of 15 in the present case to quantify the compensation under the loss of dependency of the claimant. It is urged by the claimant that use of multiplier system for determining compensation for medical negligence cases involving death of his wife is grossly erroneous in law. The claimant has rightly placed reliance upon the cases of this Court such as, Indian Medical Assn. Vs. V.P. Shanta & Ors.(supra), Spring Meadows Hospital & Anr. Vs. Harjol Ahluwalia[33], Charan Singh Vs. Healing Touch Hospital and Ors.(supra), J.J. Merchants & Ors. Vs. Srinath Chaturbedi (supra), Savita Garg Vs. Director National Heart Institute (supra), State of Punjab Vs. Shiv Ram & Ors.(supra), Samira Kholi Vs. Dr. Prabha Manchanda & Anr.(supra), P.G. Institute of Medical Sciences Vs. Jaspal Singh & Ors., (supra) Nizam Institute Vs. Prasant Dhananka (supra) Malay Kumar Ganguly Vs. Sukumar Mukherjee & Ors. (supra) and V. Kishan Rao Vs. Nikhil Superspeciality Hospital & Anr. (supra) to contend that not a single case was decided by using the multiplier method.

In support of this contention, he has further argued that in the three judge Bench decision in the case of Nizam Institute's case (supra), this Court has rejected the use of multiplier system to calculate the quantum of compensation. The relevant paragraph is quoted hereunder:

> "92. Mr Tandale, the learned counsel for the respondent has, further submitted that the proper method for determining compensation would be the multiplier method. We find absolutely no merit in this plea. The kind of damage that the complainant

has suffered, the expenditure that he has incurred and is likely to incur in the future and the possibility that his rise in his chosen field would now be restricted, are matters which cannot be taken care of under the multiplier method." [Emphasis laid by this Court] He has further urged that the 'multiplier' method as provided in the second Schedule to Section 163-A of the M.V.Act which provision along with the Second Schedule was inserted to the Act by way of Amendment in 1994, was meant for speedy disposal of 'no fault' motor accident claim cases. Hence, the present case of gross medical negligence by the appellant-doctors and the Hospital cannot be compared with 'no fault' motor accident claim cases.

96. The appellant Dr. Balram Prasad on the other hand relied upon the decision in United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan (supra) and contended that multiplier method is a standard method of determining the quantum of compensation in India. The relevant paragraphs read as under:

"20. The court cannot be totally oblivious to the realities. The Second Schedule while prescribing the multiplier, had maximum income of Rs 40,000 p.a. in mind, but it is considered to be a safe guide for applying the prescribed multiplier in cases of higher income also but in cases where the gap in income is so wide as in the present case income is 2,26,297 dollars, in such a situation, it cannot be said that some deviation in the multiplier would be impermissible. Therefore, a deviation from applying the multiplier as provided in the Second Schedule may have to be made in this case. Apart from factors indicated earlier the amount of multiplicand also becomes a factor to be taken into account which in this case comes to 2,26,297 dollars, that is to say an amount of around Rs 68 lakhs per annum by converting it at the rate of Rs 30. By Indian standards it is certainly a high amount. Therefore, for the purposes of fair compensation, a lesser multiplier can be applied to a heavy amount of multiplicand. A deviation would be reasonably permissible in the figure of multiplier even according to the observations made in the case of Susamma Thomas where a specific example was given about a person dying at the age of 45 leaving no heirs being a bachelor except his parents.

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22. We therefore, hold that ordinarily while awarding compensation, the provisions contained in the Second Schedule may be taken as a guide including the multiplier, but there may arise some cases, as the one in hand, which may fall in the category having special features or facts calling for deviation from the multiplier usually applicable."

97. It is further urged by the learned senior counsel Mr. Vijay Hansaria for the appellant-AMRI Hospital relying on Sarla Verma's case (supra) that the multiplier method has enabled the courts to bring about consistency in determining the 'loss of dependency' more particularly in the death of victims of negligence. The relevant paragraph reads as under:

"14. The lack of uniformity and consistency in awarding compensation has been a matter of grave concern. Every district has one or more Motor Accidents Claims Tribunal(s). If different Tribunals calculate compensation differently on the same facts, the claimant, the litigant, the common man will be confused, perplexed and bewildered. If there is significant divergence among the Tribunals in determining the quantum of compensation on similar facts, it will lead to dissatisfaction and distrust in the system." The learned counsel for the appellant-AMRI Hospital further argued that reliance placed upon the judgment in Nizam Institute's case referred to supra by the claimant is misplaced since the victim in that case suffered from permanent disability which required constant medical assistance. Therefore, it was urged that Nizam Institute case cannot be relied upon by this Court to determine the quantum of compensation by not adopting multiplier method in favour of the claimant.

A careful reading of the above cases shows that this Court is skeptical about using a strait jacket multiplier method for determining the quantum of compensation in medical negligence claims. On the contrary, this Court mentions various instances where the Court chose to deviate from the standard multiplier method to avoid over-compensation and also relied upon the quantum of multiplicand to choose the appropriate multiplier. Therefore, submission made in this regard by the claimant is well founded and based on sound logic and is reasonable as the National Commission or this Court requires to determine just, fair and reasonable compensation on the basis of the income that was being earned by the deceased at the time of her death and other related claims on account of death of the wife of the claimant which is discussed in the reasoning portion in answer to the point Nos. 1 to 3 which have been framed by this Court in these appeals. Accordingly, we answer the point No. 4 in favour of the claimant holding that the submissions made by the learned counsel for the appellant-doctors and the AMRI Hospital in determination of compensation by following the multiplier method which was sought to be justified by placing reliance upon Sarla Verma and Reshma's cases (supra) cannot be accepted by this Court and the same does not inspire confidence in us in accepting the said submission made by the learned senior counsel and other counsel to justify the multiplier method adopted by the National Commission to determine the compensation under the head of loss of dependency. Accordingly, we answer the point no. 4 in favour of the claimant and against the appellants-doctors and AMRI Hospital.

Answer to Point no. 5

98. It is the claim of the claimant that he has also suffered huge losses during this period, both direct loss of income from his job in U.S.A. as well as indirect loss for pain and intense mental agony for tenure denial and termination of his employment at Ohio State University which was a direct result of the wrongful death of deceased in India as would be evident from the judgment passed by the Court of Claims in Ohio which was filed by the Hospital on 18th July, 2011. In lieu of such pain and suffering the claimant made a demand of Rs.34,56,07,000/- under different heads of 'loss of income for missed work', 'travelling expenses over the past 12 years' and 'legal expenses including advocate

fees' etc.

99. We have perused through the claims of the claimant under the above heads and we are inclined to observe the following :-

> The claim of Rs.1,12,50,000/- made by the claimant under the head of loss of income for missed work, cannot be allowed by this Court since, the same has no direct nexus with the negligence of the appellant- doctors and the Hospital. The claimant further assessed his claim under the head of 'Travel expenses over the past 12 years' at Rs.70,00,000/-. It is pertinent to observe that the claimant did not produce any record of plane fare to prove his travel expenditure from U.S.A. to India to attend the proceedings. However, it is an undisputed fact that the claimant is a citizen of U.S.A. and had been living there. It cannot be denied that he had to incur travel expenses to come to India to attend the proceedings. Therefore, on an average, we award a compensation of Rs.10 lakhs under the head of 'Travel expenses over the past twelve years'.
>
> Further, the claimant argues that he has spent Rs.1,65,00,000/- towards litigation over the past 12 years while seeking compensation under this head. Again, we find the claim to be on the higher side. Considering that the claimant who is a doctor by profession, appeared in person before this Court to argue his case. We acknowledge the fact that he might have required rigorous assistance of lawyers to prepare his case and produce evidence in order. Therefore, we grant a compensation of Rs.1,50,000/- under the head of 'legal expenses'. Therefore, a total amount of Rs. 11,50,000/- is granted to the claimant under the head of 'cost of litigation'.
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> Answer to Point no. 6

100. A perusal of the operative portion of the impugned judgment of the National Commission shows that it has awarded interest at the rate of 12% per annum but only in case of default by the doctors of AMRI Hospital to pay the compensation within 8 weeks after the judgment was delivered on October 21, 2011. Therefore, in other words, the National Commission did not grant any interest for the long period of 15 years as the case was pending before the National Commission and this Court. Therefore, the National Commission has committed error in not awarding interest on the compensation awarded by it and the same is opposed to various decisions of this Court, such as in the case of Thazhathe Purayil Sarabi & Ors. Vs. Union of India & Anr. regarding payment of interest on a decree of payment this Court held as under:

> "25. It is, therefore, clear that the court, while making a decree for payment of money is entitled to grant interest at the current rate of interest or contractual rate as it deems reasonable to be paid on the principal sum adjudged to be payable and/or awarded, from the date of claim or from the date of the order or decree for recovery of the outstanding dues. There is also hardly any room for doubt that interest may be claimed on any amount decreed or awarded for the period during which the money

was due and yet remained unpaid to the claimants.

26. The courts are consistent in their view that normally when a money decree is passed, it is most essential that interest be granted for the period during which the money was due, but could not be utilised by the person in whose favour an order of recovery of money was passed.

27. As has been frequently explained by this Court and various High Courts, interest is essentially a compensation payable on account of denial of the right to utilise the money due, which has been, in fact, utilised by the person withholding the same.

Accordingly, payment of interest follows as a matter of course when a money decree is passed.

28. The only question to be decided is since when is such interest payable on such a decree. Though, there are two divergent views, one indicating that interest is payable from the date when claim for the principal sum is made, namely, the date of institution of the proceedings in the recovery of the amount, the other view is that such interest is payable only when a determination is made and order is passed for recovery of the dues. However, the more consistent view has been the former and in rare cases interest has been awarded for periods even prior to the institution of proceedings for recovery of the dues, where the same is provided for by the terms of the agreement entered into between the parties or where the same is permissible by statute."

101. Further, in Kemp and Kemp on Quantum of Damages, the objective behind granting interest is recorded as under:

"The object of a court in awarding interest to a successful litigant is to compensate him for being kept out of money which the court has found is properly due to him. That objective is easy to achieve where it is clear that on a certain date the defendant ought to have paid to the plaintiff an ascertained sum, for example by way of repayment of a loan. The problems which arise in personal injury and fatal accident cases in relation to awards of interest result from the facts that while, on the one hand, the cause of action accrues at the time of the accident, so that compensation is payable as from that time, on the other hand

a) the appropriate amount of compensation cannot be assessed in a personal injury case with any pretence of accuracy until the condition of the plaintiff has stabilised, and

b) subject to the provisions of the Supreme Court Act 1981, S.32A when that section is brought into force, when damages are assessed they are assessed once for all in relation to both actual past and anticipated future loss and damage.

XXX XXX XXX XXX XXX The necessity for guidelines, and the status of guidelines, were considered by the House of Lords in Cookson v. Knowles.[34] In that case Lord

Diplock with whom the other members of the House agreed, said:

> The section as amended gives to the judge several options as to the way in which he may assess the interest element to be included in the sum awarded by the judgment. He may include interest on the whole of the damages or on a part of them only as he thinks appropriate. He may award it for the whole or any part of the period between the date when the cause of action arose and the date of judgment and he may award it at different rates for different part of the period chosen.
>
> The section gives no guidance as to the way in which the judge should exercise his choice between the various options open to him. This is all left to his discretion; but like all discretions vested in judges by statute or at common law, it must be exercised judicially or, in the Scots phrase used by Lord Emslie in Smith V. Middleton, 1972 S.C. 30, in a selective and discriminating manner, not arbitrarily or idiosyncractically- for otherwise the rights of parties to litigation would become dependent upon judicial whim.
>
> It is therefore appropriate for an appellate court to lay down guidelines as to what matters it is proper for the judge to take into account in deciding how to exercise the discretion confided in him by the statute. In exercising this appellate function, the court is not expounding a rule of law from which a judge is precluded from departing where special circumstances exist in a particular case; nor indeed, even in cases where there are no special circumstances, is an appellate court justified in giving effect to the preference of its members for exercising the discretion in a different way from that adopted by the judge if the choice between the alternative ways of exercising it is one upon which judicial opinion might reasonably differ."

102. Therefore, the National Commission in not awarding interest on the compensation amount from the date of filing of the original complaint up to the date of payment of entire compensation by the appellant-doctors and the AMRI Hospital to the claimant is most unreasonable and the same is opposed to the provision of the Interest Act, 1978. Therefore, we are awarding the interest on the compensation that is determined by this Court in the appeal filed by the claimant at the rate of 6% per annum on the compensation awarded in these appeals from the date of complaint till the date of payment of compensation awarded by this Court. The justification made by the learned senior counsel on behalf of the appellant-doctors and the AMRI Hospital in not awarding interest on the compensation awarded by the National Commission is contrary to law laid down by this Court and also the provisions of the Interest Act, 1978. Hence, their submissions cannot be accepted as the same are wholly untenable in law and misplaced. Accordingly, the aforesaid point is answered in favour of the claimant.

Answer to point no. 7

103. Before we answer this point, it is pertinent to mention that we are not inclined to determine the liability of the doctors in causing the death of the claimant's wife since the same has already been

done by the Court in Malay Kumar Ganguly's case (supra). We will confine ourselves to determine the extent to which the appellant-doctors and the Hospital are liable to pay compensation awarded to the claimant for their acts of negligence in giving treatment to the deceased wife of the claimant.

Liability of the AMRI Hospital:

104. It is the claim of appellant-AMRI Hospital that the arguments advanced on behalf of the appellant-doctors that is, Dr. Balram Prasad, Dr. Sukumar Mukherjee and Dr. Baidyanath Haldar and the claimant Dr. Kunal Saha, that the appellant AMRI is liable to pay the highest share of compensation in terms of percentage on the basis of the cost imposed by this Court in the earlier round of litigation in Malay Kumar Ganguly's case, supra are not sustainable in law.

105. The learned senior counsel for the appellant-AMRI Hospital Mr. Vijay Hansaria argued that the submission made by the claimant Dr. Kunal Saha is not sustainable both on facts and in law since he himself had claimed special damages against the appellant-doctors, Dr. Sukumar Mukherjee, Dr. Baidyanath Haldar and Dr. Abani Roy Choudhury in his appeal and therefore, he cannot now in these proceedings claim to the contrary. On the other hand, the claimant Dr. Kunal Saha argues that though the National Commission claims that this Court did not make any observation on apportionment of liability while remanding the matter back to it for determining the quantum of compensation, this Court had implicitly directed the bulk of compensation to be paid by the Hospital. Through Paragraph No. 196, the judgment reads as under:

> "196. We, keeping in view the stand taken and conduct of AMRI and Dr. Mukherjee, direct that costs of Rs 5,00,000 and Rs 1,00,000 would be payable by AMRI and Dr. Mukherjee respectively. We further direct that if any foreign experts are to be examined it shall be done only through videoconferencing and at the cost of the respondents." This Court has stated that the bulk of the proportion of compensation is to be paid by the Hospital and the rest by Dr. Sukumar Mukherjee. None of the other doctors involved were imposed with cost though they were found guilty of medical negligence. The claimant relied upon the decision in Nizam Institute's case (supra) in which this Court directed the Hospital to pay the entire amount of compensation to the claimant in that case even though the treating doctors were found to be responsible for the negligence. The claimant also relied upon the observations made by this Court while remitting the case back to National Commission for determining the quantum of compensation, to emphasize upon the negligence on the part of the Hospital. The findings of this Court in Malay Kumar Ganguly's case read as under:
>
> "76. AMRI records demonstrate how abysmal the nursing care was. We understand that there was no burn unit in AMRI and there was no burn unit at Breach Candy Hospital either. A patient of TEN is kept in ICU. All emphasis has been laid on the fact that one room was virtually made an ICU. Entry restrictions were strictly adhered to. Hygiene was ensured. But constant nursing and supervision was required. In the name of preventing infection, it cannot be accepted that the nurses

would not keep a watch on the patient. They would also not come to see the patients or administer drugs.

77. No nasogastric tube was given although the condition of the mouth was such that Anuradha could not have been given any solid food. She required 7 to 8 litres of water daily. It was impossible to give so much water by mouth. The doctors on the very first day found that the condition of the mouth was bad.

78. The ENT specialist in his prescription noticed blisters around the lips of the patient which led her to difficulty in swallowing or eating. No blood sample was taken. No other routine pathological examination was carried out. It is now beyond any dispute that 25-30% body surface area was affected (re. Prescription of Dr. Nandy, Plastic Surgeon). The next day, he examined the patient and he found that more and more body surface area was affected. Even Dr. Prasad found the same.

79. Supportive therapy or symptomatic therapy, admittedly, was not administered as needle prick was prohibited. AMRI even did not maintain its records properly. The nurses reports clearly show that from 13th May onwards even the routine check-ups were not done."

106. The liability of compensation to be apportioned by this Court on the appellant-AMRI Hospital is mentioned in paragraph 165 of the Malay Kumar Ganguly's case which reads as under:

"165. As regards, individual liability of Respondents 4, 5 and 6 is concerned, we may notice the same hereunder. As regards AMRI, it may be noticed:

(i)Vital parameters of Anuradha were not examined between 11-5-

1998 to 16-5-1998 (body temperature, respiration rate, pulse, BP and urine input and output).

(ii) IV fluid not administered. (IV fluid administration is absolutely necessary in the first 48 hours of treating TEN.)"

107. However, this Court in the aforesaid case, also recorded as under:

"184. In R. V. Yogasakaran the New Zealand Court opined that the hospital is in a better position to disclose what care was taken or what medicine was administered to the patient. It is the duty of the hospital to satisfy that there was no lack of care or diligence. The hospitals are institutions, people expect better and efficient service, if the hospital fails to discharge their duties through their doctors, being employed on job basis or employed on contract basis, it is the hospital which has to justify and not impleading a particular doctor will not absolve the hospital of its responsibilities. (See also Errors, Medicine and the Law, Alan Merry and Alexander McCall Smith, 2001 Edn., Cambridge University Press, p. 12.)"

108. Even in the case of Savita Garg Vs. National Heart Institute (supra) this Court, while determining the liability of the Hospital, observed as under:

> "15. Therefore, as per the English decisions also the distinction of "contract of service" and "contract for service", in both the contingencies, the courts have taken the view that the hospital is responsible for the acts of their permanent staff as well as staff whose services are temporarily requisitioned for the treatment of the patients. Therefore, the distinction which is sought to be pressed into service so ably by learned counsel cannot absolve the hospital or the Institute as it is responsible for the acts of its treating doctors who are on the panel and whose services are requisitioned from time to time by the hospital looking to the nature of the diseases. The hospital or the Institute is responsible and no distinction could be made between the two classes of persons i.e. the treating doctor who was on the staff of the hospital and the nursing staff and the doctors whose services were temporarily taken for treatment of the patients.....
>
> 16. Therefore, the distinction between the "contract of service" and "contract for service" has been very elaborately discussed in the above case and this Court has extended the provisions of the Consumer Protection Act, 1986, to the medical profession also and included in its ambit the services rendered by private doctors as well as the government institutions or the non-

governmental institutions, be it free medical services provided by the government hospitals. In the case of Achutrao Haribhau Khodwa v. State of Maharashtra their Lordships observed that in cases where the doctors act carelessly and in a manner which is not expected of a medical practitioner, then in such a case an action in tort would be maintainable. Their Lordships further observed that if the doctor has taken proper precautions and despite that if the patient does not survive then the court should be very slow in attributing negligence on the part of the doctor. It was held as follows: (SCC p. 635) 'A medical practitioner has various duties towards his patient and he must act with a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. This is the least which a patient expects from a doctor. The skill of medical practitioners differs from doctor to doctor. The very nature of the profession is such that there may be more than one course of treatment which may be advisable for treating a patient. Courts would indeed be slow in attributing negligence on the part of a doctor if he has performed his duties to the best of his ability and with due care and caution. Medical opinion may differ with regard to the course of action to be taken by a doctor treating a patient, but as long as a doctor acts in a manner which is acceptable to the medical profession and the court finds that he has attended on the patient with due care, skill and diligence and if the patient still does not survive or suffers a permanent ailment, it would be difficult to hold the doctor to be guilty of negligence. But in cases where the doctors act carelessly and in a manner which is not expected of a medical practitioner, then in such a case an action in torts would be maintainable.' Similarly, our attention was invited to a decision in the case of Spring Meadows Hospital v. Harjol Ahluwalia. Their Lordships observed as follows: (SCC pp. 46-47, para 9) '9....Very often in a claim for compensation arising out of medical negligence a plea is taken that it is a case of bona fide mistake which under certain circumstances may be excusable, but a mistake which would

tantamount to negligence cannot be pardoned. In the former case a court can accept that ordinary human fallibility precludes the liability while in the latter the conduct of the defendant is considered to have gone beyond the bounds of what is expected of the skill of a reasonably competent doctor...' Therefore, as a result of our above discussion we are of the opinion that summary dismissal of the original petition by the Commission on the question of non-joinder of necessary parties was not proper. In case the complainant fails to substantiate the allegations, then the complaint will fail. But not on the ground of non-joinder of necessary party. But at the same time the hospital can discharge the burden by producing the treating doctor in defence that all due care and caution was taken and despite that the patient died. The hospital/Institute is not going to suffer on account of non-joinder of necessary parties and the Commission should have proceeded against the hospital. Even otherwise also the Institute had to produce the treating physician concerned and has to produce evidence that all care and caution was taken by them or their staff to justify that there was no negligence involved in the matter. Therefore, nothing turns on not impleading the treating doctor as a party. Once an allegation is made that the patient was admitted in a particular hospital and evidence is produced to satisfy that he died because of lack of proper care and negligence, then the burden lies on the hospital to justify that there was no negligence on the part of the treating doctor or hospital. Therefore, in any case, the hospital is in a better position to disclose what care was taken or what medicine was administered to the patient. It is the duty of the hospital to satisfy that there was no lack of care or diligence. The hospitals are institutions, people expect better and efficient service, if the hospital fails to discharge their duties through their doctors, being employed on job basis or employed on contract basis, it is the hospital which has to justify and not impleading a particular doctor will not absolve the hospital of its responsibilities." (Emphasis laid by this Court)

109. Therefore, in the light of the rival legal contentions raised by the parties and the legal principles laid down by this Court in plethora of cases referred to supra, particularly, Savita Garg's case, we have to infer that the appellant-AMRI Hospital is vicariously liable for its doctors. It is clearly mentioned in Savita Garg's case that a Hospital is responsible for the conduct of its doctors both on the panel and the visiting doctors. We, therefore, direct the appellant-AMRI Hospital to pay the total amount of compensation with interest awarded in the appeal of the claimant which remains due after deducting the total amount of Rs.25 lakhs payable by the appellants- doctors as per the Order passed by this Court while answering the point no. 7.

Liability of Dr. Sukumar Mukherjee:

110. As regards the liability of Dr. Sukumar Mukherjee, it is his case that nowhere has this Court in Malay Kumar Ganguly's decision hold the appellant Dr. Mukherjee and appellant-AMRI Hospital "primarily responsible" for the death of the claimant's wife. On the contrary, referring to paras 186 and 187 of the said judgment, under the heading of 'cumulative effect', the appellant's counsel has argued that his liability is not established by the Court. The said paragraphs are extracted hereunder:

> "186. A patient would feel the deficiency in service having regard to the cumulative effect of negligence of all concerned. Negligence on the part of each of the treating doctors as also the hospital may have been the contributing factors to the ultimate

> death of the patient. But, then in a case of this nature, the court must deal with the consequences the patient faced, keeping in view the cumulative effect. In the instant case, negligent action has been noticed with respect to more than one respondent. A cumulative incidence, therefore, has led to the death of the patient.
>
> 187. It is to be noted that the doctrine of cumulative effect is not available in criminal law. The complexities involved in the instant case as also the differing nature of negligence exercised by various actors, make it very difficult to distil individual extent of negligence with respect to each of the respondent. In such a scenario finding of medical negligence under Section 304-A cannot be objectively determined."

111. In the light of the legal contention raised by the appellant-Dr. Mukherjee, we are inclined to make the following observation regarding his liability in the present case. The paragraphs relied upon by Dr. Mukherjee as have been mentioned above are in relation to the culpability of the doctors for causing the death of the patient under Section 304-A of IPC. It is imperative to mention here that the quantum of compensation to be paid by the appellant-doctors and the AMRI Hospital is not premised on their culpability under Section 304-A of IPC but on the basis of their act of negligence as doctors in treating the deceased wife of the claimant. We are therefore inclined to reiterate the findings of this Court regarding the liability of Dr. Mukherjee in Malay Kumar Ganguly's case which read as under:

> "159. When Dr. Mukherjee examined Anuradha, she had rashes all over her body and this being the case of dermatology, he should have referred her to a dermatologist. Instead, he prescribed "depomedrol" for the next 3 days on his assumption that it was a case of "vasculitis". The dosage of 120 mg depomedrol per day is certainly a higher dose in case of a TEN patient or for that matter any patient suffering from any other bypass or skin disease and the maximum recommended usage by the drug manufacturer has also been exceeded by Dr. Mukherjee. On 11-5- 1998, the further prescription of depomedrol without diagnosing the nature of the disease is a wrongful act on his part.
>
> 160. According to general practice, long-acting steroids are not advisable in any clinical condition, as noticed hereinbefore.

However, instead of prescribing a quick-acting steroid, the prescription of a long-acting steroid without foreseeing its implications is certainly an act of negligence on Dr. Mukherjee's part without exercising any care or caution. As it has been already stated by the experts who were cross-examined and the authorities that have been submitted that the usage of 80-120 mg is not permissible in TEN. Furthermore, after prescribing a steroid, the effect of immunosuppression caused due to it, ought to have been foreseen. The effect of immunosuppression caused due to the use of steroids has affected the immunity of the patient and Dr. Mukherjee has failed to take note of the said consequences."

112. It is also important to highlight in this judgment that the manner in which Dr. Mukherjee attempted to shirk from his individual responsibility both in the criminal and civil cases made

against him on the death of the claimant's wife is very much unbecoming of a doctor as renowned and revered as he is. The finding of this Court on this aspect recorded in Malay Kumar Ganguly's case reads as under:

> "182. It is also of some great significance that both in the criminal as also the civil cases, the doctors concerned took recourse to the blame game. Some of them tried to shirk their individual responsibilities. We may in this behalf notice the following:
>
> (i) In response to the notice of Dr. Kunal, Dr. Mukherjee says that depomedrol had not been administered at all. When confronted with his prescription, he suggested that the reply was not prepared on his instructions, but on the instruction of AMRI.
>
> (ii) Dr. Mukherjee, thus, sought to disown his prescription at the first instance. So far as his prescription dated 11-5-1998 is concerned, according to him, because he left Calcutta for attending an international conference, the prescription issued by him became non-operative and, thus, he sought to shift the blame on Dr. Halder.
>
> (iii) Dr. Mukherjee and Dr. Halder have shifted the blame to Dr. Prasad and other doctors. Whereas Dr. Prasad countercharged the senior doctors including Respondent 2 stating:
>
> "Prof. B.N. Halder (Respondent 2) was so much attached with the day-today treatment of patient Anuradha that he never found any deficiency in the overall management at AMRI so much so that he had himself given a certificate that her condition was very much fit enough to travel to Mumbai...."

113. Therefore, the negligence of Dr. Sukumar Mukherjee in treating the claimant's wife had been already established by this Court in Malay Kumar Ganguly's case. Since he is a senior doctor who was in charge of the treatment of the deceased, we are inclined to mention here that Dr. Mukherjee has shown utmost disrespect to his profession by being so casual in his approach in treating his patient. Moreover, on being charged with the liability, he attempted to shift the blame on other doctors. We, therefore, in the light of the facts and circumstances, direct him to pay a compensation of Rs.10 lakhs to the claimant in lieu of his negligence and we sincerely hope that he upholds his integrity as a doctor in the future and not be casual about his patient's lives.

Liability of Dr.Baidyanath Haldar:

114. The case of the appellant Dr. Baidyanath Haldar is that he is a senior consultant who was called by the attending physician to examine the patient on 12.5.1998. On examining the patient, he diagnosed the disease as TEN and prescribed medicines and necessary supportive therapies. It is his further case that he was not called either to see or examine the patient post 12.5.1998. The case against Dr. B. Haldar is his prescription of Steroid Predinosolone at the rate of 40 mg thrice a day which was excessive in view of the fact that the deceased was already under high dose of steroid. It is urged by the appellant- Dr. Haldar that the deceased was under a high dose of steroid at the rate of

160 mg per day and it was the appellant who tapered it down by prescribing a quick acting steroid Predinosolone at 120 mg per day. The appellant-Dr. Haldar further urged that he was called only once to examine the deceased and he was not called thereafter. Hence, the National Commission wrongly equated him with Dr. Balram Prasad who was the attending physician. Though the claimant did not make any counter statement on apportioning liability to the appellant-Dr. Haldar, it is pertinent for us to resort to the findings recorded by this Court in the case while remanding it back to the National Commission for determining the individual liability of the appellant doctors involved in the treatment of the deceased. The findings of this Court in Malay Kumar Ganguly's case supra, are recorded as under:

> "161. After taking over the treatment of the patient and detecting TEN, Dr. Halder ought to have necessarily verified the previous prescription that has been given to the patient. On 12- 5-1998 although "depomedrol" was stopped, Dr. Halder did not take any remedial measures against the excessive amount of "depomedrol" that was already stuck in the patient's body and added more fuel to the fire by prescribing a quick-acting steroid "prednisolone" at 40 mg three times daily, which is an excessive dose, considering the fact that a huge amount of "depomedrol" has been already accumulated in the body.
>
> 162. Life saving "supportive therapy" including IV fluids/electrolyte replacement, dressing of skin wounds and close monitoring of the infection is mandatory for proper care of TEN patients. Skin (wound) swap and blood tests also ought to be performed regularly to detect the degree of infection. Apart from using the steroids, aggressive supportive therapy that is considered to be rudimentary for TEN patients was not provided by Dr. Halder.
>
> 163. Further "vital signs" of a patient such as temperature, pulse, intake-output and blood pressure were not monitored. All these factors are considered to be the very basic necessary amenities to be provided to any patient, who is critically ill.

The failure of Dr. Halder to ensure that these factors were monitored regularly is certainly an act of negligence. Occlusive dressings were carried out as a result of which the infection had been increased. Dr. Halder's prescription was against the Canadian Treatment Protocol reference to which we have already made hereinbefore. It is the duty of the doctors to prevent further spreading of infections. How that is to be done is the doctors concern. Hospitals or nursing homes where a patient is taken for better treatment should not be a place for getting infection."

115. Similar to the appellant Dr. Sukumar Mukherjee, the appellant Dr. Baidyanath Haldar is also a senior doctor of high repute. However, according to the findings of this Court in Malay Kumar Ganguly's case, he had conducted with utmost callousness in giving treatment to the claimant's wife which led to her unfortunate demise. The appellant Dr. Baidyanath Haldar too, like Dr. Sukumar Mukherjee, made every attempt to shift the blame to the other doctors thereby tainting the medical profession who undertook to serve. This Court thereby directs him to pay Rs.10 lakhs as compensation to the claimant in lieu of his negligence in treating the wife of the claimant.

Liability of Dr Baidyanath Prasad:

116. It is the case of the appellant-Dr. Balram Prasad that he was the junior-most attending physician at AMRI Hospital who saw the deceased for the first time on 11.5.1998. He was not called upon to prescribe medicines but was only required to continue and monitor the medicines to be administered to the deceased as prescribed by the specialists. The learned senior counsel on behalf of the appellant-Dr. B.Prasad argues that the complaint made by the claimant had no averments against him but the one whereby it was stated by the claimant at paragraph 44 of the complaint which reads thus:

> "44. That Dr. Balram Prasad as attending physician at AMRI did do nothing better. He did not take any part in the treatment of the patient although he stood like a second fiddle to the main team headed by the opposite party no. 2 & 3. He never suggested even faintly that AMRI is not an ideal place for treatment of TEN patient; on the converse, he was full of praise for AMRI as an ideal place for the treatment of TEN patients knowing nothing how a TEN patient should be treated."

117. To prove his competence as a doctor, the appellant-Dr. Balram Prasad further produced a portion of the complaint which reads thus:

> "33……. that no skin biopsy for histopathology report was ever recommended by any (except Dr. B.Prasad), which is the basic starting point in such treatment, the same mistake was also committed by the opposite party no. 1"

118. The appellant Dr. Balram Prasad further emphasizes upon the cross- examination of the claimant to prove that he was not negligent while treating the patient. Question No. 26 of the cross examination reads as under:

> "Q. No. 26: Dr. Prasad says that Depomedrol dose according to the treatment sheet of the AMRI hospital, he made a specific suggestion that the dose should be limited to that particular day only. Is it correct?
>
> Ans: It is all matter of record. Yeah, he said that one day in AMRI record."

119. Though the claimant did not make specific claim against the appellant-Dr. Balram Prasad, appellant Dr. B. Haldar claimed in his submission that he has been wrongly equated with Dr. Balram Prasad who was the attending physician and Dr. Anbani Roy Choudhury who was the physician in charge of the patient.

120. It is pertinent for us to note the shifting of blames on individual responsibility by the doctors specially the senior doctor as recorded by this Court which is a shameful act on the dignity of medical profession. The observations made by this Court in this regard in Malay Kumar Ganguly's case read as under:

"182.....(iii) Dr. Mukherjee and Dr. Halder have shifted the blame to Dr. Prasad and other doctors. Whereas Dr. Prasad countercharged the senior doctors including Respondent 2 stating:

"Prof. B.N. Halder (Respondent 2) was so much attached with the day-today treatment of patient Anuradha that he never found any deficiency in the overall management at AMRI so much so that he had himself given a certificate that her condition was very much fit enough to travel to Mumbai...." In answer to a question as to whether Dr. Halder had given specific direction to him for control of day-today medicine to Anuradha, Dr. Prasad stated:

"... this was done under the guidance of Dr. Sukumar Mukherjee (Respondent 1), Dr. B.N. Halder (Respondent 2) and Dr. Abani Roy Chowdhury (Respondent 3)." He furthermore stated that those three senior doctors primarily decided the treatment regimen for Anuradha at AMRI.

(iv) Dr. Kaushik Nandy had also stated that three senior doctors were in charge of Anuradha's treatment.

(v) AMRI states that the drugs had been administered and nursing care had been given as per the directions of the doctors.

(vi) Respondents 5 and 6, therefore, did not own any individual responsibility on themselves although they were independent physicians with postgraduate medical qualifications.

183. In Errors, Medicine and the Law, Cambridge University Press, p. 14, the authors, Alan Merry and Alexander McCall Smith, 2001 Edn., stated:

"Many incidents involve a contribution from more than one person, and this case is an example. It illustrates the tendency to blame the last identifiable element in the claim of causation—the person holding the 'smoking gun'. A more comprehensive approach would identify the relative contributions of the other failures in the system, including failures in the conduct of other individuals...."

121. Paragraph 183 of the judgment indicates that the Court abhorred the shifting of blames by the senior doctor on the attending physician the appellant Dr. Balram Prasad even though the Court held him guilty of negligence. This Court found the appellant-Dr. Balram Prasad guilty as under:

"166. As regards, Dr. Balaram Prasad, Respondent 5, it may be noticed:

(i) Most doctors refrain from using steroids at the later stage of the disease due to the fear of sepsis, yet he added more steroids in the form of quick-acting "prednisolone"

> at 40 mg three times a day.
>
> (ii) He stood as a second fiddle to the treatment and failed to apply his own mind.
>
> (iii) No doctor has the right to use the drug beyond the maximum recommended dose."
>
> 122. We acknowledge the fact that Dr. Balram Prasad was a junior doctor who might have acted on the direction of the senior doctors who undertook the treatment of the claimant's wife in AMRI-Hospital.

However, we cannot lose sight of the fact that the appellant Dr. Balram Prasad was an independent medical practitioner with a post graduate degree. He still stood as a second fiddle and perpetuated the negligence in giving treatment to the claimant's wife. This Court in Malay Kumar Ganguly's case found him to be negligent in treating the claimant's wife in spite of being the attending physician of the Hospital. But since he is a junior doctor whose contribution to the negligence is far less than the senior doctors involved, therefore this Court directs him to pay a compensation of Rs. 5 lakhs to the claimant. We hope that this compensation acts as a reminder and deterrent to him against being casual and passive in treating his patients in his formative years of medical profession.

Liability of the claimant - Dr. Kunal Saha:

> 123. Finally, we arrive at determining the contribution of the claimant to the negligence of the appellant- doctors and the AMRI Hospital in causing the death of his wife due to medical negligence.

The National Commission has determined the compensation to be paid for medical negligence at Rs.1,72,87,500/-. However, the National Commission was of the opinion that the interference of the claimant was also contributed to the death of his wife. The National Commission relied upon paragraph 123 of the judgment of this Court in Malay Kumar Ganguly's case to arrive at the aforesaid conclusion. Paragraph 123 of the judgment reads thus:

> "123. To conclude, it will be pertinent to note that even if we agree that there was interference by Kunal Saha during the treatment, it in no way diminishes the primary responsibility and default in duty on part of the defendants. In spite of a possibility of him playing an overanxious role during the medical proceedings, the breach of duty to take basic standard of medical care on the part of defendants is not diluted. To that extent, contributory negligence is not pertinent. It may, however, have some role to play for the purpose of damages." Therefore, holding the claimant responsible for contributory negligence, the National Commission deducted 10% from the total compensation and an award of Rs.1,55,58,750/- was given to the claimant.
>
> 124. The appellants-doctors and the AMRI Hospital have raised the issue of contributory negligence all over again in the present case for determining the

quantum of compensation to be deducted for the interference of the claimant in treatment of the deceased.

125. On the other hand, the claimant in his written statement has mentioned that this Court has rejected the assertion that the claimant interfered with the treatment of his wife. The appellant-doctors raised the same issue in the revision petition which was appropriately dismissed. He relied upon the observations made by this Court which read as under:

"117. Interference cannot be taken to be an excuse for abdicating one's responsibility especially when an interference could also have been in the nature of suggestion. Same comments were said to have been made by Dr. Halder while making his statement under Section 313 of the Code of Criminal Procedure. They are admissible in evidence for the said purpose. Similarly, the statements made by Dr. Mukherjee and Dr. Halder in their written statements before the National Commission are not backed by any evidence on record. Even otherwise, keeping in view the specific defence raised by them individually, interference by Kunal, so far as they are concerned, would amount to hearsay evidence and not direct evidence.

122. The respondents also sought to highlight on the number of antibiotics which are said to have been administered by Kunal to Anuradha while she was in AMRI contending that the said antibiotics were necessary. Kunal, however, submitted that the said antibiotics were prescribed by the doctors at AMRI and he did not write any prescription. We would, however, assume that the said antibiotics had been administered by Kunal on his own, but it now stands admitted that administration of such antibiotics was necessary.

123. To conclude, it will be pertinent to note that even if we agree that there was interference by Kunal Saha during the treatment, it in no way diminishes the primary responsibility and default in duty on part of the defendants. In spite of a possibility of him playing an overanxious role during the medical proceedings, the breach of duty to take basic standard of medical care on the part of defendants is not diluted. To that extent, contributory negligence is not pertinent. It may, however, have some role to play for the purpose of damages." (Emphasis laid by this Court) A careful reading of the above paragraphs together from the decision of Malay Kumar Ganguly's case would go to show that the claimant though over-anxious, did to the patient what was necessary as a part of the treatment. The National Commission erred in reading in isolation the statement of this Court that the claimant's action may have played some role for the purpose of damage.

126. We further intend to emphasize upon the observation of this Court in Malay Kumar Ganguly's case which reads as under:

"194. Further, the statement made by the High Court that the transfer certificate was forged by the patient party is absolutely erroneous, as Dr. Anil Kumar Gupta deposed before the trial court that he saw the transfer certificate at AMRI's office and the words "for better treatment" were written by Dr. Balaram Prasad in his presence and these words were written by Dr. Prasad, who told it would be easier for them to transport the patient. In a case of this nature, Kunal would have expected sympathy and not a spate of irresponsible accusations from the High Court." In the abovementioned paragraph, this Court clearly deterred the High Court from making irresponsible accusations against the claimant who has suffered not only due to the loss of his wife but also because his long drawn battle for justice. Unfortunately, the National Commission made the same mistake.

127. We, therefore, conclude that the National Commission erred in holding that the claimant had contributed to the negligence of the appellant-doctors and the Hospital which resulted in the death of his wife when this Court clearly absolved the claimant of such liability and remanded the matter back to the National Commission only for the purpose of determining the quantum of compensation. Hence, we set aside the finding of the National Commission and re-emphasize the finding of this Court that the claimant did not contribute to the negligence of the appellants-doctors and AMRI Hospital which resulted in the death of his wife.

Answer to point no. 8

128. This Court, while remanding the matter back to the National Commission, has categorically stated that the pecuniary and non- pecuniary losses sustained by the claimant and future losses of him up to the date of trial must be considered for the quantum of compensation. That has not been done in the instant case by the National Commission. Therefore, the claimant is entitled for enhancement of compensation on the aforesaid heads as he has incurred huge amount of expenses in the court of more than 15 years long trial in the instant case. The total claim, original as well as enhanced claim by way of filing affidavit with supporting documents, is Rs.97,56,07,000/- that includes pecuniary damages of Rs.34,56,07,000/- and non pecuniary damages of Rs.31,50,00,000/-, special damages of US $4,000,000 for loss of job/house in Ohio and punitive damages of US $1,000,000. The updated break-up of the total claim has been perused and the same has not been considered by the National Commission keeping in view the claim and legal evidence and observations made and directions issued by this Court in Malay Kumar Ganguly's case to determine just and reasonable compensation. Therefore, we are of the view that the claimant is entitled for enhanced compensation that will be mentioned under different heads which will be noted in the appropriate paragraphs of this judgment.

129. The National Commission has also not taken into consideration the observations made by this Court while remanding the case for determining the quantum of compensation with regard to the status of treating doctors and the Hospital. Further, the National Commission has failed to take into consideration the observations made in the aforesaid judgment wherein in paragraphs 152 and 155 it is held that AMRI Hospital is one of the best Hospitals in Calcutta and the doctors were best

doctors available. This aspect of the matter has been completely ignored by the National Commission in awarding just and reasonable compensation in favour of the claimant.

130. Since, it has already been determined by the Court that the compensation paid by the National Commission was inadequate and that it is required to be enhanced substantially given the facts and evidence on record, it will be prudent to take up the different heads of compensation separately to provide clarity to the reasoning as well.

Loss of income of the deceased:

131. The grievance of the claimant is that the National Commission has failed to take into consideration the legal and substantial evidence produced on record regarding the income of the deceased wife as she was a citizen of U.S.A. and permanently settled as a child psychologist and the claimant was AIDS researcher in the U.S.A. Therefore, the National Commission ought to have taken the above relevant factual aspect of the case into consideration regarding the status and standard of living of the deceased in U.S.A. to determine just compensation under the head of loss of dependency. The claimant has rightly relied upon the case involving death of a 47-48 years old U.S.A. citizen in a road accident in India, in United India Insurance Co. Ltd. & Others Vs. Patricia Jean Mahajan & Ors. referred to supra where this Court has awarded compensation of Rs.10.38 crores after holding that while awarding compensation in such cases the Court must consider the high status and standard of living of both the victim and dependents. However, the National Commission did not consider the substantial and legal evidence adduced on record by the claimant regarding the income that was being earned by the claimant's wife even though he has examined the U.S.A. based Prof. John F. Burke through video conferencing in May-June, 2011. He was also cross examined by the counsel of the appellant- doctors and the Hospital and had scientifically calculated and testified under direct as well as cross examination as to how he came to calculate the prospective loss of income for a similarly situated person in U.S.A. as of the deceased. Prof. John F. Burke has categorically stated that direct loss of income of the deceased on account of her premature death, would amount to 5 million and 125 thousand dollars. The loss of income on account of premature death of the claimant's wife was calculated by the said witness who is an Economist in America and he has also deducted one- third for her personal expenses out of her annual income which is at par with the law laid down by this Court in number of cases including Sarla Verma's case (supra). In the cross examination of the said expert witness by the learned counsel for the appellant-doctors and the Hospital, he has also explained how he calculated the loss of income on the premise of the premature death of the claimant's wife. According to Prof. John F. Burke, the above calculation of 5 million and 125 thousand dollars for loss of income of the deceased was a very conservative forecast and other estimates the damages for her premature death could be 9 to 10 million dollars. It is the claim of the claimant that loss of income of multi-million dollars as direct loss for the wrongful death of the deceased may appear as a fabulous amount in the context of India but undoubtedly an average and legitimate claim in the context of the instant case has to be taken to award just compensation. He has placed reliance upon the judgment of this Court in Indian Medical Association's case (supra) wherein the Constitution Bench has stated that to deny the legitimate claim or to restrict arbitrarily the size of an award would amount to substantial injustice. We have considered the above important aspect of the case in the decision of this Court for enhancing the

compensation in favour of the claimant.

132. As per the evidence on record, the deceased was earning $ 30,000 per annum at the time of her death. The appellant-doctors and the Hospital could not produce any evidence to rebut the claims of the claimant regarding the qualification of her wife. Further, Prof. John F. Burke, an economic expert testified that the deceased could have earned much more in future given her present prospect. But relying upon the principle laid down by this Court, we cannot take the estimate of Prof. John F. Burke to be the income of the deceased. We also feel that $30,000 per annum earned by the deceased during the time of her death was not from a regular source of income and she would have earned lot more had it been a regular source of income, having regard to her qualification and the job for which she was entitled to. Therefore, while determining the income of the deceased, we rely on the evidence on record for the purpose of determining the just, fair and reasonable compensation in favour of the claimant. It would be just and proper for us to take her earning at $40,000 per annum on a regular job. We further rely upon the paragraphs in the cases of Sarla Verma and Santosh Devi referred to supra while answering the point no. 1, to hold that 30% should be added towards the future loss of income of the deceased. Also, based on the law laid down by this Court in catena of cases referred to supra, 1/3rd of the total income is required to be deducted under the head of personal expenditure of the deceased to arrive at the multiplicand.

133. The multiplier method to be applied has been convincingly argued by the learned counsel for the appellant-doctors and the Hospital against by the claimant which we concede with based on the reasoning mentioned while answering the point no. 4. Therefore, estimating the life expectancy of a healthy person in the present age as 70 years, we are inclined to award compensation accordingly by multiplying the total loss of income by 30.

134. Further, the claimant has rightly pointed that the value of Indian currency has gone down since the time when these legal proceedings have begun in this country. This argument of the claimant has been accepted by us while answering the point nos. 2 and 3. Therefore, it will be prudent for us to hold the current value of Indian Rupee at a stable rate of Rs.55/- per 1$.

Therefore, under the head of 'loss of income of the deceased' the claimant is entitled to an amount of Rs.5,72,00,550/- which is calculated as [$40,000+(30/100x40,000$)-(1/3 x 52,000$) x 30 x Rs.55/-] = Rs.5,72,00,550/-.

Other Pecuniary Damages:

135. The pecuniary damages incurred by the claimant due to the loss of the deceased have already been granted while answering the point no. 5. Therefore, we are not inclined to repeat it again in this portion. However, the expenditure made by the claimant during the treatment of the deceased both in Kolkata and Mumbai Hospitals deserves to be duly compensated for awarding reasonable amount under this head as under:-

(a) For the medical treatment in Kolkata and Mumbai:

136. An amount of Rs.23 lakhs has been claimed by the claimant under this head. However, he has been able to produce the medical bill only to the extent of Rs.2.5 lakhs which he had paid to the Breach Candy Hospital, Mumbai. Assuming that he might have incurred some more expenditure, the National Commission had quantified the expenses under this head to the tune of Rs.5 lakhs. We still consider this amount as insufficient in the light of the fact that the deceased was treated at AMRI Hospital as an in-patient for about a week; we deem it just and proper to enhance the compensation under this head by Rs.2 lakhs thereby awarding a total amount Of Rs.7 lakhs under this head.

(b) Travel and Hotel expenses at Bombay:

137. The claimant has sought for compensation to the tune of Rs.7 lakhs for travel and expenses for 11 days he had to stay in Mumbai for the treatment of his wife. However, again he has failed to produce any bills to prove his expenditure. Since, his travel to Mumbai for the treatment of his wife is on record, the National Commission has awarded compensation of Re.1 lakh under this head. We find it fit and proper to enhance the compensation by Rs.50,000/- more considering that he had also incurred some unavoidable expenditure during his travel and stay in Mumbai at the time of treatment of the deceased. Therefore, under this head, we award a compensation of Rs.1,50,000/-.

138. However, with respect to the claim made under the cost of chartered flight, a sum of Rs.5,00,000/- is already awarded by the National Commission and we are not inclined to interfere with the same in absence of any evidence which alters the computation of the cost incurred in chartered flight. Hence, we uphold the amount awarded by the National Commission under the head of 'cost of chartered flight'.

Non pecuniary damages:

139. It is the case of the claimant that the National Commission has awarded paltry amount equivalent to $20,000 for the enormous and lifelong pain, suffering, loss of companionship and amenities that he had been put through due to the negligent act of the appellant- doctors and the Hospital. The claimant had claimed Rs.50 crores under this head before the National Commission without giving any break up figures for the amount. Before this Court however, the claimant has reduced the claim to Rs.31,50,00,000/- under three different heads. He has claimed Rs.13,50,00,000/- for loss of companionship and life amenities, Rs.50,00,000/- for emotional distress, pain and suffering of the husband- the claimant and Rs.4,50,00,000/- for pain and suffering endured by the deceased during her treatment.

140. In this regard, we are inclined to make an observation on the housewife services here. In the case of Arun Kumar Agarwal Vs. National Insurance Company[35], this Court observed as follows:

> 22. We may now deal with the question formulated in the opening paragraph of this judgment. In Kemp and Kemp on Quantum of Damages, (Special Edn., 1986), the authors have identified various heads under which the husband can claim compensation on the death of his wife. These include loss of the wife's contribution to

the household from her earnings, the additional expenses incurred or likely to be incurred by having the household run by a housekeeper or servant, instead of the wife, the expenses incurred in buying clothes for the children instead of having them made by the wife, and similarly having his own clothes mended or stitched elsewhere than by his wife, and the loss of that element of security provided to the husband where his employment was insecure or his health was bad and where the wife could go out and work for a living.

23. In England the courts used to award damages solely on the basis of pecuniary loss to family due to the demise of the wife.

A departure from this rule came to be made in Berry v. Humm & Co. where the plaintiff claimed damages for the death of his wife caused due to the negligence of the defendant's servants. After taking cognizance of some precedents, the learned Judge observed: (KB p. 631) "... I can see no reason in principle why such pecuniary loss should be limited to the value of money lost, or the money value of things lost, as contributions of food or clothing, and why I should be bound to exclude the monetary loss incurred by replacing services rendered gratuitously by a relative, if there was a reasonable prospect of their being rendered freely in the future but for the death."

24. In Regan v. Williamson the Court considered the issue relating to quantum of compensation payable to the dependants of the woman who was killed in a road accident. The facts of that case were that on the date of accident, the plaintiff was aged 43 years and his children were aged 14 years, 11 years, 8 years and 3 years respectively. The deceased wife/mother was aged 37 years. The cost of a housekeeper to carry out services previously rendered by his wife was 22.5 pounds per week, the saving to him in not having to clothe and feed his wife was 10 pound per week, leaving a net loss of 12.50 pounds per week or 600 pounds a year. However, the Court took into account the value of other services previously rendered by the wife for which no substitute was available and accordingly increased the dependency to 20 pounds a week. The Court then applied a multiplier of 11 in reaching a total fatal accidents award of 12,298 pounds. In his judgment, Watkins, J. noted as under: (WLR pp. 307 H-308 A) "The weekend care of the plaintiff and the boys remains a problem which has not been satisfactorily solved. The plaintiff's relatives help him to a certain extent, especially on Saturday afternoons. But I formed the clear impression that the plaintiff is often, at weekends, sorely tired in trying to be an effective substitute for the deceased. The problem could, to some extent, be cured by engaging another woman, possibly to do duty at the weekend, but finding such a person is no simple matter. I think the plaintiff has not made extensive enquiries in this regard. Possibly the expense involved in getting more help is a factor which has deterred him. Whatever be the reason, the plain fact is that the deceased's services at the weekend have not been replaced. They are lost to the plaintiff and to the boys." He then proceeded to observe: (WLR p. 309 A-D) "I have been referred to a number of cases in which judges have felt compelled to look upon the task of assessing damages in cases involving the death of a wife and mother with strict disregard to those features of the life of a woman beyond her so- called services, that is to say, to keep house, to cook the food, to buy the clothes, to wash them and so forth. In more than one case, an attempt has been made to calculate the actual number of hours it would take a woman to perform such services and to compensate dependants upon that basis at so much an hour and so relegate the wife

or mother, so it seems to me, to the position of a housekeeper.

(Emphasis laid by this Court) While I think that the law inhibits me from, much as I should like to, going all the way along the path to which Lord Edmund-Davies pointed, I am, with due respect to the other judges to whom I have been referred, of the view that the word 'services' has been too narrowly construed. It should, at least, include an acknowledgment that a wife and mother does not work to set hours and, still less, to rule. She is in constant attendance, save for those hours when she is, if that is the fact, at work. During some of those hours she may well give the children instruction on essential matters to do with their upbringing and, possibly, with such things as their homework. This sort of attention seems to be as much of a service, and probably more valuable to them, than the other kinds of service conventionally so regarded."

25. In Mehmet v. Perry the pecuniary value of a wife's services were assessed and granted under the following heads:

(a) Loss to the family of the wife's housekeeping services.

(b) Loss suffered by the children of the personal attention of their mother, apart from housekeeping services rendered by her.

(c) Loss of the wife's personal care and attention, which the husband had suffered, in addition to the loss of her housekeeping services.

26. In India the courts have 210recognized that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by the wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of the husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean, etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

27. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. the husband and children. However, for the purpose of award of compensation to the dependants, some pecuniary estimate has to be made of the services of the housewife/mother. In that context, the term "services" is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.

30. In A. Rajam v. M. Manikya Reddy, M. Jagannadha Rao, J. (as he then was) advocated giving of a wider meaning to the word "services" in cases relating to award of compensation to the dependants of a deceased wife/mother. Some of the observations made in that judgment are extracted below:

> 'The loss to the husband and children consequent upon the death of the housewife or mother has to be computed by estimating the loss of 'services' to the family, if there was reasonable prospect of such services being rendered freely in the future, but for the death. It must be remembered that any substitute to be so employed is not likely to be as economical as the housewife. Apart from the value of obtaining substituted services, the expense of giving accommodation or food to the substitute must also be computed. From this total must be deducted the expense the family would have otherwise been spending for the deceased housewife.
>
> While estimating the 'services' of the housewife, a narrow meaning should not be given to the meaning of the word 'services' but it should be construed broadly and one has to take into account the loss of 'personal care and attention' by the deceased to her children, as a mother and to her husband, as a wife. The award is not diminished merely because some close relation like a grandmother is prepared to render voluntary services.' XXX XXX XXX
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> 32. In National Insurance Co. Ltd. v. Mahadevan the learned Single Judge referred to the Second Schedule of the Act and observed that quantifying the pecuniary loss at the same rate or amount even after 13 years after the amendment, ignoring the escalation in the cost of living and the inflation, may not be justified.
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> 33. In Chandra Singh v. Gurmeet Singh, Krishna Gupta v. Madan Lal, Captan Singh v. Oriental Insurance Co. Ltd. and Amar Singh Thukral v.

Sandeep Chhatwal, the Single and Division Benches of the Delhi High Court declined to apply the judgment of this Court in Lata Wadhwa case for the purpose of award of compensation under the Act. In Krishna Gupta v. Madan Lal the Division Bench of the High Court observed as under: (DLT p. 834, para 24) "24. ... The decision of the Apex Court in Lata Wadhwa in our considered opinion, cannot be said to have any application in the instant case. The Motor Vehicles Act, 1939 was the complete code by itself. It not only provides for the right of a victim and/or his legal heirs to obtain compensation in case of bodily injury or death arising out of use of motor vehicle, but the Forum therefor has been provided, as also the mode and manner in which the compensation to be awarded therefor. In such a situation, it would be inappropriate to rely upon a decision of the Apex Court, which had been rendered in an absolutely different fact situation and in relation whereto there did not exist any statutory compensation. Lata Wadhwa was decided in a matter where a fire occurred during a celebration. The liability of Tata Iron & Steel Co. Ltd. was not disputed. Compensation was awarded having regard to the peculiar feature obtaining in that case which has got nothing to do with the statutory compensation payable under the provisions of the Motor Vehicles Act." (Emphasis laid by this Court)

141. Also, in a three judge Bench decision of this Court in the case of Rajesh & Ors. Vs. Rajvir Singh and Ors.[36], this Court held as under:

> "20. The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santhosh Devi (supra). We may therefore, revisit the practice of awarding compensation under conventional heads: loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of Rs. 2,500/- to Rs. 10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Sarla Verma's case (supra), it was held that compensation for loss of consortium should be in the range of Rs. 5,000/- to Rs. 10,000/-, In legal parlance, 'consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium." (Emphasis laid by this Court)

142. Under the heading of loss due to pain and suffering and loss of amenities of the wife of the claimant, Kemp and Kemp write as under:

> "The award to a plaintiff of damages under the head "pain and suffering" depends as Lord Scarman said in Lim Poh Choo v. Camden and Islington Area health Authority, "upon the claiamant's personal awareness of pain, her capacity of suffering. Accordingly, no award is appropriate if and in so far as the claimant has not suffered and is not likely to suffer pain, and has not endured and is not likely to endure suffering, for example, because he was rendered immediately and permanently unconscious in the accident. By contrast, an award of damages in respect of loss of amenities is appropriate whenever there is in fact such a loss regardless of the claimant's awareness of the loss." .....

> Further, it is written that, "Even though the claimant may die from his injuries shortly after the accident, the evidence may justify an award under this head. Shock should also be taken account of as an ingredient of pain and suffering and the claimant's particular circumstances may well be highly relevant to the extent of her suffering.
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> .....
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> By considering the nature of amenities lost and the injury and pain in the particular case, the court must assess the effect upon the particular claimant. In deciding the appropriate award of damages, an important consideration show long will he be deprived of those amenities and how long the pain and suffering has been and will be endured. If it is for the rest of his life the court will need to take into account in assessing damages the claimant's age and his expectation in life. That applies as much in the case of an unconscious plaintiff as in the case of one sentient, at least as regards the loss of amenity." The extract from Malay Kumar Ganguly's case read as under:
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> "3. Despite administration of the said injection twice daily, Anuradha's condition deteriorated rapidly from bad to worse over the next few days. Accordingly, she was admitted at Advanced Medicare Research Institute (AMRI) in the morning of 11-5-1998 under Dr. Mukherjee's supervision. Anuradha was also examined by Dr. Baidyanath Halder, Respondent 2 herein. Dr. Halder found that she had been suffering from erythema plus blisters. Her condition, however, continued to deteriorate further. Dr. Abani Roy Chowdhury, Consultant, Respondent 3 was also consulted on 12- 5-1998.
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> 4. On or about 17-5-1998 Anuradha was shifted to Breach Candy Hospital, Mumbai as her condition further deteriorated severely.

She breathed her last on 28-5-1998....."

143. The above extracted portion from the above judgment would show that the deceased had undergone the ordeal of pain for 18 long days before she breathed her last. In this course of period, she has suffered with immense pain and suffering and undergone mental agony because of the negligence of the appellant-doctors and the Hospital which has been proved by the claimant and needs no reiteration.

144. Further, in the case of Nizam Institute (supra), the claimant who was also the surviving victim of a motor vehicle accident was awarded Rs.10 lakhs for pain and suffering. Further, it was held in R.D. Hattangadi's case (supra) as follows:

> "14. In Halsbury's Laws of England, 4th Edn., Vol. 12 regarding non-pecuniary loss at page 446 it has been said:

> Non-pecuniary loss: the pattern.— Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the courts in the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstances of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award."|

145. Therefore, the claim of Rs.4,50,00,000/- by the claimant is excessive since it goes against the amount awarded by this Court under this head in the earlier cases referred to supra. We acknowledge and empathise with the fact that the deceased had gone through immense pain, mental agony and suffering in course of her treatment which ultimately could not save her life, we are not inclined to award more than the conventional amount set by this Court on the basis of the economic status of the deceased. Therefore, a lumpsum amount of Rs.10 lakhs is awarded to the claimant following the Nizam Institute's case (supra) and also applying the principles laid in Kemp and Kemp on the "Quantum of Damages", under the head of 'pain and suffering of the claimant's wife during the course of treatment'.

146. However, regarding claim of Rs.50,00,000/- by the claimant under the head of 'Emotional distress, pain and suffering for the claimant' himself, we are not inclined to award any compensation since this claim bears no direct link with the negligence caused by the appellant- doctors and the Hospital in treating the claimant's wife.

In summary, the details of compensation under different heads are presented hereunder:

> |Loss of income of the deceased |Rs.5,72,00,550/- | |For Medical treatment in Kolkata |Rs.7,00,000/- | |and Mumbai | | |Travel and Hotel expenses at |Rs.6,50,000/- | |Mumbai | | |Loss of consortium |Rs.1,00,000/- | |Pain and suffering |Rs.10,00,000/- | |Cost of litigation |Rs.11,50,000/- |

147. Therefore, a total amount of Rs.6,08,00,550/- is the compensation awarded in this appeal to the claimant Dr. Kunal Saha by partly modifying the award granted by the National Commission under different heads with 6% interest per annum from the date of application till the date of payment.

148. Before parting with the judgment we are inclined to mention that the number of medical negligence cases against doctors, Hospitals and Nursing Homes in the consumer forum are increasing day by day. In the case of Paschim Banga Khet Mazdoor Samity Vs. State of West Bengal[37], this Court has already pronounced that right to health of a citizen is a fundamental right guaranteed under Article 21 of the Constitution of India. It was held in that case that all the government Hospitals, Nursing Homes and Poly-clinics are liable to provide treatment to the best of their capacity to all the patients.

149. The doctors, Hospitals, the Nursing Homes and other connected establishments are to be dealt with strictly if they are found to be negligent with the patients who come to them pawning all their money with the hope to live a better life with dignity. The patients irrespective of their social, cultural and economic background are entitled to be treated with dignity which not only forms their fundamental right but also their human right. We, therefore, hope and trust that this decision acts as a deterrent and a reminder to those doctors, Hospitals, the Nursing Homes and other connected establishments who do not take their responsibility seriously.

150. The central and the state governments may consider enacting laws wherever there is absence of one for effective functioning of the private Hospitals and Nursing Homes. Since the conduct of doctors is already regulated by the Medical Council of India, we hope and trust for impartial and strict scrutiny from the body. Finally, we hope and believe that the institutions and individuals providing medical services to the public at large educate and update themselves about any new medical discipline and rare diseases so as to avoid tragedies such as the instant case where a valuable life could have been saved with a little more awareness and wisdom from the part of the doctors and the Hospital.

151. Accordingly, the Civil Appeal No. 2867/2012 filed by Dr. Balram Prasad, Civil Appeal No. 858/2012 filed by Dr. Sukumar Mukherjee and Civil Appeal No. 731/2012 filed by Dr. Baidyanath Haldar are partly allowed by modifying the judgment and order of the National Commission in so far as the amount fastened upon them to be paid to the claimant as mentioned below. Dr. Sukumar Mukherjee and Dr. Baidyanath Haldar are liable to pay compensation to the tune of Rs.10 lakhs each and Dr. Balram Prasad is held liable to pay compensation of Rs.5 lakhs to the claimant. Since, the appellant-doctors have paid compensation in excess of what they have been made liable to by this judgment, they are entitled for reimbursement from the appellant-AMRI Hospital and it is directed to reimburse the same to the above doctors within eight weeks.

152. The Civil Appeal No. 692/2012 filed by the appellant-AMRI Hospital is dismissed and it is liable to pay compensation as awarded in this judgment in favour of the claimant after deducting the amount fastened upon the doctors in this judgment with interest @ 6% per annum.

153. The Civil Appeal No. 2866/2012 filed by the claimant-Dr.Kunal Saha is also partly allowed and the finding on contributory negligence by the National Commission on the part of the claimant is set aside. The direction of the National Commission to deduct 10% of the awarded amount of compensation on account of contributory negligence is also set aside by enhancing the compensation from Rs.1,34,66,000/- to Rs.6,08,00,550/- with 6% interest per annum from the date of the complaint to the date of the payment to the claimant.

154. The AMRI Hospital is directed to comply with this judgment by sending demand draft of the compensation awarded in this appeal to the extent of liability imposed on it after deducting the amount, if any, already paid to the claimant, within eight weeks and submit the compliance report.

……J. [CHANDRAMAULI KR. PRASAD]
.....J. [V. GOPALA GOWDA] New Delhi, October 24, 2013.

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[1] (2009) 9 SCC 221
[2] (2008) 4 SCC 162
[3] (2002) 6 SCC 281
[4] [5] (2009) 6 SCC 1
[6] (2009) 14 SCC 1
[7] (2001) 8 SCC 197
[8] (2001) 8 SCC 151
[9] (2011) 14 SCC 481
[10] (2011)12 SCC 695
[11] (2012) 5 SCC 370
[12] (2012) 6 SCC 430
[13] (2003) 2 SCC 274
[14] (2011) 10 SCC 634
[15] (2011) 10 SCC 655
[16] (1995) 6 SCC 651
[17] (2009) 13 SCC 710
[18] (1995) 1 SCC 551
[19] (2009) 13 SCC 654
[20] (2011) 10 SCC 756

[21] (2010) 10 SCC 254
[22] (2011) 1 SCC 343
[23] (2011) 10 SCC 683
[24] (2011) 13 SCC 236
[25] (2012) 8 SCC 604
[26] (2004) 8 SCC 56
[27] (2002) 7 SCC 668
[28] (1998) 4 SCC 39
[29] (2009) 7 SCC 372
[30] 511 U.S. 244, 1994
[31] (2009) 5 SCC 212
[32] 536 S.E. 2d 408 2000
[33] 781 N.E. 2d, 2002
[34] (1998) 4 SCC 39
[35] [1979] A.C. 556
[36] (2010) 9 SCC 218
[37] 2013 (6) SCALE 563
[38] (1996) 4 SCC 37
