



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 22 March 2024**
Judgment pronounced on : 07 May 2024

+ MAC. APP. 277/2019 & CM APPL. 53916/2019

JAGJOT SINGH Appellant

Through: Mr. Manish Maini, Adv.

versus

OM PRAKASH & ANR. Respondents

Through: Ms. Suman Bagga, Advocate
for R-2.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgment shall decide the present appeal filed by the appellant/claimant-injured under Section 173 of the Motor Vehicles Act¹, 1988 assailing the Impugned Judgment cum award dated 05.09.2018 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, North West District, Rohini Courts, Delhi² whereby total compensation in the sum of Rs. 66,00,000/- (Rupees Sixty-Six Lacs only) with interest @ 9% per annum from the date of filing of the Claim petition till realisation has been awarded in the favour of the appellant in MACT Petition No. 49407/2016³ titled as "*Sh. Jagjot Singh v. Sh. Om Prakash & Anr.*". The appellant/claimant-injured has primarily agitated that the compensation granted has been award on

¹ M. V. Act

² Tribunal

³ Claim Petition



the lower side disregarding 100% Permanent Locomotor Disability suffered by the appellant/claimant-injured due to the accident.

FACTUAL BACKGROUND:

2. Briefly stated, it was the case of the appellant/claimant-injured that on 15.10.2012, while driving his motorcycle bearing registration No. DL-8S-AL-3177, he was returning to his residence at Jahangirpuri via under pass of Azadpur, Delhi at around 07:15 am when he was hit by the offending vehicle (Bajaj Auto delivery Van) bearing registration No. DL-1L/H-2754⁴, driven by the respondent No. 1, in a rash and negligent manner from the wrong side of the flyover. Consequently, the appellant was thrown off the motorcycle on the road, sustaining multiple grievous injuries all over his body and he remained under prolonged medical treatment thereafter, which incidentally is continuing till this date and would continue indefinitely.

3. Unfortunate as it would look, the appellant has incurred a 100% Permanent Locomotor Disability and has been rendered in a vegetative state since the accident, lying in a coma. At the time of the accident the appellant was a 19-year-old, First Year B. Com student studying at Delhi University. The respondent No. 1, the driver-cum-owner of the offending vehicle, stated in his written statement that the offending vehicle was insured with United India Insurance Co. Ltd. at the time of the accident. He further asserted that the accident resulted from the appellant's negligence and not his own fault. The offending vehicle was admittedly insured for third party risks.



PROCEEDINGS BEFORE THE TRIBUNAL AND THE IMPUGNED JUDGMENT:

4. Based on the pleadings of the parties, the learned Tribunal on 01.12.2015 framed the following issues: -

- “1. Whether on 15.10.2012 at about 9:10 am (time should be 7:15 am and be read accordingly), at Azadpur flyover under pass Delhi, Azadpur, one champion Auto green colour bearing registration no. DL-1LH-2754, which was being driven rashly and negligent by Om Prakash hit the motorcycle make Yamaha Gladiator of black colour bearing registration no. DL-8S-AL-3177 and caused injuries to Jagjot Singh?
2. Whether petitioner is entitled to compensation, if so, to what amount and from whom?
3. Relief.”

5. The learned Tribunal ruled in favor of the appellant/claimant-injured on Issue No.1, determining that the accident resulted from the negligent driving of Respondent No.1, causing grievous injuries to the appellant/claimant-injured.

6. As regards decision on the Issue No. 2 is concerned, the learned Tribunal has awarded compensation in the sum of Rs. 66,00,000/- (Rupees Sixty-Six lakhs only) with interest @ 9 % per annum. The liability to pay the compensation was fastened upon the shoulders of the insurance company/respondent No. 2.

GROUND OF THE APPEAL:

7. The appellant/claimant-injured has assailed the impugned judgement, asserting that the awarded compensation is insufficient and challenges the arrangement for future medical expenses, particularly in light of the appellant's/claimant-injured's 100% Permanent

⁴ Offending Vehicle



Locomotor Disability. The appellant/claimant-injured contends that the correct multiplier has not been applied in order to ascertain the future medical expenses. Additionally, the appellant/claimant-injured avers that the learned Tribunal has awarded inadequate compensation towards the attendant charges.

8. The appellant/claimant-injured also states that the learned Tribunal should have considered that even the minimum wages are being revised and increased twice in a year, as such cost neutralization factor should have been applied in the circumstances of the present matter. Moreover, the appellant/claimant-injured agitates the absence of compensation for loss of matrimonial life/marriage prospects and also argues that the learned Tribunal failed to award compensation for the disability or disfigurement resulting from the accident.

ANALYSIS & DECISION

9. Having given my thoughtful consideration to the submissions advanced by learned counsels for the rival parties at the Bar and on perusal of the record, it would be apposite to reproduce the findings recorded by the learned Tribunal while assessing the quantum of compensation, which read as under:

“A. Medicines and Treatment

The petitioner has placed on record the treatment record of the patient/petitioner and also the medical bills which have inter alia been proved as Ex. PW4/3, Ex. PW4/4, Ex. PW4/13 (all colly) and same comes to Rs. 13,16,755/-/-. Therefore, **Rs. 13,16,755/-** are granted to the petitioner under this head.

B. Future Treatment.

The Hon'ble Delhi High Court in the case of **Pritam Singh (Supra)**, wherein also the permanent disability was 100% and the patient was in persistent vegetative state, has held that having regard to the nature of injuries suffered, and their aftermath, the



award of Rs. 5,00,000/- towards future treatment appeared to be just and proper and was granted accordingly.

In the present matter also the petitioner/injured has unfortunately suffered head injuries with 100% disability in view of altered sensorium as per his disability certificate Ex. PW3/1 of Dr. RML hospital. PW3 Dr. S. Bhaskar, Professor, Department of Neurosurgery, Dr. RML hospital has deposed that the petitioner was a case of head injury, he was in permanent vegetative state (coma) and that the disability was permanent and not likely to improve.

In view of the abovesaid judgment of Hon'ble Delhi High Court, the nature of injuries suffered by the petitioner in this case and the aftermath of the injuries, **Rs. 5,00,000/-** are granted to the petitioner towards future treatment.

C. Loss of future earning capacity due to disability (Loss of income/earning power)

In the present matter the petitioner/injured has unfortunately suffered head injuries with 100% disability in view of altered sensorium as per his disability certificate Ex. PW3/1 of Dr. RML hospital. PW3 Dr. S. Bhaskar, Professor, Department of Neurosurgery, Dr. RIVIL hospital has deposed that the petitioner was a case of head injury, he was in permanent vegetative state (coma) and that the disability was permanent and not likely to improve.

The Hon'ble Delhi High Court in the recent order in case of **Rajesh Tyagi & Ors vs Jaibir Singh & Ors, FAO 842/2003, date of order 09.03.2018** has inter alia held as follows:

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

6.5. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps:

(i) The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life).

(ii) The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age.

(iii) The third step is to find out whether:

a) The claimant is totally disabled, earning any kind of livelihood, or



b) Whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or

c) Whether he was prevented all restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood."

As the petitioner is in permanent vegetative state (coma) and has suffered 100% permanent disability which is not likely to improve, hence, he would not be in a position to do any activity or nature of work and is totally disabled from earning any kind of livelihood.

In view of above discussion, the injuries suffered by the petitioner, the functional disability of the petitioner in relation to his whole body and the effect of permanent disability on his actual earning capacity is taken as **100%**.

PW4 in his affidavit Ex. PW4/A has deposed that his son i.e. the petitioner was working with M/s Raina Optics at Tilak Nagar, was getting Rs. 10,000/- per month as salary and was also doing B.Com from School of Open Learning, University of Delhi. The copy of Secondary School Examination and Sr. Secondary School Examination certificates of the petitioner are on record as Ex. PW4/7 & Ex. PW4/8 respectively which (Ex. PW4/7) mention his date of birth as 20.07.1993 which would show that petitioner was aged about 19 years at the time of accident and at least passed his 10+2. class.

Petitioner has not got examined any witness from M/s Raina Optics to prove that he was working there prior to accident or that he was getting salary of Rs. 10,000/- per month from there. PW4 during his cross examination inter alia deposed that he had not filed on record any monthly income proof of his son of Rs. 10,000/- per month. In the said circumstances, the petitioner has failed to prove his monthly income or that he was earning Rs. 10,000/- per month.

In view of the above discussion, the petitioner can be treated as a matriculate worker. It would be thus appropriate to assess the income of the petitioner on the basis of minimum wages of a matriculate worker as fixed by the Govt. of NCT of Delhi under the Minimum Wages Act. The minimum wages of a matriculate worker at the relevant time on the date of accident was Rs. 8814/- p.m. Accordingly, it would be reasonable and just to consider the income of petitioner as **Rs. 8814/-** per month on the date of accident in question.

Addition of Future Prospects.



In the case of **Pritam Singh (Supra)**, the Hon'ble Delhi High Court took the case of **Reshma Kumari & Ors. Vs Madan Mohan &Anr., VII (2013) SLT 489= (2013)9SCC 65** as the binding precedent, till such time the law on the subject of future prospect for those who are 'self employed' or engaged in gainful employment at a 'fixed salary' was clarified by a larger bench of the Hon'ble Supreme Court.

In this regard, now reference should be made to the latest Constitutional Bench Judgment of Hon'ble Supreme Court of India in case of **National Insurance Company Limited vs. Pranay Sethi & Ors, SLP (Civil) No. 25590 of 2014, date of decision 31.10.2017, wherein, the Hon'ble Apex Court *interalia* held as under :-**

61. In view of the aforesaid analysis, we proceed to record our conclusions :-

- (i)
- (ii).....
- (iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30% , if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.**
- (iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.**
- (v) For the determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.**
- (vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.**
- (vii) The age of the deceased should be the basis for applying the multiplier.**
- (viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and future expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The**



aforsaid amounts should be enhanced at the rate of 10% in every three years. "

(Emphasis Supplied)

Refence is also made to the case of **Sanjay Oberoi vs Manoj Bageriya, MAC APPEAL 829/2011 decided on 03.11.2017 by Hon'ble Delhi High Court.**

The Hon'ble Delhi High Court in the case of **Sanjay Oberoi (Supra)** after referring to the judgment of the constitution bench of Hon'ble Supreme Court of India in case of **National Insurance Company Limited vs. Pranay Sethi &Ors, SLP (Civil) No. 25590 of 2014, date of decision 31.10.2017** granted element of future prospects of increase in the income in a case where the income of the petitioner was notionally assessed on the basis of minimum wages with functional disability @ 10%.

In the case in hand, the petitioner was self employed and thus while determining his income for computing compensation, future prospects have to be added to fail within the ambit and sweep of just compensation under Section 168 of M.V. Act.

The age of the petitioner, as discussed above, in the present case was about 19 years and he was self employed. In view of paragraph no. 61 (iv) of above said judgment in **Pranay Sethi (Supra)**, the petitioner would be entitled to an addition of 40% of the established income as he was below 40 years at the time of his accident.

The monthly income of petitioner is thus calculated as 8814/- +40% of 8814/- which comes to Rs. 8814/-+ Rs. 3525/- (after rounding of) = **Rs. 12,339/-**.

The age of petitioner at the time of accident was about 19 years and the relevant multiplier of "18" is to be adopted as per judgment in case of **Sarla Verma vs Delhi Transport Corporation, 2009 ACJ 1298** which has been upheld in paragraph no. 61 (vi) in case of **Pranay Sethi (Supra)**. Accordingly, the relevant multiplier would be "18" as per judgment in case of **Sarla Verma (Supra)** which has been upheld in paragraph no, 61 (vi) in case of **Pranay Sethi (Supra)**.

The compensation is accordingly assessed towards loss of earning capacity at **Rs. 26,65,224/-** [(Rs. 12,339/-per month x12 months x 18 (age multiplier) x100/100(functional disability)].

D. Loss of Amenities of Life.

In the present matter the petitioner/injured has unfortunately suffered head injuries with 100% disability in view of altered sensorium as per his disability certificate Ex. PW3/1 of Dr. RIVIL hospital. PW3 Dr S. Bhaskar, Professor, Department of Neurosurgery, Dr. RML hospital has deposed that the petitioner was a case of head injury, he was in permanent vegetative state



(coma) and that the disability was permanent and not likely to improve.

In view of the said discussion, the judgment of Hon'ble Delhi High Court in case of **Pritam Singh (Supra)** and above mentioned injuries suffered by him, a lump sum amount of **Rs. 1,00,000/-** is granted under the said head.

E. Loss of Expectancy of life

In the present matter the petitioner/injured has unfortunately suffered head injuries with 100% disability in view of altered sensorium as per his disability certificate Ex. PW3/1 of Dr. RML hospital. PW3 Dr. S. Bhaskar, Professor, Department of Neurosurgery, Dr. RML hospital has deposed that the petitioner was a case of head injury, he was in permanent vegetative state (coma) and that the disability was permanent and not likely to improve. On the same circumstances including 100% disability with persistent vegetative state, the Hon'ble Delhi High Court in case of **Pritam Singh (Supra)** has granted Rs. 1,50,000/- towards loss of expectancy of life. In facts, **Rs. 1,50,000/-** are also granted to the petitioner under the said head.

F. Pain and Suffering

In the present matter the petitioner/injured has unfortunately suffered head injuries with 100% disability in view of altered sensorium as per his disability certificate Ex. PW3/1 of Dr. RML hospital. PW3 Dr. S. Bhaskar, Professor, Department of Neurosurgery, Dr. RML hospital has deposed that the petitioner was a case of head injury, he was in permanent vegetative state (coma) and that the disability was permanent and not likely to improve.

On the same circumstances including 100% disability with persistent vegetative state, the Hon'ble Delhi High Court in case of **Pritam Singh (Supra)** has granted Rs. 2,00,000/- towards Pain & Suffering. In facts, **Rs. 2,00,000/-** are also granted to the petitioner under the said head.

G. Attendant Charges (during treatment) & future.

PW4 i.e. father of the petitioner has deposed that he had kept on attendant namely Sh. Hira Lal S/o Sh. Sunder Lal to attend to his son/petitioner in day time and had already paid him Rs. 3,44,000/- for attending to his son till 20.12.2016. He deposed that Mr. Hira Lal was still attending his son as he was 100% disabled and was still lying in coma. He deposed that he had paid Rs. 6800/- per month to Mr. Hira Lal for attending to his son from 20.12.2012 to 20.04.2014 and thereafter Rs. 7200/- per month from 20.04.2014 to 20.06.2016 and Rs. 8000/- per month from 20.06.2016 to 20.12.2016. He deposed that in future also he would have to keep one attendant regularly for attending his son. The said receipts qua



alleged payment made to Hira Lal have been proved as Ex. PW4/6 and Ex. PW4/14 both collectively.

PW4 in his cross examination has inter alia deposed that the receipts Ex. PW4/6 do not bear his signatures. He denied the suggestions that the document Ex. PW4/6 (colly) were prepared on a single day or that they were false and fabricated document or that he had not kept any attendant namely Sh. Hira Lal or that he had not paid Rs. 3,44,000/- to Hira Lal or any other amount for attending his son.

The receipts Ex. PW4/6 and Ex. PW4/14 are the payment shown to been made to one attendant Sh. Hira Lal for different time period for attending the petitioner. The petitioner has however, miserably failed to prove the above said receipts in the absence of examination of Sh. Hira Lal The said receipts would further show that they were undated and only bear the signature of one Hira Lal, who as discussed above, has not been examined as a witness in this case. The petitioner has therefore, failed to prove that he kept any such attendant by the name of Hira Lai or that above mentioned amount by way of above said receipts were paid to him. The amount of said receipts cannot thus be awarded to the petitioner.

The petitioner has also examined Sh. Kapil Anand/PW7 who proved, two receipts of Rs. 10,000/- each Ex. PW4/15 (colly) for the period of 1.09.2017 till 01.10.2017 and 01.10.2017 till 01.11.2017. He deposed that he was attending to Mr. Jagjot Singh (petitioner), who was lying in coma from 01.09.2017 and was getting Rs. 10,000/- per month in cash from his father for attending his son from 9:00 am to 9:00 pm and that he had already received Rs. 10,000/- from him. In cross examination, PW7 inter alia deposed that there was no witness on receipts Ex. PW4/15, the same were in the handwriting of the father of the petitioner and that they were undated. PW7 Sh. Kapil Anand has stepped in the witness box and has proved the above said two receipts as Ex. PW4/15 (colly) through which he received total payment of Rs. 20,000/- in cash for attending to the petitioner.

In the case of **Pritam Singh (Supra)**, the Hon'ble Delhi High Court held that since the claimant had been rendered permanently disabled to the extent of 100%, there is no doubt that he would require consistent presence of attendant throughout his life. It was further held that in the said circumstances, the proper course would be to take care of attendant charges incurred during treatment and for future on the assumption that he would need to engage an attendant on regular basis. It was further held that expenditure towards this end could be computed on the basis of minimum wages of unskilled worker relevant to the date of



accident. The Hon'ble Delhi High Court in the said matter also adopted the multiplier in that regard.

The minimum wages of an unskilled worker on the date of accident i.e. 15.10.2012 was Rs. 7254/-. In terms of the calculation adopted by the Hon'ble Delhi High Court in case of **Pritam Singh (Supra)**, the compensation for attendant charges would come to Rs. 7254/- x 12x18= **Rs. 15,66,864/- (rounded of to Rs. 15,67,000/-)**.

In the said circumstances and the law as laid down in the case of **Pritam Singh (Supra)** of Hon'ble Delhi High Court, the attendant charges (during treatment) and future are calculated at **Rs. 15,67,000/-**.

H. Special Diet and conveyance

PW4 denied the suggestion that in his cross examination that he had not spent more than Rs. 70,000/- on conveyance or that he did not spend more than Rs. 2,00,000/- on special diet.

The petitioner has not proved any such bill qua conveyance or special diet.

In similar circumstances, the Hon'ble Delhi High Court in the case of **Pritam Singh (Supra)** has granted Rs. 1,00,000/- under this head, therefore, the petitioner is granted **Rs. 1,00,000/-** in lump sum under this head.

*It is pertinent to mention here that in the case of **Pritam Singh (Supra)** one other head of Transportation/boarding/lodging charges was granted by Hon'ble Delhi High Court as it was granted by the Tribunal in that matter, however, in the present matter before this Tribunal it was neither pressed nor any evidence was lead in that regard, hence, the same is not being granted to the petitioner.*

9. Accordingly, the over all compensation which is to be awarded to the petitioner thus comes to **Rs. 65,98,979/-** which is tabulated as below:-

Sl. No.	Compensation	Award Amount
1.	Medicines & treatment	Rs. 13,16,755/-
2.	Future Treatment	Rs. 5,00,000/-
3.	Loss of income/earning power	Rs. 26,65,224/-
4.	Loss of Amenities	Rs. 1,00,000/-
5.	Loss of Expectancy of life	Rs. 1,50,000/-
6.	Pain & Suffering	Rs. 2,00,000/-
7.	Attendant charges (During Treatment)	Rs. 15,67,000/-



	& Future	
8.	Special diet & Conveyance	Rs. 1,00,000/-
	Total	Rs. 65,98,979/-

**Rounded off to Rs. 66,00,000/-
(Rupees Sixty Six Lakhs only)**

The claimant/petitioner is also entitled to interest @ 9% per annum from the date of filing of DAR/petition i.e. w.e.f 16.01.2013 till realisation of the compensation amount. The said interest @ 9% p.a. was awarded on the award amount by the Hon'ble Apex Court in case **Municipal Corporation of Delhi vs. Association of Victims of Uphaar Tragedy, 2012 ACJ 48 (SC)**.

The amount of interim award, if any, shall however be deducted from the above amount, if the same has already been paid to the petitioner.

10. Learned counsel for the appellant/claimant-injured has vehemently urged that the quantum of compensation requires to be enhanced since the appellant/claimant-injured, *who is in a comatose and vegetative*, state is unable to pursue his studies, work or even earn his livelihood. It was reiterated that PW-3 Dr. S. Bhasker, Professor from Department of Neurosurgery, Dr. Ram Manohar Lohia Hospital, New Delhi has proved the permanent disability certificate Ex.PW-3/A and categorically deposed that the patient would remain in a permanent vegetative state. Relying on the decision in the case of **Benson George v. Reliance General Insurance Company Limited**⁵ and **Kajal v. Jagdish Chand**⁶, it was vehemently urged that the amount of compensation towards pain and suffering should be enhanced to Rs. 8,00,000/-; loss of amenities and marriage prospects Rs. 9,00,000/- besides disability/disfigurement Rs. 2,00,000/-. It was further urged that the appellant/claimant-injured would require an

⁵ 2022 ACJ 948

⁶ 2020 ACJ 1042



automatic Wheelchair apart from its requirement of having regular upgradation, replacement and repairs for which a sum of Rs. 4,00,000/- is sought.

11. Learned counsel for the appellant/claimant-injured urged that the appellant/claimant-injured would be required to spend expenses towards his medical treatment throughout his life and based on the facts that medical expenses for about 14 months came to Rs. 1,14,412/-, there would be spent an average of Rs. 8,172/- per month throughout life, and therefore, he sought compensation for a sum of Rs. 17,65,152/- (8172 x 12 x 18). Lastly, it was urged that the learned Tribunal has provided expenses towards attendant by wrongly reckoning minimum wages provided to an 'unskilled workman' and he has sought enhancement of compensation in total to the tune of Rs. 50,22,152/-.

12. This Court is not oblivious of the extreme pain and suffering, which has been suffered by the appellant/claimant-injured and also his parents, at the same time, the compensation could only be assessed on objective parameters, needless to state it should be just and reasonable. No amount of compensation can bring the healthy life back to the appellant/claimant-injured. Perhaps the Almighty only knows if he would be able to live a normal life at some point of time in his future life. Having carefully gone through the evidence brought on the record, it is but evident that the learned Tribunal has not granted any compensation towards 'loss of marriage prospects' and the amount of compensation awarded towards 'pain and suffering' as well as 'loss of enjoyment amenities of life' are abysmally low, unjust



and unreasonable. Hence, the compensation towards ‘loss of marriage prospects’ is awarded to the tune of **Rs. 5,00,000/-** and **Rs. 10,00,000/-** each is awarded towards ‘pain and suffering’ as well as ‘loss of enjoyment of amenities of life’.

13. At this stage, it is pertinent to mention that the appellant/claimant-injured had preferred an early hearing application before this Court bearing C.M. APPL. 21784/2022, wherein the appellant’s/claimant-injured’s medical bills from 05.01.2019 to 16.03.2022 were annexed, and it showed that the appellant/claimant-injured had incurred a sum of Rs. 1,91,558/- on his medical bills and the same are on record. The appellant/claimant-injured also filed a Master Index of additional medical bills dated 28.09.2023, wherein a total amount of Rs. 1,22,863/- was paid by the appellant/claimant-injured for the medical bills from 20.04.2022 to 18.03.2023. The said bills have not been challenged by the Insurance Company. What is clearly discernible is that since the date of passing of the impugned award of the compensation *vide* impugned judgment-cum-award dated 05.09.2018, out of amount of Rs. 5,00,000/-, which was awarded towards future medical expenses, the appellant/claimant-injured has already incurred more than Rs. 3,00,000/- on his medical treatment.

14. At the cost of repetition, the appellant/claimant-injured is in vegetative state since 15.10.2012, and this Court can into account the events happening subsequent thereto till a decision in the instant appeal. Therefore, the amount of compensation towards future medical expenses needs to be enhanced. Therefore, assuming that a sum of Rs. 5,000/- per month would be spent on medical treatment,



the annual expenses would come to Rs. 60,000/- and applying multiplier of '18', future medical expenses need to be enhanced to Rs. 10,80,000/-. Likewise, there are compelling circumstances for increase in the compensation towards 'special diet and conveyance charges', since the appellant/claimant injured is completely bed ridden and could only be provided liquid diet, and hence the same is enhanced to Rs. 2,50,000/-.

15. As regards compensation on account of the attendant charges, this Court finds that the decision by the learned Tribunal cannot be faulted as being arbitrary or unconscionable. A fair amount of compensation has been awarded by making a provision of Rs. 15,67,000/- based on average amount of Rs. 7,254/- per month and applying multiplier of '18'. After all, how long the poor parents are going to take care of the victim child. It is a life-long responsibility and they have to make sufficient provisions of such services after they are no more. The amount of compensation towards loss of functional/earning capacity has also been rightly determined to the tune of Rs. 26,65,224/-.

16. In forming this view, this Court is supported by the observations made by the Supreme Court in the case of **Benson Geroge (supra)** wherein the claimant-injured was 29 years old person and had been rendered in comatose due to the injuries sustained in the accident. The only exception being that he was gainfully employed regarding which evidence was brought on the record, and accordingly, loss of future income/earning capacity was assessed on different yardsticks.



17. In view of the foregoing discussion, the total compensation is arrived as under:-

Sr. No.	Heads of compensation	Amount
1.	Medicines and treatment	Rs. 13,16,755/-
2.	Future Treatment	Rs. 10,80,000/-
3.	Loss of income/earning power	Rs. 26,65,224/-
4.	Loss of Amenities	Rs. 10,00,000/-
5.	Loss of Expectancy of life	Rs. 1,50,000/-
6.	Loss of Marriage Prospects	Rs. 5,00,000/-
7.	Pain and Suffering	Rs. 10,00,000/-
8.	Attendant Charges (During Treatment & Future)	Rs. 15,67,000/-
9.	Special diet and Conveyance	Rs. 2,50,000/-
	Total	Rs. 95,28,979/-

18. Accordingly, the present appeal is allowed. The impugned-judgment-cum-award dated 05.09.2018 is hereby modified thereby providing that the appellant/claimant-injured is entitled to total compensation of **Rs. 95,28,979/- (Rupees ninety-five lakhs twenty-eight thousand and nine hundred and seventy-nine only)**. The respondent No. 2/insurance company is directed to deposit the entire amount of compensation with accrued interest with the learned Tribunal within four weeks from today with interest @ 9% per annum, failing which, the respondent No. 2/insurance company shall be liable to pay penal interest @ 12% from the date of filing of the petition i.e.,



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16.01.2013 till realization. The amount of Rs. 25,000/- towards the statutory deposit for filing of the appeal is hereby forfeited.

19. The present appeal along with the pending application stands disposed of.

DHARMESH SHARMA, J.

MAY 07, 2024

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