2024 INSC 963

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2024
(Arising out of SLP(C) No.10996 of 2018)

BABY SAKSHI GREOLA ...APPELLANTS(S)

VERSUS

MANZOOR AHMAD SIMON AND ANOTHER ...RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.

2. The present appeal calls into question the correctness and validity of the final judgment and order passed by a learned Single Judge of the High Court of Delhi at New Delhi dated 7th November 2017 in MAC. APP. 1107/2011.

3. The appellant had approached the High Court seeking enhancement of the compensation awarded on account of injuries suffered in a motor vehicle accident. The Motor Accident

Claims Tribunal, Central District, Delhi (hereinafter referred to as "Tribunal") had by a judgment and order dated 13th June 2011 awarded compensation of Rs. 5,90,750/- along with interest at the rate of 7.5% per annum from the date of filing of the claim petition. The learned Single Judge of the High Court, vide impugned judgment and order, *disposed of* the appeal filed by the appellant seeking enhancement by granting a further amount of Rs. 5,60,000/- along with interest at the rate of 9% per annum from the date of filing till realization. Aggrieved thereby, the appellant has approached this Court.

4. The facts, *in brief*, giving rise to the present appeal are as follows:

4.1 On 2nd June, 2009, the appellant, aged seven years, was going on foot along with her mother and brother to her house from National Bal Bhawan, Kotla Road, New Delhi. At about 01:00 PM, when they reached a red light on Deen Dayal Upadhyay Marg and Vishnu Digambar Marg, ITO, Delhi, and were crossing the road on a zebra crossing, a car bearing Registration No. DL-3C-AX-1502 being driven at a high speed,

hit the appellant, as a result of which, she sustained grievous injuries.

4.2 On 3rd September 2009, the appellant, through her father, filed a claim petition for grant of compensation under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "MV Act"), before the learned Tribunal against the driver-*cum*-owner of the offending vehicle and United India Insurance Company Limited, New Delhi arrayed as Respondent Nos. 1 and 2 respectively.

4.3 The learned Tribunal framed three issues for its consideration. *First*, whether the appellant had suffered grievous injuries on account of the road accident on 2nd June 2009, due to rash and negligent driving of vehicle by Respondent No. 1. *Second*, whether the appellant is entitled to any compensation, if so, to what amount and from whom. *Third*, as to what relief should be granted to the appellant.

4.4 The appellant got examined five witnesses in support of her claim. Respondent No. 1 was proceeded *ex-parte* and Respondent No. 2 did not lead any evidence.

4.5 The learned Tribunal, on appreciation of the evidence, decided the first two issues in favour of the appellant. The learned Tribunal held the respondents jointly and severally liable to make the payment of compensation to the appellant.

4.6 The appellant was awarded the following compensation:

S. No.	**Head**	**Amount (In ₹)**
1.	Medicines and Medical Treatment	32,000/-
2.	Loss of Earning Capacity due to Disability	1,68,750/-
3.	Pain and Suffering	50,000
4.	Future Treatment	30,000/-
5.	Attendant Charges	15,000/-
6.	Loss of Amenities of Life	1,00,000/-
7.	Loss of Future Prospect	1,00,000/-
8.	Special Education Expenditure	75,000/-
9.	Conveyance and Special Diet	20,000/-
	Total	**5,90,750/-**

4.7 Vide judgment and order dated 13th June 2011, the learned Tribunal, therefore, held that the appellant is entitled to a compensation of Rs. 5,90,750/-. The appellant was also held entitled to interest at the rate of 7.5% per annum from the date of filing of the claim petition i.e. 3rd September 2009.

4.8 Seeking enhancement of the compensation awarded by the learned Tribunal, the appellant approached the High Court.

4.9 The learned Single Judge of the High Court, on appreciation of the material placed on record, enhanced the compensation as follows (**in bold**):

S. No.	**Head**	**Amount (In ₹)**
1.	Medicines and Medical Treatment	32,000/-
2.	Loss of Earning Capacity due to Disability	1,68,750/-
3.	**Pain and Suffering**	**50,000 + *50,000* = 1,00,000/-**
4.	Future Treatment	30,000/-
5.	**Attendant Charges**	**15,000 + *4,10,000* = 4,25,000/-**
6.	Loss of Amenities of Life	1,00,000/-
7.	Loss of Future Prospect	1,00,000/-
8.	Special Education Expenditure	75,000/-
9.	Conveyance and Special Diet	20,000/-
10.	**Loss of Marriage Prospects**	**1,00,000/-**
	Total	**5,90,750 + *5,60,000* = 11,51,000/-**

4.10 Vide impugned judgment and order dated 7th November 2017, the learned Single Judge of the High Court, therefore, enhanced the compensation by Rs.5,60,000/- to Rs.11,51,000/- along with interest at the rate of 9% per annum from the date of filing of the claim petition till realization.

4.11 Challenging the compensation awarded by the High Court, the appellant has filed the present appeal.

5. We have heard Smt. Aruna Mehta, learned counsel appearing on behalf of the appellant and Shri Ravi Bakshi, learned counsel appearing on behalf of Respondent No. 2 (United India Insurance Company Limited).

6. Smt. Mehta submitted that the compensation awarded by the Tribunal as enhanced by the High Court deserves reconsideration by this Court. Placing reliance on the evidence of Dr. Monica Juneja (PW-3) who examined the appellant, the learned counsel for the appellant submitted that the appellant has sustained 75% mental moderate retardation and has no control over the passage of her urine. Further, it is submitted that the disability of the appellant is in relation to the whole body

and is non-progressive. She submitted that children with moderate mental retardation are generally able to learn skills up to the level of a child of 2nd standard/class as adults and can work under close supervision only. She further submitted that, the appellant will require close supervision of an attendant for her day-to-day work. She further submitted that the appellant would need admission in a special school or training by a special education teacher and that due to her condition, the appellant's marriage prospects may be severely affected.

7. Smt. Mehta submitted that, taking into consideration the condition of the appellant, the High Court has erred in granting only Rs. 4,25,000/- towards the attendant charges by taking minimum wages of unskilled worker (Rs. 3,934/- per month) for a part time attendant. She further submitted that, the High Court has failed to award suitable amount of compensation under the head *pain and suffering*, as well as for future medical treatment of the appellant.

8. The learned counsel for the appellant has placed reliance on three judgments of this Court viz. ***Kajal v. Jagdish Chand***

and Others[1]***, Master Ayush v. Branch Manager, Reliance General Insurance Company Limited and Another***[2] and ***K.S. Muralidhar v. R. Subbulakshmi and Another***[3]***.***

9. *Per contra*, Shri Bakshi, learned counsel appearing for Respondent No. 2 (Insurance Company) submitted that the High Court has rightly followed the settled principles of law and increased the compensation. He submitted that the High Court has been very liberal in awarding an additional sum of Rs.5,60,000/- over and above the amount awarded by the Tribunal.

10. Placing reliance on the Disability Certificate dated 10th January 2011, the learned counsel for Respondent No. 2 submitted that there is a likelihood of improvement in the condition of the appellant. He therefore, submitted that, this Court should not interfere with the amount awarded by the High Court.

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[1] **(2020) 4 SCC 413 : 2020 INSC 135**
[2] **(2022) 7 SCC 738 : 2022 INSC 363**
[3] **2024 SCC OnLine SC 3385 : 2024 INSC 886**

11. To consider the present case, it would be appropriate to refer to the evidence of Smt. Prakashi Devi (PW-2), mother of the appellant, who had the misfortune to recount the incident before the Tribunal. It is stated by Smt. Prakashi Devi (PW-2) that on 2nd June 2009 when she was going back from National Bal Bhawan to her home, along with her children on foot, they had to cross the road. When they were crossing the road, on a zebra crossing meant for pedestrians, a Tata Safari car bearing registration number DL-3C-AX-4502, driven by Respondent No.1, at a very high speed, hit her daughter (appellant/Baby Sakshi) with great force as a result of which her daughter sustained grievous injuries to her brain, sustained fracture over left side of femur and lacerated injuries all over her body.

12. Smt. Prakashi Devi (PW-2) stated that her daughter has become permanently partially disabled from her skull area. Further, her daughter cannot enjoy her life like a normal person and cannot walk properly. The prospect of her marriage has been ruined due to the unfortunate accident. Her daughter will not get any government job in her remaining life. Thus, *life has become*

just like hell for her and her daughter will have to suffer trauma and loss of amenities of life.

13. It was also stated by the mother of the appellant (PW-2), that she wanted to make her daughter a badminton player but all her hopes have now vanished due to the unfortunate accident. It was stated by her that the appellant was a brilliant student and had she not met with the accident, she would have got a job of at least Rs. 25,000-30,000/- per month, but as a result of the accident she has become a dull student.

14. It would also be appropriate to refer to the evidence of Dr. Monica Juneja (PW-3), who proved the Disability Certificate dated 10th January 2011. As per the said certificate, the appellant has suffered 75% disability, which is permanent in nature on account of moderate mental retardation. This disability is in relation to the whole body, which is non-progressive. It is stated in the certificate that this is a case of road traffic accident with Subarachnoid Haemorrhage with healed fracture femur left with moderate mental retardation

which means she has an Intelligence Quotient of 41 and social Quotient of 43.

15. It is recorded in the testimony of Dr. Monica Juneja (PW-3) that, children with moderate mental retardation are generally able to learn skills up to the level of 2nd Standard/Class as adults and can work under close supervision only. Further, the appellant also has severe apathy and has no control over passage of her urine. Because of severe apathy, the appellant has no interest in playing or interacting with other children. The appellant would require very close supervision of an attendant for her day-to-day care. The appellant would also require admission in a special school or training by a special education teacher.

16. Dr. Monica Juneja (PW-3) has also stated that, due to all these problems, her marriage prospects may be affected. However, her possibility of procreation is not affected on account of mental retardation.

17. This Court, in the case of ***Kajal*** (supra), had an opportunity to consider a case with identical facts. In the said case, a girl

(Kajal) aged 12 sustained brain injuries on account of an accident. The accident had very serious consequences on her. Kajal was examined for an assessment of her disability. It was assessed that, because of the head injury, Kajal is left with very low IQ and severe weakness in all her four limbs, she suffers from severe hysteria and severe urinary incontinence. Her disability had been assessed as 100%.

18. This Court, in the said case, referred to a number of cases where the principles for grant of compensation have been enunciated. Cases from foreign jurisdiction as well as cases of this Court were relied upon to extract the principles to be applied while assessing compensation. It would be apposite to refer to the following paragraphs of the said case:

> **"8.** In *Phillips* v. *London & South Western Railway Co.* [*Phillips* v. *London & South Western Railway Co.*, (1879) [L.R.] 5 Q.B.D. 78 (CA)] , Field, J., while emphasising that damages must be full and adequate, held thus : (QBD p. 79)
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> > "… You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always recollect that this is the only occasion on which compensation can be given. The plaintiff can never sue again for it. You have,

> therefore, now to give him compensation once and for all. He has done no wrong, he has suffered a wrong at the hands of the defendants and you must take care to give him full fair compensation for that which he has suffered."

Besides, the Tribunals should always remember that the measures of damages in all these cases "should be such as to enable even a tortfeasor to say that he had amply atoned for his misadventure".

9. In *Mediana, In re* [*Mediana, In re*, 1900 AC 113 (HL)] , Lord Halsbury held : (AC pp. 116-17)

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

10. The following observations of Lord Morris in his speech in *H. West & Son Ltd.* v. *Shephard* [*H. West &*

Son Ltd. v. *Shephard*, 1964 AC 326 : (1963) 2 WLR 1359 (HL)] , are very pertinent : (AC p. 346)

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

In the same case, Lord Devlin observed (at p. 357) that the proper approach to the problem was to adopt a test as to what contemporary society would deem to be a fair sum, such as would allow the wrongdoer to "hold up his head among his neighbours and say with their approval that he has done the fair thing?", which should be kept in mind by the court in determining compensation in personal injury cases.

11. Lord Denning while speaking for the Court of Appeal in *Ward* v. *James* [*Ward* v. *James*, (1966) 1 QB 273 : (1965) 2 WLR 455 : (1965) 1 All ER 563 (CA)] , laid down the following three basic principles to be followed in such like cases : (QB pp. 299-300)

> "First, *assessibility* : In cases of grave injury, where the body is wrecked or the brain destroyed, it is very difficult to assess a fair compensation in money, so difficult that the award must basically be a conventional figure, derived from

> experience or from awards in comparable cases. Secondly, *uniformity* : There should be some measure of uniformity in awards so that similar decisions are given in similar cases; otherwise there will be great dissatisfaction in the community, and much criticism of the administration of justice. Thirdly, *predictability* : Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceably and not brought to court, a thing very much to the public good."
>
> (emphasis in original)

12. The assessment of damages in personal injury cases raises great difficulties. It is not easy to convert the physical and mental loss into monetary terms. There has to be a measure of calculated guesswork and conjecture. An assessment, as best as can, in the circumstances, should be made.

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

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

14. In *Concord of India Insurance Co. Ltd.* v. *Nirmala Devi* [*Concord of India Insurance Co. Ltd.* v. *Nirmala Devi*, (1979) 4 SCC 365 : 1979 SCC (Cri) 996 : 1980 ACJ 55] , this Court held : (SCC p. 366, para 2)

> "*2.* … the determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales."

15. In *R.D. Hattangadi* v. *Pest Control (India) (P) Ltd.* [*R.D. Hattangadi* v. *Pest Control (India) (P) Ltd.*, (1995) 1 SCC 551 : 1995 SCC (Cri) 250] , dealing with the different heads of compensation in injury cases this Court held thus : (SCC p. 556, para 9)

> "*9.* Broadly speaking while fixing the amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant : (*i*) medical attendance; (*ii*) loss of earning of profit up to the date of trial; (*iii*) other material loss. So far as non-pecuniary damages are concerned, they may include : (*i*) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in the future; (*ii*) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (*iii*) damages for

loss of expectation of life i.e. on account of injury the normal longevity of the person concerned is shortened; (*iv*) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

16. In *Raj Kumar* v. *Ajay Kumar* [*Raj Kumar* v. *Ajay Kumar*, (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161] , this Court laid down the heads under which compensation is to be awarded for personal injuries : (SCC p. 348, para 6)

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

Pecuniary damages (Special damages)

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

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

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

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

(*iii*) Future medical expenses.

Non-pecuniary damages (General damages)

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

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

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

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

17. In *K. Suresh* v. *New India Assurance Co. Ltd.* [*K. Suresh* v. *New India Assurance Co. Ltd.*, (2012) 12 SCC 274 : (2013) 2 SCC (Civ) 279 : (2013) 4 SCC (Cri) 638] , this Court held as follows : (SCC p. 276, para 2)

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

19. This Court, in the said case, thereafter, formulated various heads such as loss of earnings, expenses related to treatment,

attendant charges, pain and suffering and loss of amenities, loss of marriage prospects, future medical treatment. Ultimately, this Court enhanced the compensation awarded by the High Court from Rs. 25,78,501/- to Rs.62,27,000/-.

20. In another case titled ***Master Ayush*** (supra), this Court was called upon to adjudicate on an appeal filed by a 5-year-old victim of a road accident seeking enhancement of compensation awarded by the Tribunal.

21. In the said case, Ayush was left as a paraplegic patient as a result of the accident. He was examined by two doctors. He was not able to move both his legs and had complete sensory loss in the legs, urinary incontinence, bowel constipation and bed sore. Ayush was aged about 5 years on the date of the accident, hence, he lost his childhood and became dependant on other(s) for his routine work.

22. This Court, in the said case, relying on the decision of ***Kajal*** (supra) enhanced the compensation under the head of loss of future earnings due to permanent disability for life, medical expenses, future medical expenses, pain and suffering and loss

of amenities, loss of marriage prospects, attendant charges and conveyance charges. This Court enhanced the compensation awarded to the appellant therein from Rs.13,46,805/- to Rs.49,93,000/-.

23. Recently, this Court in the case of ***K.S. Muralidhar*** (supra) on an elaborate consideration of certain authorities (scholarly as also judicial) on the aspect of *"pain and suffering"* set out the contours. It would be relevant to refer to the following paragraphs of the said case:

> "**14.** In respect of '*pain and suffering*' in cases where disability suffered is at 100%, we may notice a few decisions of this Court:—
>
> 14.1 In *R.D Hattangadi* v. *Pest Control (India) (P) Ltd.* It was observed:
>
> > "17. The claim under Sl. No. 16 for 'pain and suffering' and for loss of amenities of life under Sl. No. 17, are claims for non-pecuniary loss. The appellant has claimed lump sum amount of Rs. 3,00,000 each under the two heads. The High Court has allowed Rs. 1,00,000 against the claims of Rs. 6,00,000. When compensation is to be awarded for 'pain and suffering' and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-

> pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration. According to us, as the appellant was an advocate having good practice in different courts and as because of the accident he has been crippled and can move only on wheelchair, the High Court should have allowed an amount of Rs. 1,50,000 in respect of claim for 'pain and suffering' and Rs. 1,50,000 in respect of loss of amenities of life. We direct payment of Rs. 3,00,000 (Rupees three lakhs only) against the claim of Rs. 6,00,000 under the heads "'pain and suffering'" and "Loss of amenities of life".
>
> (Emphasis Supplied)

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

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

14.3 In *Kajal* v. *Jagdish Chand* considering the facts of the case, i.e., 100% disability, child being

bedridden for life, her mental age being that of a nine-month-old for life - a vegetative existence, held that "even after taking a conservative view of the matter an amount payable for the 'pain and suffering' of this child should be at least Rs. 15,00,000/-."

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

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

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

24. Ultimately, this Court in the said case, in light of the authorities cited, the injuries suffered, the pain and suffering caused, and the lifelong nature of the disability afflicted upon the appellant therein (*a workman who sustained multiple brain injuries which resulted in 90% permanent disability*) enhanced the

compensation awarded under the head of *pain and suffering* to Rs. 15,00,000/-.

25. In the present case, therefore, we will have to consider the case of the appellant under various heads.

a) <u>Loss of income/earning capacity</u>

26. In this respect, it will be appropriate to refer to the evidence of Dr. Monica Juneja (PW-3). The Doctor proved the disability certificate. As per the said certificate, the appellant has suffered 75% disability. The appellant is suffering from moderate mental retardation. It was stated by the Doctor that the appellant would only be able to learn skills up-to the level of a child of 2nd Standard/Class. The appellant also has severe apathy and no control over passage of her urine.

27. Even though Dr. Monica Juneja (PW-3) on assessment of the appellant opined that the disability suffered by the appellant is 75%, however, on a complete overview of the situation, it is clear that for all practical purposes, the disability of the appellant should be treated to be 100%.

28. The learned Tribunal on appreciation of the medical evidence came to a conclusion that, since the appellant was only seven years at the time of the accident, it would be appropriate to take notional income as per the MV Act to be Rs. 15,000/- per annum. The learned Tribunal applied a multiplier of 15 which was taken up-to the age of fifteen years. Therefore, an amount of 15,000/- x 15 x 75/100 = Rs. 1,68,750/- was awarded by the learned Tribunal. The High Court did not enhance the amount awarded under this head.

29. This Court in the case of ***Kajal*** (supra) has held that taking notional income is not the correct approach. Instead, the minimum wages payable to a skilled workman in the concerned State has to be taken into consideration because, that would be the minimum amount which she would have earned on becoming a major. In this case, the minimum wage payable to a skilled workman in the State of Delhi at the time of the accident, i.e., 2nd June 2009, was Rs. 4,358/- per month.

30. Further, a Constitution Bench of this Court in the case of ***National Insurance Company Limited v. Pranay Sethi and Others***[4] in paragraph 59 recorded its conclusion as follows:

> "**59.** In view of the aforesaid analysis, we proceed to record our conclusions:
> **59.1.** The two-Judge Bench in *Santosh Devi* [*Santosh Devi* v. *National Insurance Co. Ltd.*, (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in *Sarla Verma* [*Sarla Verma* v. *DTC*, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] , a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.
> **59.2.** As *Rajesh* [*Rajesh* v. *Rajbir Singh*, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] has not taken note of the decision in *Reshma Kumari* [*Reshma Kumari* v. *Madan Mohan*, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] , which was delivered at earlier point of time, the decision in *Rajesh* [*Rajesh* v. *Rajbir Singh*, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] is not a binding precedent.
> **59.3.** 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

[4] **(2017) 16 SCC 680 : 2017 INSC 1068**

years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4. 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.

59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of *Sarla Verma* [*Sarla Verma* v. *DTC*, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] which we have reproduced hereinbefore.

59.6. The selection of multiplier shall be as indicated in the Table in *Sarla Verma* [*Sarla Verma* v. *DTC*, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] read with para 42 of that judgment.

59.7. The age of the deceased should be the basis for applying the multiplier.

59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

(emphasis supplied)

31. Accordingly, to arrive at the compensation to be awarded under the head of loss of income and earnings due to disability,

40% should be added for future prospects and a multiplier of 18 would have to be applied in view of the age of the appellant.

32. The same approach was adopted by this Court in the cases of ***Kajal*** (supra) and ***Master Ayush*** (supra).

33. Therefore, in the present case, the compensation under this head would be Rs. [4,358 + (40% of 4,358)] x 12 x 18 = Rs.13,17,859/- and rounded it off to Rs. 13,18,000/-.

b) <u>Pain and Suffering</u>

34. As has been referred to hereinabove, this Court recently in the case of ***K.S. Muralidhar*** (supra) relying *inter-alia* upon the previous decisions of this Court in the cases of ***Kajal*** (supra) and ***Master Ayush*** (supra) awarded a sum of Rs. 15,00,000/- under the head of pain and suffering to the appellant therein.

35. In this respect, it would be appropriate to refer to paragraphs 26 and 27 of the judgment of this Court in the case of ***Kajal*** (supra), which read thus:

> **"*Pain, suffering and loss of amenities***
>
> **26.** Coming to the non-pecuniary damages under the head of pain, suffering, loss of amenities, the High Court has awarded this girl only Rs 3,00,000.

In *Mallikarjun* v. *National Insurance Co. Ltd.* [*Mallikarjun* v. *National Insurance Co. Ltd.*, (2014) 14 SCC 396 : (2015) 1 SCC (Civ) 335 : (2015) 1 SCC (Cri) 372 : (2013) 10 Scale 668] , this Court while dealing with the issue of award under this head held that it should be at least Rs 6,00,000, if the disability is more than 90%. As far as the present case is concerned, in addition to the 100% physical disability, the young girl is suffering from severe incontinence, she is suffering from severe hysteria and above all she is left with a brain of a nine-month-old child. This is a case where departure has to be made from the normal rule and the pain and suffering suffered by this child is such that no amount of compensation can compensate.

27. One factor which must be kept in mind while assessing the compensation in a case like the present one is that the claim can be awarded only once. The claimant cannot come back to court for enhancement of award at a later stage praying that something extra has been spent. Therefore, the courts or the Tribunals assessing the compensation in a case of 100% disability, especially where there is mental disability also, should take a liberal view of the matter when awarding the compensation. While awarding this amount, we are not only taking the physical disability but also the mental disability and various other factors. This child will remain bedridden for life. Her mental age will be that of a nine-month-old child. Effectively, while her body grows, she will remain a small baby. We are dealing with a girl who will physically become a woman but will mentally remain a 9-month-old child. This girl will miss out playing with her friends. She cannot communicate; she

> cannot enjoy the pleasures of life; she cannot even be amused by watching cartoons or films; she will miss out the fun of childhood, the excitement of youth; the pleasures of a marital life; she cannot have children who she can love, let alone grandchildren. She will have no pleasure. Her's is a vegetable existence. Therefore, we feel in the peculiar facts and circumstances of the case even after taking a very conservative view of the matter an amount payable for the pain and suffering of this child should be at least Rs 15,00,000."
>
> (emphasis supplied)

36. This Court has observed that it has to be borne in mind that while assessing compensation in a case like the present one, the claim can be awarded only once. It was observed that the claimant cannot come back to the court for enhancement at a later stage praying that something extra has been spent. This Court further observed that courts or tribunals assessing compensation in a case of 100% disability, especially where there is mental disability also, should take a liberal view of the mater when awarding compensation. It was observed that while awarding this amount, courts are not only taking into account physical disability but also mental disability and various other factors.

37. Similarly, in the case of ***Master Ayush*** (supra), this Court in paragraph 14 observed as under:

> "**14. The determination of damages in personal injury cases is not easy. The mental and physical loss cannot be computed in terms of money but there is no other way to compensate the victim except by payment of just compensation.** Therefore, we find that in view of the physical condition, the appellant is entitled to one attendant for the rest of his life though he may be able to walk with the help of assistant device. The device also requires to be replaced every 5 years. Therefore, it is reasonable to award cost of 2 devices i.e. Rs 10 lakhs. The appellant has not only lost his childhood but also adult life. Therefore, loss of marriage prospects would also be required to be awarded. The learned Tribunal has rejected the claim of taxi expenses for the reason that the taxi driver has not been produced. It is impossible to produce the numerous taxi drivers. Still further, the Tribunal should have realised the condition of the child who had complete sensory loss in the legs. Therefore, if the parents of the child have taken him in a taxi, probably that was the only option available to them. Accordingly, we award a sum of Rs 2 lakhs as conveyance charges."
>
> (emphasis supplied)

38. In the present case also, the appellant will remain dependant on another person for the rest of her life. Even though the physical age will increase, but her mental age will be that of a child studying in the 2nd Standard/Class. Effectively, while her body grows, she will remain a small baby.

39. Similar to the case of ***Kajal*** (supra), the appellant in the present case will also miss out on partaking in activities which she would have normally done, if she had not met with this unfortunate accident.

40. The High Court, vide impugned judgment and order, only enhanced the compensation under the head of pain and suffering from Rs. 50,000/- as awarded by the learned Tribunal to Rs.1,00,000/-. The same is not commensurate to the impact the unfortunate accident had and will have on the appellant as well as her family members for the rest of their lives. In our view, the compensation should be enhanced further. Therefore, in the peculiar facts and circumstances of this case, we are of the considered view that it would be appropriate to award compensation to the tune of Rs. 15,00,000/- to the present appellant under the head of pain and suffering.

c) <u>Loss of marriage prospects</u>

41. In this respect, we reiterate the evidence given by the Dr. Monica Juneja (PW-3) vide the disability certificate wherein she has opined that the mental status of the appellant would be the

same as that of a child studying in the 2nd Standard/Class. Further, it was stated that the appellant would also have severe apathy and therefore, maintaining/forming marital/familial bonds with the aforementioned conditions for the appellant is very difficult.

42. The appellant, therefore, has not only lost her childhood but also her adult life. Marriage/companionship is an integral part of the natural life of a human being. Although, in the present case the appellant is capable of reproduction, it is near impossible for her to rear children and enjoy the simple pleasures of marital life and companionship. However, the learned Tribunal in the present case did not award any compensation to the appellant under this head and the High Court, in appeal, without appreciating the impact of the non-pecuniary loss suffered by the appellant only awarded compensation of Rs. 1,00,000/- for the loss of marriage prospects.

43. We are, therefore, of the opinion that this a fit case where the compensation awarded under the head of loss marriage

prospects by the High Court is inadequate and the same must be enhanced to Rs. 5,00,000/-.

d) <u>Attendant Charges</u>

44. In the present case, the learned Tribunal recorded the evidence of the appellant's mother (PW-2). She stated that they had engaged a maid servant to do the household work whom they were paying Rs. 2,500/- per month for a period of 6 months. Considering the same, the learned Tribunal awarded Rs. 2,500 x 6 = Rs. 15,000/- under the head of attendant charges.

45. In appeal, the High Court, in paragraph 3 of the impugned judgment and order, observed that owing to the condition to which the appellant has been reduced, she would require the services of an attendant, *though part-time*. Accordingly, the High Court adopted the minimum wages of an unskilled worker in the State of Delhi at the time of the accident being Rs. 3,934/-, *for a part time attendant*, and applied the multiplier of 18. Considering the same, the High Court computed attendant charges to be awarded as Rs. (3,934/- ÷ 2) x 12 x 18 = Rs. 4,24,872/- and rounded it off to Rs. 4,25,000/-.

46. We find that, the approach of the High Court on appreciation of the evidence that the appellant would only be requiring a part time attendant is erroneous. On the contrary, we are of the opinion that the appellant, would be dependent on an attendant throughout her life and on a full-time basis. Considering her medical situation, the attendant would have to be skilled and not unskilled. The appellant would be requiring special care and attention which can only be provided by a skilled attendant. It was, therefore, incorrect on the part of the High Court to proceed on the basis that the appellant could be taken care of by an unskilled attendant and that too on a part-time basis.

47. In this respect, it will be relevant to refer to paragraphs 22, 23 and 24 of ***Kajal*** (supra), which read thus:

> "***Attendant charges***
> **22.** The attendant charges have been awarded by the High Court @ Rs 2500 per month for 44 years, which works out to Rs 13,20,000. Unfortunately, this system is not a proper system. **Multiplier system is used to balance out various factors. When compensation is awarded in lump sum, various factors are taken into consideration. When compensation is paid in lump sum, this Court has always followed the multiplier system. The**

multiplier system should be followed not only for determining the compensation on account of loss of income but also for determining the attendant charges, etc. This system was recognised by this Court in *Gobald Motor Service Ltd.* v. *R.M.K. Veluswami* [*Gobald Motor Service Ltd.* v. *R.M.K. Veluswami*, AIR 1962 SC 1] . The multiplier system factors in the inflation rate, the rate of interest payable on the lump sum award, the longevity of the claimant, and also other issues such as the uncertainties of life. Out of all the various alternative methods, the multiplier method has been recognised as the most realistic and reasonable method. It ensures better justice between the parties and thus results in award of "just compensation" within the meaning of the Act.

23. It would be apposite at this stage to refer to the observation of Lord Reid in *Taylor* v. *O'Connor* [*Taylor* v. *O'Connor*, 1971 AC 115 : (1970) 2 WLR 472 (HL)] : (AC p. 128)

> "Damages to make good the loss of dependency over a period of years must be awarded as a lump sum and that sum is generally calculated by applying a multiplier to the amount of one year's dependency. That is a perfectly good method in the ordinary case but it conceals the fact that there are two quite separate matters involved — the present value of the series of future payments, and the discounting of that present value to allow for the fact that for one reason or another the person receiving the damages might never have enjoyed the whole of the benefit of the dependency. It is quite unnecessary in the ordinary case to deal with these matters separately. Judges and counsel have a wealth of experience which

> is an adequate guide to the selection of the multiplier and any expert evidence is rightly discouraged. But in a case where the facts are special I think that these matters must have separate consideration if even rough justice is to be done and expert evidence may be valuable or even almost essential. The special factor in the present case is the incidence of income tax and, it may be, surtax."
>
> **24.** This Court has reaffirmed the multiplier method in various cases like *MCD* v. *Subhagwanti* [*MCD* v. *Subhagwanti*, AIR 1966 SC 1750 : 1966 ACJ 57] , *U.P. SRTC* v. *Trilok Chandra* [*U.P. SRTC* v. *Trilok Chandra*, (1996) 4 SCC 362] , *Sandeep Khanuja* v. *Atul Dande* [*Sandeep Khanuja* v. *Atul Dande*, (2017) 3 SCC 351 : (2017) 2 SCC (Civ) 276 : (2017) 2 SCC (Cri) 178] . This Court has also recognised that Schedule II of the Act can be used as a guide for the multiplier to be applied in each case. Keeping the claimant's age in mind, the multiplier in this case should be 18 as opposed to 44 taken by the High Court."
>
> [emphasis supplied]

48. Consistent with the approach adopted by this Court in the cases of ***Kajal*** (supra) and ***Master Ayush*** (supra), we deem it appropriate to enhance the compensation to be awarded under this head. The minimum wages paid to a skilled worker on a full-time basis in the State of Delhi at the time of the accident was Rs. 4,358/-. Keeping the appellant's age in mind, the multiplier in the present case should be 18. Accordingly, the compensation

to be awarded to the appellant under this head shall be enhanced to Rs. 4,358 x 12 x 18 = Rs. 9,41,328/- and rounded it off to Rs.9,42,000/-.

e) <u>Future Medical Treatment</u>

49. As has been referred to hereinabove, the appellant would have to be under the supervision of a full-time skilled attendant. Further, Dr. Monica Juneja (PW-3) has opined that the appellant suffers from severe apathy and has no control over the passage of her urine. Therefore, it is not difficult to see that the appellant would be requiring medical assistance in the form of medicines, diapers, etc., so as to live a relatively comfortable life.

50. It was also opined by Dr. Monica Juneja (PW-3) that in all cases of mental retardation there is an increased risk of developing convulsions. The Doctor, however, in her testimony before the learned Tribunal had stated that at that time, the appellant was not suffering from the same yet. The possibility of the same, however, cannot be ruled out.

51. Faced with such a situation, the family of the appellant must be financially equipped to deal with the medical conditions,

current and potential. It would, therefore, be appropriate to enhance the compensation to be awarded under this head to Rs.5,00,000/-.

52. For ease of understanding and compliance, the revised compensation awarded to the appellant is as follows:

S. No.	**Head**	**Amount (In ₹)**
1.	Medicines and Medical Treatment	32,000/-
2.	Loss of Earning Capacity due to Disability	13,18,000/-
3.	Pain and Suffering	15,00,000/-
4.	Future Treatment	5,00,000/-
5.	Attendant Charges	9,42,000/-
6.	Loss of Amenities of Life	1,00,000/-
7.	Loss of Future Prospect	1,00,000/-
8.	Special Education Expenditure	75,000/-
9.	Conveyance and Special Diet	20,000/-
10.	Loss of Marriage Prospects	5,00,000/-
	Total	**50,87,000/-**

53. The High Court, vide impugned judgment and order, has enhanced the rate of interest awarded by the trial court to 9% per annum from the date of the filing of the claim petition till the actual realisation. We do not find any error with the same and maintain the rate of interest.

54. We direct the Insurance Company (Respondent No. 2) to disburse the compensation awarded to the appellant as above. Obviously, the Insurance Company shall be entitled to adjust the amount already paid, if any.

55. Needless to state, as the learned Tribunal has held the driver-*cum*-owner (Respondent No.1) and the insurance company (Respondent No. 2) to be jointly and severally liable to make the payment of compensation to the appellant, the *inter-se* liability of the two respondents herein shall be decided in accordance with law. However, the Insurance Company is directed to make good the compensation awarded to the appellant as per this order so that the appellant and her family members are not put to any further agony.

56. Lastly, we find it appropriate to refer to the order of this Court in the case of ***General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Others*[5]*,*** wherein it has been reiterated that the claims tribunal should, in the case of minors, invariably order

[5] **(1994) 2 SCC 176**

the amount of compensation awarded to the minor be invested in long term Fixed Deposits at least till the date of the minor attaining majority. However, the expenses incurred by guardian or next friend may be allowed to be withdrawn.

57. We are cognizant of the fact that the appellant has attained majority, however, since the appellant was a minor at the time of the accident, we direct that at present an amount of Rs.10,00,000/- should be disbursed to the father of the appellant as her guardian. If, however, an amount more than Rs. 10,00,000/- has already been disbursed, the said amount shall not be adjusted. We further direct that the rest of the amount be invested in one or more Fixed Deposits Receipts so as to attract the maximum rate of interest. The interest amount shall be payable to the guardian of the appellant every month. Further, it shall be open to the guardian to seek orders from the Tribunal for withdrawal of the amount on the basis of medical opinion, if any major medical expenses are required to be incurred.

58. In the result, the impugned judgment and order dated 7th November 2017 passed by the High Court of Delhi at New Delhi

in MAC. APP. 1107/2011 is quashed and set aside. The appeal stands allowed in the above terms. Needless to state, that the Insurance Company (Respondent No. 2) shall comply with this order within a period of eight weeks from today.

59. We place on record our appreciation for the learned counsel appearing on behalf of the parties for their valuable assistance.

60. Pending application(s), if any, are disposed of.

.....J.
(B.R. GAVAI)

.....J.
(K.V. VISWANATHAN)

NEW DELHI;
DECEMBER 11, 2024.