

## The Bajaj Allianz General Insurance Co. Ltd. Versus Vs Ketanbhai Ashokbhai Patel Alias Dobariya & Ors.

**Court:** Gujarat High Court

**Date of Decision:** Jan. 10, 2025

**Acts Referred:** Motor Vehicles Act, 1988 " Section 166, 168, 173

Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 " Section 2(i)

**Hon'ble Judges:** Biren Vaishnav, J; Maulik J.Shelat, J

**Bench:** Division Bench

**Advocate:** Kirti S Pathak

**Final Decision:** Dismissed

### Judgement

Exh./Mark,Description of Documents

102,Certified copy of FIR.

103,Certified copy of Panchnama of place of the incident.

104,Copy of Discharge Summary of Stavva Spine Hospital.

105,Certificate of Stavva Spine Hospital.

76,Disability Certificate

90,Income-tax Return of year 2010-11 of applicant

91,Income-tax Return of year 2011-12 of applicant.

92,Income-tax Return of year 2012-13 of applicant.

106,Certificate of completing program of Diploma in Civil Engineering.

129,School Leaving Certificate of applicant.

130,Firm Registration of R.N.Dobariya

131,Partnership Deed of R.N.Dobariya

93,Income Tax Return of year 2010-11 of R.N.Dobariay

94,Income Tax Return of year 2011-12 of R.N.Dobariay

95,Income Tax Return of year 2012-13 of R.N.Dobariay

107,Copy of Registrar of Firms of M/s. Eagle Export.

122,Passbook of M/s. Eagle Export.

123,Bill of Sarthi Medical Store.

124,Bill of Shanti Distributors.

108,Medicclaim Voucher.

125,Bill of Firozgar Engineering Company.

126,Bill of Nuk Healthcare for purchasing Wheelchair.

78,Bill of Sakariya Physiotherapy Clinic.

84,Bill of Shital B Lathiya Physiotherapy Clinic.

127,Bill of Firozgar Engineering Company.

128,Certificate of Navjivan Hospital.

101,Copy of Audit Report.

68/33,Copy of R.C. Book of Luxury Bus.

68/34,Copy of Insurance Policy of Luxury Bus.

68/35,Copy of R.C. Book of Dumper/Truck.

68/36,Copy of Insurance Policy of Dumper/Truck.

Tribunal as 35% of body as a whole, granting of Rs.10,00,000/- towards pain, shock and suffering, is on higher side and according to the learned",

advocate of the insurance company, at best, under such head, Rs.5,00,000/- could have been awarded by Tribunal.",

5.5 Ms.Pathak, learned advocate for the appellant "opponent no.6 further submits that the Tribunal has committed a gross error by granting",

Rs.9,00,000/- under the head of special diet, transportation and attendant charges.",

5.6 According to the submission of learned advocate for the appellant - opponent No. 6, claimant has not proved such expenses on record, thereby, he",

is not entitled to receive it.,

5.7 Ms.Pathak, learned advocate for the appellant "opponent no.6 would further submit that granting of medical expense of huge amount i.e.,",

Rs.29,15,937/- by Tribunal without any appropriate evidence on record and in absence of any co-relation of charges, which were paid by the claimant",

and received by physiotherapist, ought not to have been awarded by Tribunal.",

5.8 Ms.Pathak, learned advocate for the appellant "opponent no.6 would further submit that under the head of future medical expenses also, the",

Tribunal has generously granted compensation of Rs.32,40,000/- which is uncalled for having not proved by claimant.",

5.9 Ms.Pathak, learned advocate for the appellant "opponent no.6 would further submit that under the head of loss of amenities and enjoyment of",

life, compensation of Rs.5,00,000/- is unjustified and on higher side.",

5.10 Lastly, Ms.Pathak, learned advocate for the appellant "opponent no.6 would submit that the Tribunal has committed an error in granting 9%",

interest on compensation, which is on higher side. Considering the fact that accident is of the year 2012 and the same is decided by Tribunal in 2024,"

according to the learned advocate for the claimant, as per various decisions of Hon'ble Supreme Court of India, such interests ought to have been",

awarded at the rate of 6%.

5.11 The sum and substance of arguments made by learned advocate Ms.Kirti Pathak appearing for opponent No. 6 is that the Tribunal has granted,

compensation ignoring evidence on record and the same is granted generously, which would be considered as a bonanza to the claimant."

5.12 To buttress her argument, Ms.Pathak, learned advocate for the appellant " opponent no.6 has drawn our attention to the decision of",

Hon'ble Supreme Court of India in the case of State of Haryana versus Jasbir Kaur, reported in (2003) 7 SCC 484 and Divisional Controller,"

K.S.R.T.C. versus Mahadeva Shetty, reported in JT 2003 (6) SC 519 and thereby, requested this Court to consider the aforesaid submissions and",

requested this Court to allow the appeal.

#### POINT OF DETERMINATION,

(i) Whether in the facts and circumstances of the case, any error has been committed by Tribunal while granting compensation in favour of original",

claimant?,

#### APPRECIATION AND EVALUATION OF SUBMISSIONS AND FINDINGS,

6. We have heard Ms.Kirti S. Pathak, learned advocate appearing for the appellant - opponent No.6 at length and minutely gone through the impugned",

judgment and award passed by Tribunal and so also perused the voluminous records and proceedings received from the Tribunal.,

7. As far as issue of negligence is concerned, when it was pointed out to learned advocate for the opponent no.6 that the observation made by",

Tribunal in para 10 of its judgment, wherein a reference was given to earlier decision of Tribunal of M.A.C.P. No.371 of 2012, arising out of the same",

incident, wherein ratio of negligence is already fixed between two set of drivers then in view of decision of this Court in the case of Laljibhai",

Hamirbhai (supra), applying principle of Res-Judicata on the case on hand, she conceded that now in view of the above, opponent No. 6 cannot agitate",

the point of negligence. So we are not deliberating much on the aspect of negligence so decided by Tribunal in accordance with law.,

8. Before adverting to the merits of the matter qua quantum of compensation awarded by Tribunal and to appreciate submissions of learned Advocate,

of Appellant made in this regards, it is apt to refer the following decisions of Hon'ble Supreme Court of India in the case of Anjali and Ors vs."

Lokendra Rathod and Ors, reported in 2023 AIR(SC) 44, wherein it has been held as under:-",

[10] The provisions of the Motor Vehicles Act, 1988 (for short, "MV Act") gives paramount importance to the concept of 'just and fair',

compensation. It is a beneficial legislation which has been framed with the object of providing relief to the victims or their families. Section,

168 of the MV Act deals with the concept of 'just compensation' which ought to be determined on the foundation of fairness, reasonableness",

and equitability. Although such determination can never be arithmetically exact or perfect, an endeavor should be made by the Court to",

award just and fair compensation irrespective of the amount claimed by the applicant/s. In *Sarla Verma & Ors. Vs. Delhi Transport,*

*Corporation & Anr.*, 2009 6 SCC 121 , this Court has laid down 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.",

9. Moreover, in a case of *Yadava Kumar V/s National Insurance Company Ltd.* reported in (2010) 10 SCC 341, wherein it has been held as under:-",

17. The High Court and the Tribunal must realize that there is a distinction between compensation and damage. The expression,

compensation may include a claim for damage but compensation is more comprehensive. Normally damages are given for an injury which is,

suffered, whereas compensation stands on a slightly higher footing. It is given for the atonement of injury caused and the intention behind",

grant of compensation is to put back the injured party as far as possible in the same position, as if the injury has not taken place, by way of",

grant of pecuniary relief. Thus, in the matter of computation of compensation, the approach will be slightly more broad based than what is",

done in the matter of assessment of damages. At the same time it is true that there cannot be any rigid or mathematical precision in the,

matter of determination of compensation.

9.1 It further appears that despite discussing the aspect of disability and future prospects of claimant, the Tribunal has not awarded any amount under",

the head of future loss of income in such a serious case of disability sustained by the claimant. The factor, which weighed with the Tribunal of not",

granting any future loss of income, was that subsequent income tax returns of injured claimant would indicate that he continued in partnership firm as",

a partner and drawing his share of profit despite such disability and the income of claimant was increased year after year. Such an approach on the,

part of Tribunal is misconceived at law and not in consonance with law laid down by Hon'ble Supreme Court of India in the case of Sandeep,

Khanuja Versus Atul Dande & Anr reported in 2017 3 SCC 351, wherein it has been held as under:-",

"[11] Learned counsel for the respondent, on the other hand, made an endeavour to justify the approach of the MACT with the",

submission that when the injuries suffered by him, even resulting in 70% permanent disability, had no adverse affect on the working of the",

appellant, who was a Chartered Accountant, he was not entitled to have the compensation computed by invoking the principle of multiplier.",

[15] The crucial factor which has to be taken into consideration, thus, is to assess as to whether the permanent disability has any adverse",

effect on the earning capacity of the injured. In this sense, the MACT approached the issue in right direction by taking into consideration",

the aforesaid test. However, we feel that the conclusion of the MACT, on the application of the aforesaid test, is erroneous. A very myopic",

view is taken by the MACT in taking the view that 70% permanent disability suffered by the appellant would not impact the earning capacity,

of the appellant. The MACT thought that since the appellant is a Chartered Accountant, he is supposed to do sitting work and, therefore, his",

working capacity is not impaired. Such a conclusion was justified if the appellant was in the employment where job requirement could be to,

do sitting/table work and receive monthly salary for the said work. An important feature and aspect which is ignored by the MACT is that,

the appellant is a professional Chartered Accountant. To do this work efficiently and in order to augment his income, a Chartered",

Accountant is supposed to move around as well. If a Chartered Accountant is doing taxation work, he has to appear before the assessing",

authorities and appellate authorities under the Income Tax Act, as a Chartered Accountant is allowed to practice up to Income Tax",

Appellate Tribunal. Many times Chartered Accountants are supposed to visit their clients as well. In case a Chartered Accountant is,

primarily doing audit work, he is not only required to visit his clients but various authorities as well. There are many statutory functions",

under various statutes which the Chartered Accountants perform. Free movement is involved for performance of such functions. A person,

who is engaged and cannot freely move to attend to his duties may not be able to match the earning in comparison with the one who is,

healthy and bodily abled. Movements of the appellant have been restricted to a large extent and that too at a young age. Though the High,

Court recognised this, it did not go forward to apply the principle of multiplier."

9.2 We are conscious of the fact that claimant has not preferred any appeal seeking enhancement. While considering the submissions made by,

learned advocate for the insurance company for reduction of compensation under respective heads, which according to insurance company, might be",

on a higher side, this Court can take note of it and offset the same with non granting any amount under head of future loss /disability benefits by",

following principle of just compensation.,

10. It is not in dispute that claimant was aged about 26 years at the time of accident and travelling in the luxury bus bearing registration,

No.GJ.05.Z.2088 on the date of accident. The factum of accident and injury sustained by claimant is also not in dispute, albeit, nature of injuries and",

disability sustained by claimant was disputed by opponents including present appellants before Tribunal.,

11. It is the case of claimant that he had a diploma in Civil Engineering and having received such diploma in May, 2007 and joined construction",

business and was a partner in M/s.R.N.Dobariya, which is a registered partnership firm having its registration as GUJ/SRT/(17)16451, which was",

started in the year 2008.,

12. As per the case of claimant, his firm is in the construction business getting government contracts across the State of Gujarat and he used to",

receive huge amount as a share of profit as a partner from partnership firm. It is further the case of the claimant that due to injuries sustained by him,

on his spinal cord having fracture of L1, L2 and D2 of the spinal cord, both lower limbs are not working, thereby, he became completely dependent.",

According to the claimant, due to injuries sustained by him, he is in a paraplegic condition/situation.",

13. To substantiate his claim before Tribunal, claimant has submitted disability certificate of Dr.Manoj Satyawani, M.D. (Medicine) & D.M.",

(Neurology) issued on 27.04.2014 at Exh.76. Dr. Satyawani was examined before Tribunal at Exh.75, wherein he has categorically deposed that",

claimant, having lost sensation below waist is a case of Paraplegia. Dr. Manoj Satyawani has further deposed that the lower limbs of claimant are not",

functioning as claimant is not able to walk and even not able to stand with support and unable to cross legs, at the time of the examination of the",

claimant for the issuance of aforesaid disability certificate.,

14. He has further deposed that as per the certificate, post Paraplegia, the bowel and bladder involvement without recovery, which according to him,"

found in a case, where patient is unable to have a control for natural call/ passing of urine and defecation. According to the doctor, claimant requires a",

permanent catheter and has to use diaper but he would not be in a position to confirm as on the date of his deposition because he has examined the,

claimant once while issuing disability certificate.,

15. The doctor concerned has found disability of claimant @ 90%. The doctor was thoroughly cross-examined by respective learned advocates of,

insurance companies but nothing substantial / adverse came from cross examination of aforesaid doctor.,

16. The doctor has admitted that after neurological examination, forensic aspect and examining the patient and his condition, he used to issue",

certificate but such record was not available to him having issued his disability certificate in the year 2014 as he was examined and cross examined on,

10.01.2023. It appears that due to above reasons, doctor was not able to submit much detail including other test reports, which might have been",

undertaken by him while issuing disability certificate. Nonetheless, his certificate and evidence cannot be discarded merely in not producing test",

reports especially when insurance company has not brought on record any adverse evidence by which this Court can dislodge his evidence.,

17. Be that as it may. After going through oral evidence of claimant produced at Exh.69 and his cross examination as well as examination and cross,

examination of Dr.Manoj Satyawani at Exh.75 and disability certificate produced at Exh.76, we are of the view that it is proved on record by claimant",

that due to injuries sustained by him, his both lower limbs were not at all working permanently. It is the case of Paraplegia and we are not in",

agreement with the submissions made by learned advocate for opponent No. 6 - insurance company that claimant has not proved injuries sustained by,

him, which ultimately resulted into Paraplegia.",

18. The insurance - company has contradicted and disputed the claim petition vehemently before this Court and might have done the same before,

Tribunal but not taken any pain to get claimant examined through any civil surgeon to find out current situation of claimant. It may not be undertaken,

because insurance company might not afford as sending the claimant for medical examination by civil surgeon, what has been submitted by claimant",

and certified by private doctor, comes on record. There was ample opportunity available with insurance company, who could get claimant examined",

through any independent government doctor to counter the evidence submitted by claimant. None of the act has been done by insurance company,

then at this stage, they have to thank themselves for not taking appropriate recourse available to them.",

19. One should not lose sight of the fact that when any road accident victim receives such serious injuries and has to undergo such ordeal and would,

continue to remain in such situation for remainder of his life, such victim requires to be compensated at the fullest extent, albeit, in accordance with",

law.,

20. Now, it is well settled legal position of law that claim petition filed under Section 166 of M.V.Act, wherein any enquiry is required to be undertaken",

by Tribunal as per the language of Section 168 of the M.V. Act for adjudicating the claim then standard of proof is based upon principles of,

preponderance of probability. It is apt to refer and rely upon the celebrated judgment of Hon'ble Supreme Court of India in the case of Bimla Devi,

Vs. H.R.T.C. reported in AIR 2009 SC 2819 wherein in para 15 it is held as under:-,

"[15] In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that",

strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants,

were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt,

could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by",

both the parties."

21. The aforesaid ratio of Hon'ble Supreme Court of India has so far remained in force and requires to be applied while judging proof submitted,

before Tribunal. So, keeping all this factors into account and aforesaid evidence of claimant and Dr. Satyawani, we have no doubt in our mind that",

claimant has received serious injuries, which ultimately resulted into permanent disability of both lower limbs become paraplegic and having lost control",

over the bowel and bladder. According to this Court, permanent disability in turn functional disability of claimant, keeping in mind his nature of work,"

educational qualification i.e. Diploma in Civil Engineering would be 100% (permanent total disablement). It is apt to refer the relevant observation,

made by Honourable Supreme Court of India in a case of Aabid Khan V/s Dinesh & Others reported in 2024 (6) SCC 149, the relevant paragraphs",

read as under:-,

"[10] In the light of the afore-stated position of law explained when the medical evidence tendered by the claimant is perused, we are of",

the considered view that tribunal and the High Court committed a serious error in not accepting the said medical evidence and in the,

absence of any contra evidence available on record, neither the tribunal nor the High Court could have substituted the disability to 10% as",

against the opinion of the doctor (PW- 5) certified at 17%. In that view of the matter the compensation awarded under the head 'loss of,

income' towards permanent disability deserves to be enhanced by construing the whole body disability at 17%."

22. The Tribunal might have considered 35% of the disability of the body as a whole of the claimant but having not awarded any future loss of income,



to the claimant, we restrain ourselves to make further comment on it. Nonetheless, our aforesaid observation about disability received by claimant",

would justify it and reasons assigned hereinafter, while dealing with submission of learned advocate of the appellant under each heads, would fortify it.",

23. We are bifurcating different heads, which are so awarded by Tribunal, as set out hereinabove as the same is disputed by present appellant through",

this appeal.,

PAIN, SHOCK AND SUFFERING",

24. We have considered the submission made by learned advocate of the insurance company - opponent No. 6 that taking into account only 35%,

disability considered by Tribunal, an amount of Rs.10,00,000/- towards pain, shock and suffering is on a higher side.",

25. The pain, shock and suffering received by claimant is enormous and countless as a young man aged about 26 years becomes overnight paraplegic",

and such ordeal has to be undergone by him for remainder of his life. According to the view of this Court, no amount can compensate him for pain,",

shock and suffering, which is to be faced by claimant everyday. We cannot lose sight of the fact that due to nature of disability sustained by him and",

having received serious injuries, claimant has lost control over his bowel and bladder as well as no control over passing of urine and defecation. He",

requires to have catheter and to wear diaper everyday. The claimant has no option but to live with such condition for his remaining life.,

26. Granting of compensation under non pecuniary head like pain, shock and suffering is one of the discretion available to the Tribunal and, as the case",

may be, to the Court and the same would depend upon the nature of disability, age of claimant "victims", treatment undertaken, nature of injuries",

which requires any future medication etc. As held in Yadava Kumar (supra), there cannot be exact precision or mathematics in determination of such",

non-pecuniary damages.,

27. Even as per the celebrated judgment of Hon'ble Supreme Court of India in the case of Raj kumar vs. Ajay kumar and Anr reported in 2011 1,

SCC 343, wherein also the Hon'ble Supreme Court of India in lucid manner laid down the law, which is required to be considered by every",

Tribunal and Court while granting compensation in injury cases. The relevant observations and ratio of decision of Raj Kumar (Supra) reads as under:-,

"[5] The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that",

compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of",

awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and",

equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or,

fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be",

compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be",

compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the",

injuries, and his inability to earn as much as he used to earn or could have earned. (See C. K. Subramonia Iyer Vs. T. Kunhikuttan Nair, ",

1970 AIR(SC) 376, R. D. Hattangadi Vs. Pest Control (India) Ltd., 1995 1 SCC 551 and Baker Vs. Willoughby, 1970 AC 467.",

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

Pecuniary damages (Special Damages),

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

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

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

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

(iii) Future medical expenses. Non-pecuniary damages (General Damages) (iv) Damages for pain, suffering and trauma as a consequence",

of the injuries, (v) Loss of amenities (and/or loss of Prospects of marriage.)",

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

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, ",

where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the",

heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of",

amenities (and/ or loss of prospects of marriage) and loss of expectation of life.,

[7] Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of,

actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii)- depends upon specific,

medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages items (iv), (v) and (vi) - ",

involves determination of lump sum amounts with reference to circumstances such as age. nature of injury/deprivation/disability suffered by,

the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines,

for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of",

permanent disability - item (ii)(a). We are concerned with that assessment in this case.,

Assessment of future loss of earnings due to permanent disability.,

[8] Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being.,

Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of",

treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life the",

body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be",

either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could,

perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent",

disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent,

disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are",

enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('Disabilities Act'",

for short). But if any of the disabilities enumerated in section 2(i) of the Disabilities Act are the result of injuries sustained in a motor,

accident, they can be permanent disabilities for the purpose of claiming compensation.".,

[13] Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. 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 ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to,

ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the",

claimant is totally disabled from earning any kind of livelihood, or (ii) 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 (iii) whether he was prevented or 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. "It is not for the Court to say that a person is not fit to earn or can continue to earn his livelihood."

28. At this stage, it is apposite to refer and rely upon decision of Honourable Supreme Court of India in the matter of *Sidram v. Divisional Manager*,

*United India Insurance Co. Ltd. and Another*, (2023) 3 SCC 439, it was observed by this Court thus: -

113. Before we close this matter, it needs to be underlined, as observed in *Pappu Deo Yadav* (supra) that Courts should be mindful that a

serious injury not only permanently imposes physical limitations and disabilities but too often inflicts deep mental and emotional scars upon,

the victim. The attendant trauma of the victim's having to live in a world entirely different from the one she or he is born into, as an invalid,

and with degrees of dependence on others, robbed of complete personal choice or autonomy, should forever be in the judge's mind,

whenever tasked to adjudge compensation claims. Severe limitations inflicted due to such injuries undermine the dignity (which is now,

recognized as an intrinsic component of the right to life Under Article 21) of the individual, thus depriving the person of the essence of the

right to a wholesome life which she or he had lived, hitherto. From the world of the able bodied, the victim is thrust into the world of the

disabled, itself most discomfiting and unsettling. If courts nit-pick and award niggardly amounts oblivious of these circumstances there is

resultant affront to the injured victim. [See: *Pappu Deo Yadav* (supra)]

29. There are various authorities of Hon'ble Supreme Court of India laying down principles while granting amount under the head of pain, shock,

and suffering. We could have referred and relied upon various authorities but we do not burden our judgment with the same, albeit, we are placing

reliance upon recent judgment of Hon'ble Supreme Court of India in the case of *Baby Sakshi Geola vs. Manzoor Ahmad Simon and another*,

reported in 2024 LawSuit (SC) 1111; 2024 INSC 963 in Civil Appeal No. 14290 of 2024. Hon'ble Supreme Court of India, in the case of *Baby*,

*Sakshi Geola* (supra) has revisited law on the issues, which are involved in the present case including pain, shock and suffering, wherein it has

observed as under:-

"[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),

Medical expenses,"Rs.1,98,433/-

Physiotherapy,"Rs.5,91,800/-

Catheter and Diaper etc., "Rs.19,60,704/-

Foldable Electronic Wheelchair,"Rs.1,65,000/-

Total,"Rs.29,15,937

40. Keeping all these factors into account and the ratio laid down by Hon'ble Supreme Court of India in the case of Kajal (supra) and Baby,

Sakshi Greola (supra), we are of the view that no error is committed by Tribunal while awarding aforesaid attendant charges to the claimant.",

#### FUTURE MEDICAL EXPENSES,

41. The claimant has to undergo severe difficulties while performing his routine activity and considering nature of disability as discussed hereinabove,

and since last more than 12 years, he has been incurring medical expenses of Rs.13,616/-per month which is so observed hereinabove, the future",

medical expenses need to be revised and to be paid for accordingly.,

42. The Tribunal has given cogent and sufficient reasons while granting future medical expenses in para 22 of its judgment whereby it has considered,

monthly medical expenses of Rs.15,000/- per month which annually comes to Rs.1,80,000/- and when multiplied by 18, would come to Rs.32,40,000/-.",

Considering the peculiar facts of the present case and evidence so on record, we are of the view that granting of such future medical expenses, which",

is, in fact, being incurred by claimant every month, requires to be accepted and even the Tribunal has not considered future rise in the items of medical",

equipments, which are used by claimant. However, granting the aforesaid amount at one go, would take care of such future increase in such items",

used by claimant.,

#### LOSS OF AMENITIES OF LIFE,

43. The Tribunal has awarded a sum of Rs.5,00,000/-towards loss of amenities and enjoyment of life, considering the fact that claimant is a young man",

aged about 26 years, who became overnight paraplegic, would not only affect his professional career but personal life and having so stated in his",

deposition that due to disability, he is now not able to enjoy his marital life.",

44. At the cost of repetition, we would like to observe that no amount can reinstate the claimant to his original life prior to accident. Granting",

compensation by Tribunal under the respective heads including non pecuniary heads is not based solely upon mathematics but several factors are,

required to be considered and assessed while awarding compensation. Much of calculation necessarily remains in the realm of hypothesis and in that,

region "arithmetic is a good servant but a bad master". According to this Court, when a young man like the claimant, who at beginning of his",

professional and personal carrier, lost charm of his life due to paraplegic situation and also lost control of his bowel and bladder and other disabilities in",

performing routine activities like a young man, the Tribunal and this Court would definitely like to adequately compensate such road accident victim -",

claimant within the reach of law.,

45. Keeping in mind the aforesaid peculiar facts of the matter and span of life, which, ordinarily have by any able bodied man, granting compensation",

of Rs.5,00,000/- towards loss of amenities and enjoyments of life cannot be said to be on a higher side.",

INTEREST,

46. Lastly, as far as the issue of granting 9% interest by Tribunal is concerned, the Tribunal has taken note of year of accident as well as two",

decisions of Hon'ble Supreme Court of India in the case of Dharampal Versus Uttar Pradesh State Road Transport Corporation, reported in 2008",

(12) SCC 208 and Subulaxmi Versus M.D., Tamil Nadu State Transport reported in 2012 (10) SCC 177 and thereby, considered to grant 9% interest.",

As such, granting of interest by Tribunal is a discretion available with the Tribunal. We are of the opinion that considering year of accident and",

pendency of present claim petition and rate of interest awarded by Tribunal at 9%, the same cannot be said to be on higher side, which does not need",

any interference by this Court. No evidence is brought on record by insurance company to substantiate its claim.,

CONCLUSION,

47. Thus, the upshot of our aforesaid discussions, reasons and findings, we are of the view that there is no merit in the appeal.",

47.1 In view of the above, we are of the view that compensation, which has been awarded by Tribunal, cannot be said to be on a higher side.",

According to this Court, keeping all the factors into account and our aforesaid discussions, reasons and findings, we are of the view that no",

interference is required against the impugned judgment and award. The appeal is meritless and requires to be dismissed, hence, the appeal is",

DISMISSED in limine. No order as to costs. Resultantly, the Civil Application is also disposed of.",

47.2 In view of dismissal of the present appeal, it is open for the appellant - insurance company to deposit its share of award before the Tribunal. The",

Tribunal shall disburse/invest the awarded amount as per its award.,

47.3 Records and proceedings be sent back to the Tribunal forthwith.,