

**HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU**

CIMA No. 88/2006

CIMA No. 84/2006 & CMP (C)No. 391/2006

CIMA No.85/2006 & CMP No. 464/2006

CIMA No.86/2006

CIMA No. 87/2006

Cross Appeal (C) No. 18/2006

Cross Appeal (C) No. 8/2006

CIMA No. 89/2006

Date of decision: 13.10.2009

<i>National Insurance Co Ltd.</i>	Vs.	<i>Yash Paul & ors.</i>
<i>National Insurance Co Ltd.</i>	Vs.	<i>Yash Paul & ors.</i>
<i>National Insurance Co Ltd.</i>	Vs.	<i>Kamla Devi & ors.</i>
<i>National Insurance Co Ltd.</i>	Vs.	<i>Naresh Kumar & ors.</i>
<i>National Insurance Co Ltd.</i>	Vs.	<i>Vinay Kumari & ors.</i>
<i>Rekha Chadgal</i>	Vs.	<i>Bachan Lal & Ors.</i>
<i>Vinay Kumari</i>	Vs.	<i>Bachan Lal & Ors.</i>
<i>National Insurance Co Ltd.</i>	Vs.	<i>Rekha Chadgal & ors.</i>

Coram:

MR. JUSTICE J. P. SINGH, JUDGE.

Appearing Counsel:

For Appellant(s) : Mr. C.S.Gupta, Advocate.

For Respondent(s): M/s R.K.Bhatia, Jatinder Choudhary & Manohar Singh, Advocates.

i) Whether approved for reporting in Press/Journal/Media : Yes

ii) Whether to be reported in Digest/Journal : Yes

A Public Service Vehicle bearing Registration No. JK02D-5947
plying on Kathua-Jammu route, met with an accident at Kanthpur,
when because of its driver's loosing control, it collided with a Tipper

bearing Registration No. JK02K-2586, coming from the opposite direction.

The Public Service Vehicle owned by Lakshman Dass and driven by Bachan Lal respondents was insured with the National Insurance Co. Ltd. at the time of the accident.

The injured and the dependants of those who died in the accident, approached the Motor Accidents Claims Tribunal, Jammu, with six Claim Petitions, detail whereof is as follows:-

Claim Petition No. 45, pertains to a compensation claim of Rs. 17, 75,000/-, for the death of Tripta Devi, Yash Paul Claimant's wife and the other claimants Pankaj Chadwal and Partek Chadwal's mother, who had died because of the injuries sustained in the accident.

Claim Petition No. 46, is for compensation of Rs. 2, 25,000/-, for the death of Priyanka, the minor daughter of Yash Pal claimant, who had succumbed to the injuries received in the motor vehicular accident, aforementioned.

Claim Petition No. 892, is for compensation of Rs. 40.00 Lac to Rekha Chadwal, who too received injuries in the accident.

Claim Petition No. 154, is for compensation of Rs 13.50 Lac to Naresh Kumar, Rajesh Kumar and Sonu Devi, sons and daughter of Bishan Dass, who had died because of the injuries sustained in the accident.

Claim Petition No. 73 for compensation amounting to Rs. 14,30,000/- has been lodged by the widow, sons, and daughters of

Sham Lal, who died as a result of the injuries in the accident, referred to herein above.

Claim Petition No. 269 has been filed by Vinay Kumari, seeking compensation of Rs. 25.00 Lac, for the injuries and the loss she has been put to, because of the injuries sustained in the accident.

Contesting the Claim Petitions, aforementioned, the National Insurance Company Ltd. disputed its liability to indemnify the owner of the vehicle before the Tribunal, *inter-alia*, on the ground that vehicle No. JK02D-5947 did not have the Route Permit, at the time of the accident and had been driven against the provisions of the Motor Vehicles Act, 1988, in that, the driver of the offending vehicle was driving the vehicle without valid and effective Driving License.

In order to avoid the possibility of conflicting judgments, the Tribunal held a joint trial of the Claim Petitions on the following issues:-

1. Whether an accident took place on 13-04-2001 due to rash and negligent driving by the driver of the offending vehicle bearing registration No. . JK02D 5947 in which the deceased Rita Devi, Prayanka, Bishan Dass and Sham Lal succumbed to the injuries, whereas the petitioners Yash Paul and Vinay Kumari sustained grievous injuries?

OPP

2. If issue No.1 is proved in affirmative to how much amount of compensation the petitioners are entitled to in each claim petition and from whom? OPP

3. Whether the offending vehicle was being driven against the provisions of Motor Vehicles Act without route permit and fitness certificate and by a driver not holding a valid driving license? OPR

4. Relief?

On evaluation of the evidence, which the Claimants and the Insurance Company produced in the Claim Petitions, to project their respective Claims, and Defence, the Tribunal, decided issue Nos.1 & 2 in favour of the Claimants and issue No.3 against the appellant-Insurance Company allowing the Claim Petitions and sanctioning an amount of Rs 10,19,520/- in favour of the Claimants in Claim Petition No. 45; Rs 1.53 Lac in Claim Petition No. 46; Rs 3,09,896/- in Claim Petition No. 154; Rs 4,83,800/- in Claim Petition No. 73; Rs. 2,25,000/- in Claim Petition No. 269/- and Rs 2,45,105/- in Claim Petition No. 892.

Questioning the Awards of the Motor Accidents Claims Tribunal, Jammu, made on December 23, 2005, in the above mentioned Claim Petitions, the Insurance Company has approached this Court by its CIMA Nos. 84 to 89/2006 seeking setting aside of the Awards and alternatively praying for reduction of the quantum of compensation awarded to the Claimants, questioning it to be excessive.

The claimants in Claim Petition Nos. 892/Claims and 269/Claims, have filed the Cross Appeals seeking modification of the awards by enhancement of Compensation, awarded to them by the Tribunal vide the Awards impugned in the Insurance Company's Appeal Nos. CIMA Nos. 87/ 2006 and 89/ 2006.

I have considered the submissions of learned counsel for the parties, in the light of the evidence and the material placed on the

records of the Motor Accidents Claims Tribunal, Jammu (hereinafter to be referred as “the Tribunal”).

Before dealing with the alternative prayer of the appellant-Insurance Company, the appellant’s main plea, questioning the findings of the Tribunal on issue No. 3, in all the Claim Petitions, on the ground that the appellant-Company was not liable to indemnify the owner, needs to be addressed.

In order to discharge the onus of proof of issue No.3 that the offending vehicle had been driven against the provisions of the Motor Vehicles Act, without Route Permit and Fitness Certificate, and by a driver not holding a valid Driving Licence, the appellant examined Bishan Dass, the driver of the offending vehicle, Subash Chand Thawan, the appellant Company’s Branch Manager, S. Harvinder Singh, Junior Assistant, in the office of ARTO Rajouri, besides S. Kartar Singh, the appellant-Company’s Investigator.

According to Bishan Dass Driver, he was driving Bus bearing Registration No. JK02D-5947 on 03.04.2001, on its route from Jammu to Kathua, when it met with the accident with a Tipper bearing Registration No. JK02K-2586 at Kanthpur. He possessed Driving Licence No. 3470/R/2000, issued by the Licensing Authority, Rajouri, at the time of the accident and the PSV endorsement thereon was made on 11.01.2001. According to him, he had been driving the bus on the basis of the Driving License issued to him on October 23, 2000.

Subash Chand Thawan testified that Bus bearing No. JK02D-5947 was insured with the Company and the driver of the vehicle, supposed to have a valid and effective Driving Licence, was having a License only for Light Transport Vehicle, with PSV endorsement thereon.

S. Harvinder Singh, an official of the Assistant Regional Transport Office, Rajouri, testified to the issuance of Driving License No. 3570/MVD/R to Bishan Dass which was valid up to October 22, 2003. According to him, PSV endorsement on the Driving Licence could be made by any Regional Transport Officer or Assistant Regional Transport Officer.

S. Kartar Singh, the Company's Investigator indicates that Bachan Lal, the driver of the vehicle, had refused to hand over the License to him.

This is the whole evidence which the appellant-Insurance Company has produced in support of issue No.3, and on its strength, it seeks, the finding on issue No.3 in its favour.

The evidence produced by the Insurance Company indicates that though the driver of the offending vehicle, possessed Licence to drive Light Transport Vehicle, yet it carried the endorsement to drive Public Service Vehicle.

What type of Public Service Vehicle, the driver of the Vehicle was licensed to drive, is, however, missing in the appellant Company's evidence. There is no evidence on records either, as to whether the Public Service Vehicle, involved in the accident, was a

Heavy Passenger Motor Vehicle, Medium Passenger Motor Vehicle or a Light Motor Vehicle and as to what was the gross weight of the vehicle in question. The evidence on the records is further silent as to whether or not the gross vehicle weight of the bus in question exceeded 12000 Kilograms.

The Insurance Company has not produced any such evidence in the case, on the basis whereof, the vehicle in question be held belonging to one or the other categories of the Public Service Vehicles which could not have been driven by the driver of the offending vehicle holding a Driving License carrying PSV endorsement, at the time of the accident.

In this view of the matter, I find no sustainable reason to accept the appellant's counsel's submission that the vehicle in question was Heavy Passenger Motor Vehicle and the driver holding License to drive only Light Transport Vehicle, was not having the valid and effective Driving License, in that, in the absence of any evidence by the Company, to prove that the gross vehicle weight of the vehicle, which had caused the accident, exceeded 12000 Kilograms, the vehicle in question cannot be said to be a Heavy Passenger Motor Vehicle.

Even otherwise, keeping in view the definition of the Transport Vehicle and the driver of the offending vehicle possessing a License with PSV endorsement, at the time of the accident, it becomes difficult to accept the Company's plea that the vehicle had been driven against the terms and conditions of the Insurance Policy.

The Judgments cited by the appellant's counsel reported as *New India Assurance Company versus Prabhu Lal*, reported as 2007 AIR SCW, 7677, *National Insurance Company Limited versus Kusum Rai and others*, reported as (2006) 4, SCC 250 and *New India Assurance Company versus Roshan Ven*, reported as (2008) SCC, 253, are distinguishable and have no application to the facts of the present case, where the appellant-Company has failed to lead requisite evidence to prove that the driver of the offending vehicle did not possess valid and effective Driving License to drive the vehicle in question.

Appellant's counsel's submission thus fails and is, accordingly, rejected, affirming the findings of the Tribunal on issue No.3 in the Claim Petitions, holding that the appellant had failed to prove that the driver of the vehicle did not possess valid and effective Driving Licence and the vehicle had been driven against the provisions of the Motor Vehicles Act, at the time of the accident.

Appellant-Company's alternative plea that the quantum of compensation awarded to the claimants, was excessive, needs to be examined, considering each claim, separately, on the basis of the un-rebutted evidence of the claimants, as the appellant-Company has chosen not to lead any evidence in this direction, indicating as to what should be the appropriate compensation for the death of those who were killed and the one who have been injured, in the accident.

Claim Petition No. 45- Yash Paul and others *versus* National Insurance Company Limited and others.

The Claim pertains to compensation for the death of Tripta Devi, who was serving as a Senior Staff Nurse, in Government Medical College Hospital, Jammu at a monthly salary of Rs.10,000/-.

While assessing compensation for the death of Tripta Devi, the Tribunal, after deducting 1/3rd out of her monthly income, taken at Rs.9,629/- after necessary deductions, as expenses which she would spend on herself, had she survived, has determined the monthly dependency of the claimants on her income, at Rs.6,420/-.

Taking the age of her husband as 47 years, the multiplier of '13' has been adopted to assess the loss of dependency at Rs.10,01,520/-.

To the aforementioned amount, assessed as Loss of dependency, a sum of Rs.15,000/- has been awarded for loss of consortium and Rs.3000/- for funeral expenses.

In case this amount was kept in a Fixed Deposit, it would carry a higher sum, by way of interest, than that has been assessed by the Tribunal, as the monthly dependency of the claimants, on the income of the deceased.

In order to assess compensation, as contemplated by Section 168 of the Motor Vehicles Act, regard needs to be had to the interest component, which the Annual Dependency of the family, determined on the basis of its monthly loss on the income of the deceased, may yield, when multiplied with a suitable multiplier, for the age group of

the persons, in the Second Schedule, issued under Section 163-A of the Motor Vehicles Act.

To determine the suitability of the Multiplier, in assessing 'Just Compensation', the Multiplier, as indicated, in the Second Schedule, aforementioned, may be either reduced or increased, ensuring that the sum total of the amount which the claimant gets by such calculation, yields by way of interest, nearly the same amount which the claimant would have got, in all probabilities, had the accident not taken place.

Applying the test aforementioned, the Tribunal, is found to be liberal, in selecting the Multiplier, in that, it appears to have omitted to consider while selecting the Multiplier, the amount which the claimant(s) would get by way of interest, on the compensation assessed by adopting '13' as the Multiplier.

The multiplier adopted by the Tribunal, therefore, needs to be scaled down so that the compensation assessed becomes 'Just Compensation' as contemplated by Section 168 of the Motor Vehicles Act, 1988.

To see that the dependents of the deceased get the same amount which they would have got, had the deceased survived, the Multiplier adopted by the Tribunal, needs to be scaled down to 11.

With the aforesaid Multiplier, the loss of dependency would come to Rs.8,47,440/-.

Adding a sum Rs.15000/- for loss of consortium, another sum of Rs.15000/- for loss of love and affection to the children of the

deceased, and Rs.5000/- as expenses spent on funeral, the total compensation payable to the claimants, would come to Rs.8,82,440/-.

The interest allowed by the Tribunal at the rate of 6% per annum appears to be on the lower side, when considered in the light of the high price rise index, and the lower rate of interest which the claimant(s) would now get, as compared to the one they would have got, had the compensation been paid to them at the time of the accident or immediately thereafter.

Keeping in view the trend noticed in various judgments of Hon'ble Supreme Court of India awarding 7.5% interest on the amount of compensation awarded in compensation cases, arising out of the Motor Vehicular Accidents to the dependents, and in view of the principle underlying Order 41 Rule 33 of the Code of Civil Procedure, it is considered just and proper to modify the rate of interest allowed by the Tribunal, to 7.5% per annum, on Rs.8,82,440/- from the date of the filing of the Petition, till its realization.

The Award made by the Tribunal in Claim Petition No. 45/Claims is, accordingly, modified as Award for an amount of Rs.8,82,440/- along with interest @ 7.5% per annum from the date of the filing of the Petition, till its realization. The claimants shall receive compensation in the ratio as indicated in the Tribunal's Award.

Claim Petition No. 46 Yash Paul versus National Insurance Company Limited and others.

The Tribunal has awarded Rs.1.53 lac as compensation for the death of the claimants' minor daughter Priyanka, aged 10/11 years.

For the reasons stated by the Tribunal, and in view of the law laid-down by Hon'ble Supreme Court of India in *Manju Devi and another versus Musafar Paswan and another*, reported as 2005 ACJ 99, awarding Rs.2,25,000/- as compensation for the death of a 13 years old boy in a motor vehicular accident, taking annual income of the non-earning minor at Rs.15,000/-, I do not find any merit in the appellant's plea for reduction of the quantum of the awarded compensation, which is already on the lower side.

Appellant's learned counsel, when confronted with the law laid-down in Manju Devi's case, had fairly conceded that the amount of compensation awarded may not warrant interference.

Adopting the same principle for award of interest on the compensation amount, as applied in Claim Petition No. 45/Claims, the claimant will be entitled to interest @ 7.5% per annum on the compensation amount.

Accordingly, the Tribunal's Award in Claim Petition No.46/Claims is modified as Award for an amount of Rs.1.53 lac along with interest at the rate of 7.5% per annum.

Claim Petition No. 154 Naresh Kumar and others versus National Insurance Company Limited and others.

Claimants-Naresh Kumar, Rajesh Kumar and Sonu Devi have filed this Petition seeking compensation for the death of their father, who was a mason by profession earning Rs.200/- per day therefrom, besides rearing buffalos and earning additionally by selling milk, to sustain his family. Taking his monthly income at Rs.4,500/- and

deducting Rs.1,124/- therefrom as the amount which the deceased would have spent on him, had he survived, besides an amount of Rs.2000/- per month for his transport and other out of pocket expenses, the monthly dependency of his family members on his income has been assessed at Rs.3,176/-. The annual loss to the family has been taken by the Tribunal at Rs.38,112/-.

Keeping in view the age of the deceased as 55 years, the Tribunal has adopted 8, the prescribed multiplier under Second Schedule of the Motor Vehicles Act, assessing loss of dependency at Rs.3,04,896/-, besides Rs.5000/- for the funeral expenses. It has assessed total compensation payable to the claimants for the death of Bishan Dass at Rs.3,09,896/-.

The appellant's counsel's submission that the compensation awarded by the Tribunal to the claimants for the death of Bishan Dass is excessive, is found unsustainable, as no evidence had been led by the appellant to rebut the evidence produced by the claimants to sustain their plea that the deceased was a mason and had been generating additional income too by selling milk besides the one he would earn from his profession as mason.

The Tribunal has adopted 8 as the Multiplier to assess the loss of dependency to the claimants taking the age of the deceased as 55 years which is, however, against the records, because the age of the deceased, as indicated in the Claim Petition is 50 years and not 55 years, as noticed by the Tribunal.

The compensation awarded by the Tribunal, being already on the lower side, no interference therewith, as sought for by the appellant's counsel may thus be warranted, barring, however, the rate of interest which needs to be allowed, on the lines similar to the one adopted in Claim Petition No. 45/Claims.

The Award of the Tribunal is, accordingly, modified as Award for an amount of Rs.3,09,896/- along with interest @ 7.5% per annum. The claimants shall receive compensation in the ratio as indicated in the Tribunal's Award.

Claim Petition No. 73 Kamla Devi and others versus National Insurance Company Limited and others.

This Claim Petition filed by Kamla Devi, aged 26 years, the widow, Master Bua Ditta, aged 5 years, the son, Ms. Shettu Devi, aged 3 years, the daughter; Gian Chand, aged 54 years, the father and Ms. Urmila Devi, aged 20 years, the sister of Sham Lal, who had died in the accident caused by the rash and negligent driving of Vehicle No. JK02D-5947 by Bachan Lal, driver, seeking an Award of Rs. 14,30,000/- as compensation for the death of Sham Lal, has been allowed, by the Tribunal, granting an amount of Rs.4,83,800/- as compensation, taking the monthly income of the deceased, who was working as Salesman at Bhagat Medical Hall, Samba, as testified by Rasal Chand, the owner of Bhagat Medical Hall, Samba, at Rs.3000/-.

Deducting the amount that he had been spending on himself, the dependency of the family on his income has been assessed by the Tribunal at Rs.2,200/-.

Keeping in view the large number of the dependents, including the young widow and minor son and daughter of the deceased, the Tribunal has considered it appropriate to adopt the same multiplier of 17 which is prescribed in the Second Schedule issued under Section 163-A of the Motor Vehicles Act to assess the 'Just Compensation' for the death of Sham Lal.

According to the appellant's learned counsel, the appropriate multiplier in this case should be 15 because the amount determined as annual dependency of the family on the income of the deceased, when multiplied with 15, would fetch, by way of interest, nearly the same amount which the deceased is stated to have been spending on his family and in this view of the matter, the loss of dependency so determined would be 'Just Compensation' to the claimants.

I would have agreed with the appellant's learned counsel, but keeping in view the tender age of the two dependents aged 5 years and 3 years and the whole life which the young widow, who is not possessed of any source of income, has to lead, I am of the opinion that '16' should have been the appropriate Multiplier in the case to assess the loss of the dependency of the family on the income of the deceased.

Accordingly, the loss of dependency of the claimants, calculated by taking '16' as the Multiplier would come to Rs.4,22,400/-. Adding an amount of Rs. 15000/- for loss of consortium, Rs.15000/- for loss to estate and Rs.5000/- as funeral expenses, the total amount payable to the claimants by way of

compensation in the ratio indicated in the Tribunal's Award would come to Rs.4,57,400/-.

The interest as allowed in other cases arising out of the same accident, in which Sham Lal had died, is adopted in this case as well. The awarded amount, aforementioned, shall therefore carry interest @ 7.5% per annum.

The claimants shall receive compensation in the ratio as indicated in the Tribunal's Award.

Claim Petition No. 269 Vinay Kumari versus National Insurance Company Limited and others.

Ms. Vinay Kumari, aged 15 years, suffered grievous injuries in the accident which, *inter alia*, resulted into disfiguration of her face, loss of teeth, damage to the Jaws, besides the permanent disability to talk effectively and eat comfortably. She claimed Rs.25,00,000/- as compensation.

The Tribunal, while appreciating the evidence produced by the claimant in the case, which included the statements of Dr. Ajay Misri and Dr. Vinay Gupta, came to the conclusion that the accident had resulted in disfiguration of the claimant's face besides loss of teeth. The disfiguration was held to be permanent. It was further found that the claimant had to undergo lip surgery besides the treatment for inter-maxillary fixation. The Tribunal accordingly awarded an amount of Rs.2,25,000/- as compensation to the claimant, break up whereof is as under:-

1. For Medical Expenses	:	Rs.30,000/-
2. Disfiguration	:	Rs.30,000/-
3. Loss of studies	:	Rs.15,000/-
4. Pain and suffering	:	Rs.75,000/-
5. Loss of amenities of life	:	Rs.75,000/-
Total	:	<u>Rs.2,25,000/-</u>

Appellant's learned counsel, questions the compensation awarded by the Tribunal as excessive, whereas the claimant's counsel, supporting the Cross Appeal seeks enhancement in the amount of compensation *inter alia* on the ground that no amount has been allowed by the Tribunal for the Plastic Surgery which the claimant has to undergo, and that the amount allowed for fracture of Jaws and number of teeth as loss of amenities of life, is on the lower side, besides seeking 7.5% interest on the compensation allowable under law to the claimant.

I have considered the submissions of learned counsel for the parties and find sufficient force in the claimant's counsel's submission, in that, looking to the nature of the injuries and the pain and suffering which the young girl has to suffer all through her life, the compensation awarded by the Tribunal is found to be on the lower side. Amount claimed for undergoing Plastic Surgery appears to have escaped notice of the Tribunal.

The claimant has proved by leading cogent evidence that she has lost 10 teeth, besides suffering injury to the Jaws and lip, resulting into the disfiguration of her face, which required Plastic Surgery. She has claimed Rs. 3 lac as compensation to meet the expenses required for undergoing Plastic Surgery.

Although the petitioner has not led any evidence as to what exact amount would she require for Plastic Surgery, yet taking judicial notice, of the amount which one may have to spend, these days, on such type of operation, an amount of Rs. 50,000/- on the basis of guess work, is considered appropriate for its award to the claimant for undergoing Plastic Surgery, in the facts and circumstances of the case.

The amount awarded for pain and suffering and loss of amenities of life too is found to be on the lower side, keeping in view the age of the claimant, the effect that the dis-figuration may have on the future of an unmarried girl, in the Indian Society and the extent of pain and suffering that the young girl has to pass through every day, an amount of Rs.25,000/- each needs to be added to the compensation awarded by the Tribunal for pain and suffering and loss of the amenities of life.

Thus calculated, the claimant becomes entitled to compensation amounting to Rs.3,25,000/-, break up whereof would be as follows:-

1. For Medical Expenses	: Rs.30,000/-
2. Dis-figuration	: Rs.30,000/-
3. Loss of studies	: Rs.15,000/-
4. Pain and suffering	: Rs.75,000/- + 25,000/-
5. Loss of amenities of life	: Rs.75,000/- + 25,000/-
6. Expenses for undergoing Plastic Surgery	: Rs.50,000/-
Total	<u>:Rs.3,25,000/-</u>

For the reasons adopted in Claim Petition No. 45/ Claims, the Compensation afore-mentioned shall carry interest @ 7.5% per annum.

The Award of the Tribunal is, accordingly, stand modified as Award for an amount of Rs.3,25,000/- along with interest at the rate of 7.5% per annum.

Claim Petition No. 892 Rekha Chadgal versus National Insurance Company Limited and others.

The claimant in this case was a student of Master's Degree Course in Library Science when while travelling in the bus in question, which met with the accident at Kanthpur, she received grievous injuries resulting in loss of vision to her both eyes. On being operated, she could regain vision only in her left eye and that too after six months. She suffered grievous crush injuries on the right side of her head, damaging the nerves which resulted in complete loss of her smelling power. With depressed fractures on her forehead and right cheek, she suffered disfiguration of her face.

According to the Doctors, who had treated her, she had been advised several operations besides for undergoing Plastic Surgery. She accordingly lodged a Claim of Compensation for Rs.40,00,000/-.

After finding the case set up by the claimant to have been substantiated by the Doctors she had produced in the case, the Tribunal awarded an amount of Rs.2,45,105/- as compensation to the claimant.

Appellant's learned counsel says that the compensation awarded to the claimant is on the higher side whereas the claimant's counsel, supporting the claimant's Cross Appeal No. 18/06 says that the compensation awarded by the Tribunal was not commensurate to

the damage which the claimant has suffered because of the accident. According to the learned counsel, the claimant is entitled to be awarded compensation additionally for undergoing Plastic Surgery and for future medical treatment and the compensation awarded for pain and suffering and loss of amenities of life too needs to be raised. Rate of interest allowed by the Tribunal has been sought to be raised on the basis of the higher rate of interest allowed by Hon'ble Supreme Court of India in compensation cases.

I have considered the submissions of learned counsel for the parties.

Finding no evidence or material in rebuttal to the evidence led by the claimant proving her to have suffered disfiguration of her face and loosing her smelling power, I am of the view that she too, like the claimant in Claim Petition No. 269/Claims is entitled to be awarded additional compensation for the amount required for undergoing Plastic Surgery which claim of hers has escaped the notice of the Tribunal, besides raising the amount of compensation awarded for pain and suffering and loss of amenities of life.

Accordingly, an additional claim of Rs.50,000/- for Plastic Surgery and Rs.1 lac each for pain and suffering and loss of amenities of life, in view of her loosing the smelling power and vision of one eye besides having been put to ancillary discomforts as the consequence of the injuries suffered in the accident, would serve as 'Just Compensation' to the claimant for the injuries suffered by her in the accident.

The Award of the Tribunal shall accordingly stand modified as Award for an amount of Rs.4,35,105/- and would carry interest @ 7.5% per annum as allowed in Claim Petition No. 45/Claims.

In view of the above discussion, the Awards made by the Tribunal in Claim Petition Nos. 45, 46, 154, 73, 269, 892 shall stand modified as indicated in the Judgment.

The Appeals and the Cross Appeals are, accordingly, disposed of on the above terms.

A copy of the Judgment be placed on each file.

**(J.P.Singh)
Judge**

Jammu:
October 13, 2009.
Pawan Chopra