IN THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

MAC App. No.11 of 2019

The Branch Manager,
National Insurance Company Limited,
having its office at 31-A, National Highway,
Opposite Tourism Department,
P.O. & P.S. Gangtok, East Sikkim.

...Appellant/Insurer

Versus

1. Mr. Bishal Chettri,
Son of Late Kedar Nath Chettri,
Resident of Sinek, Tashiding,
P.O. Tashiding & P.S. Gayzing,
West Sikkim.

…Respondent/Claimant

2. Mrs. Tulsha Chettri,
Wife of Mr. Nanda Lall Chettri,
Resident of Tashiding Bazar,
P.O. Tashiding & P.S. Gayzing.

…Respondent/Owner

BEFORE
HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, C.J.

For Appellant : Mr. Sushant Subba, Advocate.

For Respondent No. 1 : Mr. N. Rai, Senior Advocate with Mr. K.B. Chettri, Advocate.

For Respondent No. 2 : Mr. Sishir Mothay, Advocate.

Date of Hearing : 13.03.2020.

Date of Judgment : 23.03.2020.

JUDGMENT AND ORDER

Heard Mr. Sushant Subba, learned counsel appearing for the appellant. Also heard Mr. N. Rai, learned Senior Counsel assisted by Mr. K.B. Chettri, appearing for respondent no.1 and Mr. Sishir Mothay, learned counsel appearing for respondent no. 2.

2. This appeal is presented by the National Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988, for short, the Act,

against the judgment and order dated 25.04.2019 passed by the learned Motor Accidents Claims Tribunal, East Sikkim, for short, Tribunal, in MACT Case No. 30 of 2018.

3. The learned Tribunal, on the basis of evidence on record, more particularly, Exhibit-11, held that injured was having an annual income of Rs.1,20,000/-. It was also held that he was 22 years of age at the time of accident. On the basis of Exhbibit-9 it was also held that he suffered from 80% disablement. Accordingly, the learned Tribunal awarded compensation by calculating as follows:

1.	Annual income of the claimant	Rs. 1,20,000/-
2.	40% added as future prospect	Rs. 48,000/-
3.	Net income of the deceased	Rs. 1,68,000/-
4.	Multiplier is taken as 17 as per the second schedule of the Act Rs.1,68,000 x 17	Rs.28,56,000/-
5.	Medical expenses (supported by bills and cash memos)	Rs. 1,58,933/-
6.	Pain and suffering	Rs. 25,000/-
7.	Loss of amenities	Rs. 50,000/-
	Total	Rs.30,89,933/-

4. Accordingly, it was ordered that Branch Manager, National Insurance Company Limited shall pay the compensation of Rs.30,89,933/-(Rupees thirty lakhs eighty nine thousand nine hundred thirty three) only with interest @ 10% per annum on the said sum to the claimant from the date of filing of the claim petition i.e. 06.06.2018 till full and final payment.

5. Mr. Subba has submitted that as the claim petition was filed under Section 166 of the Act, it was necessary for the claimant to have proved that

he had sustained injury arising out of a vehicular accident as a result of rash and negligent driving. It is contended by him that there was no evidence whatsoever regarding the accident having occurred due to rash and negligent driving and therefore, learned Tribunal committed manifest error of law in passing the impugned Judgment awarding a sum of Rs. 30,89,933/- to the claimant. He submits that in the attending facts and circumstances and having regard to the evidence on record, the learned Tribunal ought to have awarded compensation under Section 163A of the Act, as under the aforesaid Section, the claimant is not required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person. He submits that the claimant, at the relevant time, was 22 years of age and, therefore, following the Second Schedule of the Act, the learned Tribunal, taking the upper limit of Rs.40,000/- as annual income of the injured, could have awarded a sum of Rs.7,60,000/-.

6. On a specific query made by the Court as to whether any dispute is raised with regard to annual income and medical expenses as awarded by the learned Tribunal, he submitted that medical expenses as awarded is not disputed by him. He has also not disputed Exhibit-9, wherein it is certified that the claimant is suffering from paraplegia and has 80% permanent physical impairment. He has also submitted that though in the grounds of memo of appeal, annual income certificate of injured claimant was disputed, he is not disputing the finding arrived at by the learned Tribunal with regard to the income of the injured.

7. In support of his submissions, Mr. Subba has relied on decisions of the Hon'ble Supreme Court in the cases of ***Minu B. Mehta and Another vs. Balkrishna Ramchandra Nayan and Another***, reported in ***(1977) 2 SCC***

441 and ***Oriental Insurance Co. Ltd. vs. Meena Variyal and Others***, reported in ***(2007) 5 SCC 428***.

8. Mr. Rai, on the other hand, has submitted that claimant has proved rash and negligent driving on the part of the driver of the vehicle and therefore, there is no merit in the contention advanced by Mr. Subba that the claimant had failed to prove rash and negligent driving. It is submitted by him that whether or not there is sufficient evidence regarding rash and negligent driving has to be judged on the touchstone of preponderance of probability and approach of the Tribunal or Court ought not to be to find fault with non-examination of witnesses.

9. Learned Senior Counsel submits that, in fact, the learned Tribunal, though enjoined in law to award just compensation, has failed to award just compensation and therefore, although the respondent no. 1/claimant has not filed any appeal or cross objection, there is no embargo or impediment on the part of this Court to enhance the compensation awarded, when the cause of justice so demands.

10. While not disputing the income of the claimant assessed by the learned Tribunal as well as the amount awarded on the head of 'medical expenses', he submits that adoption of multiplier of 17 by the learned Tribunal is not in consonance with the principle laid down in the case of ***Sarla Verma (Smt) and Others vs. Delhi Transport Corporation and Another***, reported in ***(2009) 6 SCC 121*** and the learned Tribunal ought to have taken 18 as the multiplier. He submits that if it was so taken, amount of compensation awarded would have been Rs.30,24,000/- instead of Rs.28,56,000/-as awarded by the learned Tribunal.

11. He further submits that though the claimant had prayed for a sum of Rs.1,00,000/- each on account of 'pain and suffering' and 'loss of amenities', without any discussion, amounts of Rs.25,000/- and Rs.50,000/-,

respectively, had been awarded on the about two counts. It is submitted by him that the evidence on record demonstrates that the claimant cannot move about without the help or assistance of others as he is suffering from 80% disability and that his condition will remain the same in the years to come, award of Rs.25,000/- and Rs.50,000/- on account of 'pain and suffering' and 'loss of amenities', respectively, is grossly on the lower side and this Court may consider to enhance the same so that the injured gets just compensation. In support of his submissions, learned Senior Counsel places reliance on ***Minu B. Mehta*** (supra), ***Oriental Insurance Co. Ltd. vs. Hansrajbhai V. Kodala and others***, reported in ***(2001) 5 SCC 175***, ***Meena Variyal*** (supra), ***Andhra Pradesh State Road Transport Corporation, represented by its General Manager and Another vs. M. Ramadevi and Others***, reported in ***(2008) 3 SCC 379***, ***Ningamma and Another vs. United India Insurance Co. Ltd.***, reported in ***(2009) 13 SCC 710***, ***Dulcina Fernandes and Others vs. Joaquim Xavier Cruz and Another***, reported in ***AIR 2014 SC 58***, ***Sandeep Khanuja vs. Atul Dande and Another***, reported in ***(2017) 3 SCC 351***, ***National Insurance Co. Ltd. vs. Pranay Sethi and Others***, reported in ***(2017) 16 SCC 680***, ***National Insurance Co. Ltd. vs. Darshana Devi***, reported ***2017 SCC OnLine HP 888***, ***Jagdish vs. Mohan and Others***, reported in ***(2018) 4 SCC 571***, ***Cholamandalam MS General Insurance Co. Ltd. vs. Sumitra***, reported in ***2018 SCC OnLine Bom 140*** and ***Sunita and Others vs. Rajasthan State Road Transport Corporation and Another***, reported in ***AIR 2019 SC 994.***

12. Mr. Mothay submits that there is no violation of the terms and conditions of the insurance policy and all the documents relating to the vehicle were valid and effective. He further submits that in the attending

facts and circumstances, it will be the Insurance Company which has to pay the compensation.

13. I have considered the submissions of the learned counsel for the parties and perused the materials on record.

14. In view of the submissions of the learned Counsel for the parties, essentially, three questions arise for consideration in this appeal:-

(i) Whether the claimant has been able to establish that the vehicular accident occurred due to rash and negligent driving?

(ii) Whether in absence of an appeal or a cross objection, it will be permissible to enhance compensation to the injured victim?

(iii) If the answer to the question no. (ii) is in the affirmative, whether any case is made out for enhancing compensation on the head of 'pain and suffering' and 'loss of amenities'?

15. In the claim petition, the claimant has stated that the ill-fated vehicle was driven by his cousin brother Nitesh Chettri and that the injury suffered by him was because of the accident that occurred due to rash and negligent driving of the vehicle bearing No.SK-02P-1110 on 03.01.2017. He was admitted into hospital on 09.03.2017 and was discharged on 29.03.2017. He had suffered spinal injury (Paraplegia), as a result of which he is bed-ridden and unable to stand and walk at all and his percentage of disability was assessed at 80%. He needs assistance of helper round the clock and he cannot move without the support of another person. He was self employed, running a poultry farm and supplying broom, orange, ginger and vegetables and earning Rs. 10,000/- per month.

16. In the claim petition, age of the injured is written as 22 years in two places and 23 years in one place. It is stated that the he had filed a petition under Section 173 (8) CrPC for reinvestigation before the Court of learned Judicial Magistrate at Soreng, objecting to Final Report submitted by the

Investigating Officer wherein it was stated that the vehicle was not driven in a rash and negligent manner and that the accident occurred when the driver drove the vehicle towards left side of the road in order to avert a collision with a truck which had come from opposite side. On such petition, the Court had directed the Investigating Officer to reinvestigate the case. A sum of Rs.42,68,496/- was claimed as the compensation amount. Out of the aforesaid amount, the claimant had claimed Rs.32,40,000/- on account of 'loss of earning' which was put under a head styled as 'A' and a sum of Rs. 12,44,496/- on various heads such as 'pain and suffering', 'future medical expenses', 'loss of amenities', 'medical expenses' etc. under heading 'B'. However, the calculation with regard to the amount of compensation claimed is not correct and addition of heads 'A' and 'B' actually adds up to Rs.44,84,496/-.

17. In ***Minu B. Mehta*** (supra), the Hon'ble Supreme Court was considering a question as to whether in a claim for compensation under the Motor Vehicles Act, 1939, proof of negligence was essential to support a claim for compensation. It was noted that the liability of the owner of a car to compensate the victim in a car accident due to negligent driving of his servant is based on the law of tort. The Hon'ble Supreme Court observed the argument canvassed that the Tribunal is entitled to award compensation which appears to be just when it is satisfied on proof of injury to a third party arising out of the use of a vehicle on a public place without proof of negligence, if accepted would lead to strange result. The Hon'ble Supreme Court held that proof of negligence remained the lynchpin to recover compensation and proof of negligence is necessary before the owner or the insurance company could be held to be liable for the payment of compensation in a motor accident claims case.

18. While enacting the Motor Vehicles Act, 1988, the Legislature introduced Section 163-A providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under sub-section (1) of Section 163-A of the Act, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned. If one proceeds under Section 163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle.

19. In ***Meena Variyal*** (supra), the Hon'ble Supreme Court had observed that the observations in ***Minu B. Mehta*** (supra) governs the claim under Section 166 of the Act and they are inapplicable when the claim is made under Section 163-A of the Act.

20. In ***Hansrajbhai*** (supra), the Hon'ble Supreme Court had observed that purpose of Section 163-A and the Second Schedule, laying down a structured formula, is to avoid long term litigation and delay in payment of compensation to the victim or his heirs who are in dire need of reliefs. It is also noted that benefit of Section 163-A can be availed of by the claimant by restricting his claim on the basis of income at a slab of Rs.40,000/-, which is the highest slab in the Second Schedule which indicates that the legislature wanted to give benefit of no-fault liability to a certain limit only.

21. Under the Act, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Though not stated in Section 166 of the Act, in view of Section 163-A, it has to be understood that under Section 166 of the Act, the claimant has to establish proof of negligence.

22. To establish the case, the claimant had examined himself and had submitted his evidence on affidavit. The claimant was cross-examined on commission. Though the appellant and the present respondent no.2 had submitted their respective written objection, no evidence was led by them.

23. In his evidence the claimant stated that he was 23 years old at the time of the accident. He also exhibited birth certificate as Exhibit-12 wherein the date of birth was recorded as 27.10.1994. Going by Exhibit-12, it is evident that the age of the injured was 23 years at the time of accident.

24. In the aforesaid factual matrix, it is inexplicable how the learned Tribunal, at paragraph 28 of the judgment, could record that 'admittedly' the 'deceased' was aged about 22 years. It is to be noted that at paragraphs 27 and 28 of the judgment, the learned Tribunal repeatedly referred to the injured as deceased. A higher degree of punctiliousness is expected while writing a judgment.

25. In ***Sunita*** (supra), the Hon'ble Supreme Court had observed that while deciding cases arising out of motor vehicle cases, the claimants are merely to establish their case on the touchstone of preponderance of probability and standard of proof beyond reasonable doubt cannot be applied. In ***Dulcina Fernandes*** (supra), the Hon'ble Supreme Court reiterated that plea of negligence on the part of the driver of the offending vehicle has to be decided by the Tribunal on the touchstone of preponderance of probability and certainly not on the basis of proof beyond reasonable doubt.

26. In his evidence the claimant had stated that the vehicle met with the accident due to rash and negligent act of the driver as he had lost control over the vehicle due to over speed and had failed to negotiate with the curve of the road. He reiterated that he sustained major spinal injury resulting in Paraplegia (paralysis of the legs and lower body), due to which he cannot perform any work on his own, cannot stand and move at all, has to take the help of a helper even to attend to call of nature and that till his death he would need a helper to survive. He had exhibited a report submitted by Station House Officer of Nayabazaar Police Station dated 20.06.2017 to the learned Judicial Magistrate, Soreng Sub-Division as Exhibit-20. In the said report, Station House Officer of Nayabazaar Police Station stated that the vehicle in question had tumbled down approximately 250 feet from the road level. A perusal of the cross-examination of the claimant goes to show that only a suggestion that the accident did not occur due to rash and negligent driving on the part of the driver was given. The claimant was not even confronted with Exhibit-20.

27. Materials on record amply demonstrate the hapless condition to which the Claimant had been placed and in a circumstance where the claimant is totally immobile, his inability to adduce the evidence of any other witness including an occupant of the car cannot be held against the claimant. The fact that the vehicle had tumbled down 250 feet from the road leads to an inference of rash and negligent driving on the part of the driver. As noted earlier, the appellant had not led any evidence. I am of the considered opinion that it must be held that there is sufficient evidence on record to hold that the accident had occurred due to rash and negligent driving.

28. In ***Jagdish*** (supra), the Hon'ble Supreme Court observed that the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Noting that injured was even unable to eat

or to attend to a visit to the toilet without the assistance of an attendant, it was held that it would be denial of justice to compute the disability at 90% and held that the disability is total. The Hon'ble Supreme Court held that compensation must provide a realistic recompense for the pain of loss and the trauma of suffering and awards of compensation, while not being law's doles, in a discourse of rights, they constitute entitlements under law.

29. In ***Ningamma*** (supra), the Hon'ble Supreme Court held that Section 166 deals with 'just compensation' and even if in the pleadings no specific claim was made under Section 166 of the Act, a party should not be deprived of getting 'just compensation' in case the claimant is able to make out a case under any provision of law. It was held that the Act being a beneficial and welfare legislation, the Court is duty-bound and entitled to award 'just compensation' irrespective of the fact as to whether any plea in that behalf was raised by the claimant or not. It was also held that there is no restriction in the Act that the Tribunal/Court cannot award compensation amount exceeding the claimed amount and the function of the Tribunal/Court is to award 'just compensation' which is reasonable on the basis of evidence produced on record.

30. In ***Sandeep Khanuja*** (supra), the injured was a Chartered Accountant and he had suffered 70% permanent disability of his legs. The learned Tribunal had taken a view that the same would not impact in his earning capacity and while arriving at the compensation amount, multiplier method was not adopted. Having regard to the nature of injuries suffered by the claimant, the Hon'ble Supreme Court observed that there is a definite loss of earning capacity of the claimant and accordingly, adopted a multiplier of 17 as the age of the injured was of 25 years for the purpose of computing compensation.

31. In ***Sarala Verma*** (supra), the Hon'ble Supreme Court at paragraphs 30, 31, 32 and 42 held as follows:

"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra [(1996) 4 SCC 362] , the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be

treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

x x x

42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335], Trilok Chandra [(1996) 4 SCC 362] and Charlie [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657]), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

32. In ***Pranay Sethi*** (supra), the Constitution Bench of the Supreme Court at paragraph-59 recorded the conclusions 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 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."

33. In ***Sumitra*** (supra), relying upon an earlier judgment of the Bombay High Court in the case of State of Maharashtra vs. Smt. Kamaladevi Kailashchandra Kaushal, the Bombay High Court reiterated that even in absence of an appeal or cross-objection on the part of the claimants, the Appeal Court is entitled to award 'just compensation' to the claimants. While arriving at the aforesaid conclusion, the Court was guided by the consideration of claimants getting 'just compensation'. In ***Darshana Devi*** (supra), the Himachal Pradesh High Court had also taken the view that in absence of an independent appeal or a cross-objection, the Court is competent to enhance the compensation award so as to ensure award of 'just compensation' in favour of the claimants.

34. Factual matrix in ***Ramadevi*** (supra) was that the Tribunal took the age of the deceased to be 40 years and take home pay was taken to be Rs.2,367/-. Applying the multiplier of 12 the entitlement was fixed at Rs.2,16,000/-. In addition, Rs.15,000/- for non-pecuniary damages and

Rs.5,000/- for loss of consortium were granted. On an appeal by the Corporation, the High Court took the view that pay of the deceased was Rs.3,536/- and accordingly, annual contribution was fixed at Rs.27,996/-. Accordingly, entitlement was fixed at Rs.3,35,952/- to which was added the sum of Rs.20,000/- additionally awarded by the Tribunal. Before the Hon'ble Supreme Court contention was urged that when there was no appeal by the claimants, in the appeal filed by the Corporation, the High Court could not have enhanced the amount of compensation. The Hon'ble Supreme Court in the aforesaid context referred to paragraph 21 of ***Nagappa vs. Gurudayal Singh,*** reported in ***(2003) 2 SCC 274***, which is as follows:

> *"21. For the reasons discussed above, in our view, under the MV Act, there is no restriction that the Tribunal/court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/court is to award "just" compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-section (4) to Section 166, even the report submitted to the Claims Tribunal under sub-section (6) of Section 158 can be treated as an application for compensation under the MV Act. If required, in appropriate cases, the court may permit amendment to the claim petition."*

35. After the 1976 Amendment of Order 41 Rule 22 of the Code of Civil Procedure, 1908, the insertion made in sub-rule (1) makes it permissible for respondent to file a cross-objection against a finding. The learned Tribunal did not record any adverse finding against the claimant. Surely, the claimant could have preferred an appeal seeking enhancement of the amount on the grounds urged by Mr. Rai during the course of his argument. The Act being a

beneficial and welfare legislation, rules of procedure may not come in the way to award 'just compensation' to the claimant even in an appeal filed by the Insurance Company or by the Owner on the basis of evidence. It is to be noted that function of the Court is to award 'just compensation'. It is on the aforesaid premise, Bombay and Himachal Pradesh High Courts had held that in absence of appeal or cross-objection on the part of the claimant, the Appellate Court is entitled to enhance the compensation amount so that the claimant receives 'just compensation'. The decision in ***Ramadevi*** (supra), also tends to support the aforesaid view. Therefore, I am of the considered opinion that this Court can enhance the amount of compensation in this appeal of the Insurance Company if the materials on record justify such enhancement with the object of ensuring that the claimant receives 'just compensation'.

36. Let me now examine as to whether in view of submissions of Mr. Rai, any enhancement is called for.

37. In ***Pranay Sethi*** (supra), the Constitution Bench of the Supreme Court held that selection of multiplier shall be as indicated in the Table in ***Sarla Verma*** (supra) read with para 42 of that judgment. The operative multiplier as laid down therein for the age groups 15 to 20 and 21 to 25 years is 18. It is not significant whether the injured was 22 years or 23 years at the time of accident for the purpose of selection of multiplier as for both these years, multiplier remains same, which is 18. The learned Tribunal, evidently, had adopted a lower multiplier when it applied multiplier of 17. In order to grant 'just compensation' to the claimant, this Court has to apply multiplier of 18.

38. Though the claimant had prayed for a sum of Rs.1,00,000/- each on account of 'pain and suffering' and 'loss of amenities', the learned Tribunal awarded Rs.25,000/- for 'pain and suffering' and Rs.50,000/- for 'loss of

amenities'. The nature of the injury suffered by the claimant and the consequences ensuing there from has already been noticed in an earlier part of the judgment. A young man of 22 years has to be dependent on someone else for every little single thing for his entire life and therefore, I am of the considered opinion that the claimant is entitled to Rs.1,00,000/- each on account of 'pain and suffering' and 'loss of amenities'.

39. Accordingly, amount of compensation is computed as follows: -

1.	(Rs.1,68,000 x 18)	Rs.30,24,000/-
2.	Medical expenses	Rs. 1,58,933/-
3.	Pain and suffering	Rs. 1,00,000/-
4.	Loss of amenities	Rs. 1,00,000/-
	Total	Rs.33,82,933/-

40. The amount of Rs.33,82,933/- (Rupees thirty three lakhs eighty two thousand nine hundred thirty three) only shall be paid by the Insurance Company with interest @ 10% per annum to the claimant from date of filing of the claim petition i.e. 06.06.2018 till full and final payment.

40. Appeal stands disposed of.

41. Records of the Tribunal be sent back.

Chief Justice

jk/