



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 21<sup>st</sup> May, 2024

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

MAC App. No.09 of 2023

**Appellant** : The Branch Manager, National Insurance Company Limited

**versus**

**Respondents** : Yoel Subba and Others

Appeal under Section 173 of the Motor Vehicles Act, 1988

**Appearance**

Ms. Babita Kumari, Advocate for the Appellant.

Mr. Tarun Choudhary, Advocate for the Respondent No.1.

Mr. Raj Kumar Chettri, Advocate for the Respondent No.2.

Mr. Gautam Tamang, Respondent No.3 in person.

**JUDGMENT**

Meenakshi Madan Rai, J.

**1.** The quantum of compensation amounting to ₹ 91,52,115/- (Rupees ninety one lakhs, fifty two thousand, one hundred and fifteen) only, awarded by the Learned Motor Accidents Claims Tribunal, Namchi, Sikkim (for short, "MACT"), in MACT Case No.11 of 2019, dated 30-11-2022 (*Yoel Subba vs. National Insurance Company Limited and Others*), is assailed in this instant appeal as being excessive and exorbitant.

**2.** The facts as per the Respondent No.1 (the Claimant before the Learned MACT) are that, on the midnight of 29-03-2018 he was hit by a Tata Truck, bearing registration no.SK 04 D 0685, near Hotel Cilantro, Bhanjyang Road, Namchi, South Sikkim, upon which he sustained head injury and was rendered unconscious at the spot. He was evacuated to the North Bengal Neuro Centre Pvt.



Ltd., Siliguri and was on Ventilator support from 29-03-2018 which was removed on 07-04-2018 after a brain surgery was conducted. That, tracheostomy was done on 14-04-2018 and on 19-04-2018 the Claimant was shifted to the HDU. Due to the accident, he sustained "*head injury with multiple deep seated hemorrhagic contusions with right sided pneumothorax*". Following treatment and prolonged sessions of physiotherapy, he was discharged from the Centre on 18-07-2018 and advised to continue medication. Consequent upon his accident, he was permanently disabled and diagnosed with 70% permanent locomotor disability, in the lower and upper part of his body, requiring the assistance of an attendant for his lifetime on his inability to carry out his day to day routine. The Disability Certificate, dated 24-04-2019, was issued to him by the Consultant Orthopedic Surgeon, District Hospital Namchi, Social Justice Empowerment and Welfare Department, Government of Sikkim. That, he was twenty-two years at the time of the accident, earning about ₹ 25,000/- (Rupees twenty five thousand) only, to ₹ 30,000/- (Rupees thirty thousand) only, per month. The documents pertaining to the vehicle in accident including the insurance policy were valid at the time of the accident and hence, the compensation claimed viz.; ₹ 1,48,87,666/- (Rupees one crore, forty eight lakhs, eighty seven thousand, six hundred and sixty six) only.

**3.** The OP No.1 the insurance company (Appellant herein), the OP No.2 the owner of the vehicle (Respondent No.2 herein) and the OP No.3 driver of the vehicle (Respondent No.3 herein) all filed their written objections denying the claim put forth.



(i) The parties shall hereinafter be referred to in terms of their litigative status before this Court.

(ii) The Learned MACT settled a single issue for determination, i.e., Whether the Claimant is entitled to the compensation claimed? If so, who is liable to compensate him?

(iii) The Respondent No.1 deposed as his own witness and he relied on 39 documents to establish his case. OP No.1 examined its Deputy Manager as its witness and the OP Nos.2 and 3 examined themselves as their own witnesses.

(iv) The Learned MACT analysing the entirety of the evidence furnished before it, concluded that, the Respondent No.1 is entitled to the compensation which was computed as follows;

1.	Loss of earnings (₹ 500/- x 30 = ₹ 15,000/- x 12 x 18)	₹ 32,40,000/-
2.	Compensation for Permanent Disability ( 70% of ₹ 32,40,000/-)	₹ 22,68,000/-
3.	Medical expenses (excluding hotel bills)	₹ 20,98,115/-
4.	Loss of earning is calculated as ₹ 32,40,000/-, thus future prospects includes 40% on loss of earning i.e. : ( 40% of ₹ 32,40,000/-)	₹ 12,96,000/-
5.	Marriage prospects	₹ 1,00,000/-
6.	Future medical expenses	₹ 1,00,000/-
7.	Pain and suffering	₹ 20,000/-
8.	Loss of amenities	₹ 30,000/-
<b>TOTAL</b>		<b>₹ 91,52,115/-</b>

4. Aggrieved thereof, the Appellant Company is before this Court advancing the argument that the compensation was exorbitant and made for illegal gains. That, the Respondent No.1 was a gratuitous passenger having travelled in the accident vehicle



from which he fell off when the vehicle hit a tree. That, this circumstance has been corroborated by the statement of the Respondent No.3. The vehicle was covered under "Motor-Goods Carrying Vehicle Liability Only" policy. That, the Respondent No.1 was neither the owner/employee of the insured nor was he the owner/representative of the goods carried, thus he qualifies as a gratuitous passenger and not a third party, consequently, the Appellant Company is not liable to pay the compensation. The income and occupation of the Respondent No.1 were also impugned contending that it was devoid of proof. Hence, the compensation calculated by the Learned MACT with 70% disability would in fact amount to ₹ 55,23,315/- (Rupees fifty five lakhs, twenty three thousand, three hundred and fifteen) only, while the Learned MACT has erroneously awarded an excess of ₹ 36,28,800/- (Rupees thirty six lakhs, twenty eight thousand and eight hundred) only. It was also argued that the interest rate of 10% on the awarded amount is contrary to the ratio in ***Benson George vs. Reliance General Insurance Company Limited and Another***<sup>1</sup>, ***Kaushnuma Begum (Smt) and Others vs. New India Assurance Co. Ltd. and Others***<sup>2</sup> and ***Puttamma and Others vs. K. L. Narayana Reddy and Another***<sup>3</sup>. That, the Judgment does not even clarify as to who is liable to pay the awarded amount to the Respondent No.1. That, in view of the grounds put forth, the Judgment and award of the Learned MACT deserves to be set aside.

**5.** Learned Counsel for the Respondent No.1 contended that, the question of gratuitous passenger was never brought up

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<sup>1</sup> (2022) 13 SCC 142 : 2022 SCC OnLine SC 238

<sup>2</sup> (2001) 2 SCC 9

<sup>3</sup> (2013) 15 SCC 45



before the Learned MACT and has for the first time been raised only before this Court. That, the settled law is that no new issues can be brought up in Appeal when it has not been agitated before the jurisdictional Court, in the instant matter the Learned MACT. That, the vehicle was in fact a Goods Carrier, duly insured, the policy being a package policy which covers every person mentioned therein. That, the Respondent No.1 qualifies as a third party as on the date of the accident, admittedly, he had travelled in the vehicle for some time and then alighted from it and was walking home. It was while he was walking that he was struck by the vehicle, which rendered him unconscious and resulted in the 70% disablement as certified by the department concerned. That, on account of the disablement he is unable to perform his day-to-day functions, he has remained unemployed and is dependant on an attendant. That, the income of the deceased ought to have been calculated at ₹ 25,000/- (Rupees twenty five thousand) only, to ₹ 30,000/- (Rupees thirty thousand) only, in terms of the documentary evidence furnished, but the Learned MACT erroneously assumed that the income of the Respondent No.1 was to be considered as ₹ 15,000/- (Rupees fifteen thousand) only, in terms of the Notification of the Labour Department. That, post the accident he was hospitalized for a long duration, which led to incurring large amount of expenditure for his treatment, including physiotherapy, for which he incurs expenditure on a daily basis. Hence, no error arises on the granting of the compensation to the Appellant. Reliance was placed on **Dr. K. G. Poovaiah** vs. **General Manager/Managing Director Karnataka State Road Transport**



*Corporation*<sup>4</sup>, *Abhimanyu Partap Singh* vs. *Namita Sekhon and Another*<sup>5</sup>  
and *Cholamandalam MS General Insurance Co. Ltd.* vs. *Amrit Kumar Manger*<sup>6</sup>.

**6.** Learned Counsel for the Respondent No.2, the owner of the accident vehicle, contended that all relevant documents pertaining to the vehicle, including the insurance policy were valid and covered persons mentioned in the policy, rendering him not liable for any payment to the Respondent No.1.

**7.** Respondent No.3 submitted that, on the date of accident he was the authorized driver of the vehicle and his licence was valid, besides the accident did not occur due to his rashness or negligence.

**8.** The submissions advanced have been considered. The documents, the impugned Judgment, award and the citations made at the Bar have been duly perused.

**9.** Whether the Respondent No.1 is entitled to the compensation claimed, is the question that calls for determination herein.

**10.** Dealing first with the argument pertaining to gratuitous passenger raised by the Appellant. On a meticulous perusal of the Written Statement of the Appellant, before the Learned MACT, it is reflective of the fact that no averments were made with regard to the Respondent No.1 being a gratuitous passenger which would thereby absolve the Appellant of its liability. It appears from the records before me that, in the "Evidence on affidavit" sworn by Kishor Kumar Subba, Deputy Manager of the Appellant-Company,

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<sup>4</sup> (2001) 9 SCC 167

<sup>5</sup> (2022) 8 SCC 489

<sup>6</sup> 2023 SCC OnLine Sikk 107



dated 18-12-2021, the Appellant made such an averment for the first time by stating; *"That from the facts stated in G.R. case No 69 of 2019, it is learnt that the claimant was travelling as a gratuitous passenger in a water tanker as the policy is for Goods carrying vehicle (Public Carrier) where driver and other 6 employee is covered."* The Learned MACT in the impugned Judgment has observed *inter alia* that the Opposite Parties only took a plea that the claimant was travelling as a gratuitous passenger in the said vehicle. No further discussions ensued on this point.

**(i)** In this context, to clarify the matter, it is essential to emphasise that the settled legal proposition on this aspect is that, no evidence can be led in the absence of pleadings on a particular point. In ***Ram Sarup Gupta (Dead) by LRs vs. Bishun Narain Inter College and Others***<sup>7</sup>, the Supreme Court considered whether the Respondents in their Written Statement had raised the necessary pleading that, the licence was irrevocable as contemplated by Section 60(b) of the Easements Act, 1882 and if so, was there any evidence on record to support that plea. *It was observed therein that it is settled law that in the absence of pleadings, evidence, if any, produced by the parties cannot be considered. That, it is also equally settled that no party should be permitted to travel beyond its pleadings and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of the pleadings is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should settle the essential material facts so that the opposing party may not be taken by surprise. It was*

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<sup>7</sup> (1987) 2 SCC 555



further observed that the pleadings however should receive a liberal construction and no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. More recently, in ***Srinivas Raghavendrarao Desai (Dead) by LRs. vs. Kumar Vamanrao alias Alok and Others***<sup>8</sup> the principle referred to above was reiterated and it was observed that there is no quarrel with the proposition of law that no evidence could be led beyond pleadings.

**(ii)** On the bedrock of this settled legal position in the matter under consideration, the pleadings of the Appellant are indeed bereft of the mention of gratuitous passenger as also the pleadings of Respondents No.2 and 3. The Appellant could not have thereby referred to it in the evidence or raised it before this Court, as the Respondent No.1 was denied the opportunity of meeting the allegation and no issue was settled by the Learned MACT for determination on this point.

**11.** Notwithstanding such legal position, in ***K. Lubna and Other vs. Beevi and Others***<sup>9</sup> the Supreme Court examined whether sub-letting one room would entail eviction from the entire tenancy premises, the question apparently having never been urged before the trial court, the appellate court or the High Court but having formed a part of the pleadings before the Supreme Court, being included in the rejoinder to the SLP. The Supreme Court while observing that the plea was to be examined, held as follows;

**"10.** On the legal principle, it is trite to say that a pure question of law can be examined at any stage, including before this Court. If the factual foundation for a case has been laid and the legal consequences of the same have not been examined, the examination of such legal consequences would be a pure question of law [*Yeswant Deorao*

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<sup>8</sup> 2024 SCC OnLine SC 226

<sup>9</sup> (2020) 2 SCC 524





*Deshmukh v. Walchand Ramchand Kothari*, 1950 SCC 766 : 1950 SCR 852 : AIR 1951 SC 16].”

(i) Based on the same view, even if we examine the question of gratuitous passenger as a legal question, it emanates from the records that the Respondent No.1 had alighted from the vehicle and was walking home. Thus, even if he travelling in the accident vehicle prior to the occurrence of the accident, he was not in the vehicle at the time of the accident, having alighted and decided to walk home. He would thus not qualify as a gratuitous passenger having been hit by the truck only after he had already alighted. The Respondent No.1 stated the following in his evidence;

**“Cross-examination on behalf of the OP No.1**

It is not a fact on the fateful day of accident I along with my other friend had gone to Hotel Kava Suite at Namchi Bazar, South Sikkim and I do not know what time we reached the parked vehicle from hotel. In the Trial Court before the Ld. Judicial Magistrate, Namchi in G.R. Case No.69 of 2019, I have stated that *“The accused person told me that he would reach half of my way towards my house. Accordingly, we boarded in tanker and when we reached garage, near Bhanjyang road, all of a sudden the tanker hit the wall. **One of my friend told me to check as to how the tanker got hit on the wall and while I was checking the same, the tanker again hit me. Thereafter, I became unconscious.**”*. It is true that my statements made in paragraph 4 of my evidence-on-affidavit (*Exhibit-40*) are correct.

It is true that in paragraph 12 of my claim petition I have mentioned as follows;

***“No, the Claimant/victim was standing on road when he was being hit by the vehicle involved in the accident.”.....***  
(emphasis supplied)

The evidence *supra* proves that he was out of the vehicle when he was hit by it which fact is not decimated in his cross-examination and thereby he cannot be brought within the ambit of gratuitous passenger.

**12.** That having been considered, now on examining the Birth Certificate Exhibit 7 and the cross-examination of the witness



of the Appellant, it is established with clarity that the age of the Respondent No.1 has not been disputed or decimated by the opposing parties. Consequently, his date of birth as per Exhibit 7 is taken as 23-09-1995. The accident having occurred on 29-03-2018, he was a little above 22 years of age on the said date. His income which was placed at ₹ 25,000/- (Rupees twenty five thousand) only, to ₹ 30,000/- (Rupees thirty thousand) only, per month, was not disputed by the Appellant and this fact was admitted by the witness of the Appellant in his evidence. The Learned MACT for its part observed that the Respondent No.1 was not able to prove that he was an employee in a Hotel by the name of 'Diya' or that he was a Florist at the time of accident, to establish his income and therefore, reliance was placed on Notification bearing No.29/DL, dated 14-09-2022, of the Department of Labour, Government of Sikkim, Gangtok, wherein the category of workers duly indicating the revised rate of daily wages was enumerated. Further that, on perusal of the Notification, it could be gathered that the Respondent No.1 fell under the category of "unskilled worker" and accordingly, his income was pegged at ₹ 500/- (Rupees five hundred) only, per day.

**(i)** On examining Exhibit 8 and Exhibit 9, relied on by the Respondent No.1, as proof of his income, it is evident that he has furnished no proof of ownership of a floriculture farm nor was the owner of the hotel where he allegedly worked as a cook examined. Indeed, I am aware that the MV Act is benevolent legislation and the Court should not strive to look for proof which establishes the case of the Respondent No.1 beyond reasonable doubt, but that



does not preclude the Court from searching for evidence which extends to preponderance of probability, which is lacking herein by reason of non-examination of relevant witnesses. Thus, the Learned MACT correctly considered the income of the Respondent No.1 as ₹ 500/- (Rupees five hundred) only, per day, discounting Exhibit 8 and Exhibit 9 relied on by the Respondent No.1.

**13.** Traversing next to the question of the percentage of disability, Exhibit 5 is the Disability Certificate issued by the Government of Sikkim, Social Justice Empowerment and Welfare Department, dated 24-04-2019. It is certified that the case of the Respondent No.1 is one of "Post Head Injury and Quadriplegia, 70% disability". The percentage of his physical disability has been evaluated as per guidelines indicated against the relevant disability table mentioned in the format of certificate with diagnosis of limb quadriplegia/locomotor disability. The Appellant did not resist this document, indicating acceptance of the 70% disability of the Respondent No.1 as certified by the concerned Department.

**(i)** In ***Raj Kumar vs. Ajay Kumar and Another***<sup>10</sup> on the aspect of disability and loss of earning capacity, the Supreme Court *inter alia* opined as follows;

"11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said

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<sup>10</sup> (2011) 1 SCC 343



percentage for determination of compensation. (See for example, the decisions of this Court in *Arvind Kumar Mishra v. New India Assurance Co. Ltd.* [(2010) 10 SCC 254] and *Yadava Kumar v. National Insurance Co. Ltd.* [(2010) 10 SCC 341])

**12.** .....

**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 disability (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."

On account of the injury to his head and limbs, it is evident that the accident has deprived him of his ability to earn a living, which he otherwise could have done. Evidently he is physically impaired to the extent that he cannot fend for himself and is dependant on the service of an attendant to assist him in his day-to-day functions. Indubitably he is still on medication and undergoing physiotherapy. Deprived thus as described supra, his disability can be assessed at 100% and not merely 70%.

**14.** That having been said, the rate of interest of 10% on the award granted by the Learned MACT which is assailed by the Appellant is now to be addressed. This Court in ***Branch Manager, National Insurance Company Limited vs. Ms. Avipsa Pathak and Others***<sup>11</sup> has dealt with this issue and observed that the Judgment of the Supreme Court in ***Benson George*** (*supra*) was carefully

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<sup>11</sup> 2024 SCC OnLine Sikk 4



perused, where the High Court had reduced the interest rate of 9% to 6% per annum and the Hon'ble Supreme Court was loathe to interfere with the interest rate fixed. No specifics for such reduction by the High Court were elucidated therein. It was further noted that this Court has in all matters of motor accident cases uniformly awarded interest rate @ 9%. 10% interest imposed by the Learned MACT is consequently set aside and in its stead 9% interest is imposed on the award.

**15.** It is imperative to notice that the settled position of law is that the compensation awarded to the Claimants in motor accidents cases must be "just compensation". It should not be a windfall but neither should it be niggardly, making it so miserly that the Claimants cannot get by as the endeavour is to enable the Claimant to lead a life that he would otherwise have, save for the misfortune of the accident.

**(i)** In *National Insurance Company Limited* vs. *Pranay Sethi and Others*<sup>12</sup> the Constitutional Bench of the Supreme held that;

**"55.** ..... The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, "just compensation". The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in *Sarla Verma* [(2009) 6 SCC 121] and it has been approved in *Reshma Kumari* [(2013) 9 SCC 65]. The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to

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<sup>12</sup> (2017) 16 SCC 680



reality. **It is a well-accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach.** There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the courts is difficult and hence, an endeavour has been made by this Court for standardisation which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardisation keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardisation" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age." [emphasis supplied]

(ii) In *Pappu Deo Yadav vs. Naresh Kumar and Others*<sup>13</sup>, the Supreme Court observed that;

"8. .... "just compensation" should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face their lives. ...."

No further discussion need ensue in the context of compensation in light of the settled legal position.

**16.** It was argued by Learned Counsel for the Appellant that the Learned MACT had failed to indicate which party was to make good the compensation. Indeed, the Judgment may not have mentioned it but perusal of the Award dated 30-11-2022 annexed to the Judgment clearly mentions as follows;

".....  
It is hereby ordered that the Opposite Party no 1, The Branch manager, National Insurance Company Limited, shall pay a sum of ₹91,52,115/- (*Rupees Ninety-One Lakhs Fifty-Two Thousand, One Hundred and Fifteen*) Only as the total compensation to the Claimant within a period of two months from the date of the Judgment. ...."

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<sup>13</sup> (2022) 13 SCC 790



Hence, this argument of the Learned Counsel for the Appellant has no legs to stand.

**17.** While calculating “just compensation” for a person with 100% physical disability, this Court in **Amrit Kumar Manger** (*supra*) relied on the decision of the Supreme Court in **Kajal** vs. **Jagdish Chand and Others**<sup>14</sup> and calculated the compensation in terms thereof. The details of “attendant charges”, “pain and suffering and loss of amenities”, “loss of marriage prospects”, “future medical expenses” have all been discussed in detail therein and for brevity are not being reiterated here.

**18.** Considering the age of the Claimant, the multiplier of ‘18’ has been correctly adopted by the Learned MACT in terms of the Judgment of the Supreme Court in **Sarla Verma (Smt) and Others** vs. **Delhi Transport Corporation and Another**<sup>15</sup>. Accordingly, the loss of earning and future prospects are calculated as follows;

₹ 500 x 30 days	=	₹ 15,000/- per month
₹ 15000/- x 12 months	=	₹ 1,80,000/- per annum
Add 40% as Future prospects [in terms of Paragraph 59.4 of the Judgment Pranay Sethi ( <i>supra</i> ) - ₹ 1,80,000/- @ 40%]	= (+) ₹	72,000/-
	=	₹ 2,52,000/-
Multiplier to be adopted ‘18’ [in terms of Paragraph 42 of Sarla Verma ( <i>supra</i> ) — ₹ 2,52,000/- x 18]	=	₹ 45,36,000/-

**19.** It is also clarified here that although the permanent disability is assessed at 100% on the loss of earning, however, this Court as per the decision in **Kajal** (*supra*) has calculated attendant charges for one attendant for the lifetime of the Claimant. The details of calculation are as follows;

₹ 500 x 30 days	=	₹ 15,000/- per month
₹ 15000/- x 12 months	=	₹ 1,80,000/- per annum

<sup>14</sup> (2020) 4 SCC 413

<sup>15</sup> (2009) 6 SCC 121



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Multiplier to be adopted is '18' = ₹ 32,40,000/-  
[in terms of Paragraph 42 of Sarla Verma (*supra*)  
— ₹ 1,80,000/- x 18]

It is appropriate to award the above amount as attendant charges to the Respondent No.1.

**20.** There is no reason to interfere with the actual medical expenses (excluding hotel bills) ₹ 20,98,115/- (Rupees twenty lakhs, ninety eight thousand, one hundred and fifteen) only, granted by the Learned MACT.

**21.** The compensation worked out by the Learned MACT and by this Court, under the “other heads”, are juxtaposed below for clarity;

Learned MACT		High Court	
1. Medical expenses (excluding hotel bills)	₹ 20,98,115/-	1. Actual medical expenses	₹ 20,98,115/-
2. Future medical expenses	₹ 1,00,000/-	2. Future medical expenses	₹ 3,00,000/-
3. Pain and suffering	₹ 20,000/-	3. Pain, suffering and loss of amenities	₹ 6,00,000/-
4. Loss of amenities	₹ 30,000/-	4. Loss of marriage prospects	₹ 3,00,000/-
5. Marriage prospects	₹ 1,00,000/-	5. Attendant charges	₹ 32,40,000/-
6. Compensation for Permanent Disability (70% of 32,40,000/-)	₹ 22,68,000/-		
Total	₹ 46,16,115/-	Total	₹ 65,38,115/-

**22.** Consequently, the compensation which is found to be “just compensation” is computed as follows;

Loss of earnings and future prospects	₹ 45,36,000.00
<b>Add</b> Actual Medical Expenses	(+) ₹ 20,98,115.00
<b>Add</b> Future Medical Expenses [in terms of the Judgment of <i>Kajal (supra)</i> ]	(+) ₹ 3,00,000.00
<b>Add</b> Pain, suffering and loss of amenities [in terms of the Judgment of <i>Kajal (supra)</i> ]	(+) ₹ 6,00,000.00
<b>Add</b> Loss of Marriage Prospects [in terms of the Judgment of <i>Kajal (supra)</i> ]	(+) ₹ 3,00,000.00
<b>Add</b> Attendant Charges [in terms of the Judgment of <i>Kajal (supra)</i> ]	(+) ₹ 32,40,000.00
<b>Total</b>	= ₹ <u>1,10,74,115.00</u>

(Rupees one crore, ten lakhs, seventy four thousand, one hundred and fifteen) only.





**23.** The Respondent No.1 is entitled to the compensation *supra*, with simple interest @ 9% per annum on it, with effect from the date of filing of the Claim Petition before the Learned MACT, i.e., 12-09-2019, till its full realisation.

**24.** The Appellant-Insurance Company is directed to pay the enhanced awarded compensation to the Respondent No.1 within one month from today, with interest as ordered, failing which, it shall pay simple interest @ 12% per annum, from the date of filing of the Claim Petition, till full realisation.

**25.** Amounts, if any, already paid by the Appellant-Insurance Company to the Claimant-Respondent No.1, shall be duly deducted from the awarded compensation.

**26.** The Learned MACT shall ensure that the compensation so granted is invested by Respondent No.1 in long term interest bearing deposits to enable him to expend it with circumspection for his requirements.

**27.** Appeal dismissed.

**28.** No order as to costs.

**29.** Copy of this Judgment be sent forthwith to the Learned MACT for information and necessary compliance, along with its records.

**( Meenakshi Madan Rai )**

**Judge**

21-05-2024

Approved for reporting : **Yes**