or with fine which may extend to ten thousand rupees or with both whereas under sub-section (b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, rigorous imprisonment may extend to 10 years and with fine which may extend to one lakh rupees. Sub-section (c) provides that where the contravention involves commercial quantity, the rigorous imprisonment shall not be less than 10 years but which may extend to 20 years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees. Merely because different punishments have been prescribed depending on the quantity of contraband, we are satisfied that by mixing the said two bags, the same has not caused any prejudice to the appellant. Even after taking two samples of 250 grams each, the quantity measured comes to 69.50 kgs which is more than commercial quantity (small quantity 1000 gms/ commercial quantity 50 kgs. and above). In view of the same, the contention that the police should have taken two samples each from the two bags without mixing is liable to be rejected.

11. Taking note of all the materials, the evidence of official witnesses, PW-2, owner of the car which was involved in the offence, possession of commercial quantity, FSL report which shows that the contraband is poppy straw and is a prohibited item, we are in entire agreement with the conclusion arrived at by the trial Court and affirmed by the High Court. Further, taking note of the fact that the quantity involved is 70 kgs. of poppy straw which is more than a commercial quantity, the Special Judge rightly imposed minimum sentence and fine in terms of Section 15(c) of the NDPS Act. We are in agreement with the said conclusion.

12. In the light of the above discussion, we do not find any merit in the appeals, consequently, the same are dismissed.

B.B.B. Appeals dismissed.

A

K. SURESH

v.

NEW INDIA ASSURANCE CO. LTD. AND ANR.

(Civil Appeal No. 7603 of 2012)

B

OCTOBER 19, 2012

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

Motor Vehicles Act, 1988 – s.168 – Determination of compensation – Just compensation – Concept of – C *Explained.*

Motor Vehicles Act, 1988 – ss.166 and 168 – Accident with auto resulting in multiple grievous injuries and fractures all over the body of the appellant – Held: Victim-appellant D *entitled to compensation for loss of earning capacity as well as for permanent disability – View of High Court that no compensation can be granted towards permanent disability once compensation is computed for the loss of earning capacity and loss of future earnings is unsustainable – On facts, appellant entitled to compensation on the headings:* E *transport charges, extra-nourishment, medical expenses, additional medical expenses, additional transport charges, pain and suffering, loss of earning capacity and permanent disability and accordingly awarded total compensation of Rs.13.48 lakhs with interest @ 7.5%.*

F

The appellant was hit by an auto driven in a rash and negligent manner causing multiple grievous injuries and fractures all over his body. The tribunal assessed the permanent disability of the appellant at 75% and awarded G **Rs.25,00,000/- under various heads, namely, transport charges, extra nourishment, medical expenses, additional medical expenses, pain and sufferings suffered by family members of the claimant, mental agony, additional transport charges, inability of the appellant to participate**

H

in public functions, loss of marital life, pain and suffering, permanent disability and loss of earning capacity. Before the High Court as serious objections were raised pertaining to percentage of disability, the appellant was referred to the Medical Board and it was found that he had compression fracture which had healed with persistence of pain in the back with root involvement causing grade IV power in left lower limb and, accordingly, the Board fixed the permanent disability at 40%. The High Court adverted to the concept of "just compensation" and opined that the quantum of damages fixed should be in proportionate to the injuries caused. It opined that Rs.2,00,000/- towards medical expenses, Rs.5,000/- each for transport charges and extra nourishment, Rs.2,50,000/ towards pain and suffering, Rs.50,000/- for medical expenses and Rs.4,68,000/- towards loss of earning capacity would be the just amount of compensation and thus, reduced the total amount of compensation to Rs.9,78,000/-. The High Court also reduced the interest to 7.5% from 9% as granted by the tribunal.

In the instant appeal, the appellant contended that the High Court had erroneously held that there cannot be grant of compensation under two heads, namely, "permanent disability" and "loss of earning power"; that the tribunal had correctly appreciated the evidence on record and fixed certain sum under various heads but the High Court on unacceptable reasons deleted the same and also that the High Court without ascribing any cogent reasons reduced the expenses for continuous treatment from Rs.2,00,000/- to Rs.50,000/- as a result of which the amount had been substantially reduced and the concept of "just compensation" lost its real characteristics.

The question which therefore arose for consideration was whether the analysis made by the High Court in not granting compensation under certain heads and further

A reducing the amount on certain scores, was justified.

Partly allowing the appeal, the Court

HELD: 1.1. Despite many a pronouncement in the field, it still remains a challenging situation warranting
B sensitive as well as dispassionate exercise how to determine the incalculable sum in calculable terms of money in cases of personal injuries. In such assessment neither sentiments nor emotions have any role. There cannot be actual compensation for anguish of the heart
C or for mental tribulations. The quintessentiality lies in the pragmatic computation of the loss sustained which has to be in the realm of realistic approximation. Therefore, Section 168 of the Motor Vehicles Act, 1988 stipulates that there should be grant of "just compensation". Thus, it
D becomes a challenge for a court of law to determine "just compensation" which is neither a bonanza nor a windfall, and simultaneously, should not be a pittance. [Para 2] [423-G-H; 424-A-B]

E 1.2. While assessing the damages there is a command to exclude considerations which are in the realm of speculation or fancy though some guess work or some conjecture to a limited extent is inevitable. Thus, some guess work, some hypothetical considerations and some sympathy come into play but, a significant one, the ultimate
F determination is to be viewed with some objective standards. Neither the tribunal nor a court can take a flight in fancy and award an exorbitant sum, for the concept of conventional sum, fall of money value and reasonableness are to be kept in view. Ergo, in conceptual
G eventuality "just compensation" plays a dominant role. The conception of "just compensation" is fundamentally concretized on certain well established principles and accepted legal parameters as well as principles of equity and good conscience. [Paras 6 and 7]

H

1.3. An adjudicating authority, while determining quantum of compensation, has to keep in view the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. Hence, while computing compensation the approach of the tribunal or a court has to be broad based. It would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the fundamental criterion of "just compensation" should be inhered. [Para 10] [428-E-G]

Jai Bagwan v. Laxman Singh and others **(1994) 5 SCC 5;** *Nagappa v. Gurudayal Singh and others* **(2003) 2 SCC 274: 2002 (4) Suppl. SCR 499;** *C.K. Subramania Iyer v. T. Kunhikuttan Nair* **AIR 1970 SC 376: 1970 (2) SCR 688;** *Yadav Kumar v. Divisional Manager, National Insurance Company Limited and another* **(2010) 10 SCC 341: 2010 (10) SCR 746;** *Concord of India Insurance Co. Ltd. v. Nirmala Devi* **(1979) 4 SCC 365: 1979 (3) SCR 694;** *Mrs. Helen C. Rebello and others v. Maharashtra State Road Transport Corpn. and another* **AIR 1998 SC 3191: 1998 (1) Suppl. SCR 684 and** *State of Haryana and another v. Jasbir Kaur and Others* **(2003) 7 SCC 484: 2003 (2) Suppl. SCR 245 – relied on.**

Davies v. Powell Duffryn Associate Collieries Ltd. **1942 AC 601;** *H. West & Son, Ltd. v. Shephard* **(1963) 2 All ER 625;** *Lim Poh Choo v. Camden and Islington Area Health Authority* **(1979) 1 All ER 332 and** *Ward v. James* **(1965) 1 All ER 563 – referred to.**

Clerk and Lindsell on Torts **(16th Edn.) – referred to.**

2.1. The incapacity or disability to earn a livelihood

A would have to be viewed not only *in praesenti* but *in futuro* on reasonable expectancies and taking into account deprival of earnings of a conceivable period. This head being totally different cannot overlap the grant of compensation under the head of pain, suffering and loss
B of enjoyment of life. One head relates to the impairment of person's capacity to earn, the other relates to the pain and suffering and loss of enjoyment of life by the person himself. It is true that compensation for loss of earning power/capacity has to be determined based on various
C aspects including permanent injury/disability, but at the same time, it cannot be construed that that compensation cannot be granted for permanent disability of any nature. In a case of a non-earning member of a family who has been injured in an accident and sustained permanent
D disability due to amputation of leg or hand, it cannot be construed that no amount needs to be granted for permanent disability. It cannot be disputed that apart from the fact that the permanent disability affects the earning capacity of the person concerned, undoubtedly, one has
E to forego other personal comforts and even for normal avocation they have to depend on others. Thus, the view of the High Court that no compensation can be granted towards permanent disability once compensation is computed for the loss of earning capacity and loss of future earnings is unsustainable. As is perceivable, the
F High Court has computed the loss of earning power at Rs.4,68,000/- instead of Rs.5,00,000/- as determined by the tribunal and deleted sum of Rs.3,00,000/- that was awarded by the tribunal towards permanent disability. The total deletion is absolutely unjustified and, in fact,
G runs counter to the principles laid down by this Court in *Ramesh Chandra* and *B. Kothandapani*. Grant of compensation towards permanent disability is permissible. Regard been had to the totality of the facts and circumstances, compensation of Rs.2,50,000/- should
H be granted towards permanent disability and Rs.2,00,000/

- towards pain and suffering. It is being so held as the injury is of serious nature and under the heading of non-pecuniary damages compensation is awardable under the headings of pain and suffering and damages for loss of amenities of life on account of injury. If the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to accident, loss of earnings and victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident. [Paras 18, 19, 20 and 28] [432-D-E-F-H; 433-A-C; 437-H; 438-A-B-D]

2.2. It is obligatory on the part of the court or the tribunal to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. He is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. [Para 23] [434-G; 435-A-B]

2.3. Permanent disability can be either partial or total and the assessment of compensation under the heads of loss of future earnings would depend upon the factum and impact of such permanent disability on his earning capacity. The tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, i.e., the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage

A of permanent disability. However, in some cases on appreciation of evidence and assessment the percentage of loss of earning capacity as a result of the permanent disability would be approximately the same as the percentage of permanent disability in which case, of B course, the court or tribunal would adopt the said percentage for determination of compensation. [Para 25] [436-D-H]

2.4. In the case at hand the High Court has determined the loss of earning capacity on the base of C multiplier method and reduced the quantum awarded by the tribunal from Rs.5,00,000/- to Rs.4,68,000/-. Applying the ratio in *Yadav Kumar* and *Arvind Kumar Mishra* and also *Raj Kumar* and regard being had to the serious nature of injury, no error is found in the said method of calculation D and, accordingly, the method of computation as well as the quantum is upheld. [Para 26] [437-A-B]

2.5. The High Court has reduced the additional medical expenses from Rs.2,00,000/- to Rs.50,000/-. The E same is not correct as there is ample evidence on record as regards the necessity for treatment in future. It is demonstrable that pedicle screws were passed into pedicles of D11 vertebra; pedicle screws were passed into pedicles of L1 vertebra; and two screws on left thigh F were connected using a rod each. That may be required to be removed or scanned from time to time depending upon other aspects. That apart, there is persistent pain and as medically advised physiotherapy is necessary and hence, continuous treatment has to be availed of. Thus, G the High Court was not justified in reducing the said amount. [Para 27] [437-C-E]

2.6. The High Court maintained the award in respect of transport charges, extra nourishment, medical expenses and, accordingly, they are maintained. The H High Court deleted the additional transport charges.

While availing treatment the said expenses would be imperative. Hence, there was no justification to reduce the same and, accordingly, it is restored. [Paras 28, 29] [437-F; 438-F]

2.7. The High Court deleted the amount awarded under the head of pain and suffering by family members of the claimant and the amount granted towards loss of marital life. There is no iota of evidence with regard to loss of marital life, hence, there is no error in the said deletion. As far as grant of compensation on the score of pain and suffering suffered by the family members of claimant is concerned, the same is not permissible and, accordingly, it was correctly deleted. [Para 30] [438-G-H; 439-A]

2.8. The High Court deleted an amount of Rs.3,00,000/- and a sum of Rs.2,00,000/- towards mental agony and inability on the part of the claimant to participate in public functions respectively. Since this Court has already determined Rs.2,00,000/- under the heading of pain and suffering already suffered and to be suffered and Rs.2,50,000/- under the heading of permanent disability and hence, no different sum need be awarded under the heading of mental agony. As far as participation in public functions is concerned, there is no evidence in that regard and, therefore, the finding of the High Court on that score is totally justified and does not call for any interference. [Para 31] [439-B-D]

2.9. Calculated on the aforesaid base, the compensation would be payable on the headings, namely, transport charges, extra-nourishment, medical expenses, additional medical expenses, additional transport charges, pain and suffering, loss of earning capacity and permanent disability and the amount on the aforesaid scores would be, in toto, Rs.13,48,000/-. The said amount shall carry interest at the rate of 7.5% from

A **the date of application till the date of payment. [Para 32] [439-E-F]**

Ramesh Chandra v. Randhir Singh **(1990) 3 SCC 723: 1990 (3) SCR 1;** *B. Kothandapani v. Tamil Nadu State Transport Corporation Ltd.* **(2011) 6 SCC 420: 2011 (6) SCR 791;** *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. and others* **(1995) 1 SCC 551: 1995 (1) SCR 75;** *Arvind Kumar Mishra v. New India Assurance Company Limited and another* **(2010) 10 SCC 254: 2010 (11) SCR 857;** *Kerala SRTC v. Susamma Thomas* **(1994) 2 SCC 176;** *Raj Kumar v. Ajay Kumar and Another* **(2011) 1 SCC 343: 2010 (13) SCR 179;** *Yadav Kumar v. Divisional Manager, National Insurance Company Limited and another* **(2010) 10 SCC 341: 2010 (10) SCR 746 and** *Laxman v. Divisional Manager, Oriental Insurance Co. Ltd. and another* **2012 ACJ 191 – relied on.**

Cholan Roadways Corporation Ltd. v. Ahmed Thambi **(2006) 4 CTC 433 (Mad) – referred to.**

Baker v. Willoughby **1970 AC 467: (1970) 2 WLR 50 – referred to.**

Case Law Reference:

1942 AC 601	**referred to**	**Para 2**
(1994) 5 SCC 5	**relied on**	**Para 3**
(1963) 2 All ER 625	**referred to**	**Para 3**
2002 (4) Suppl. SCR 499	**relied on**	**Para 4**
(1979) 1 All ER 332	**referred to**	**Para 4**
(1965) 1 All ER 563	**referred to**	**Para 5**
1970 (2) SCR 688	**relied on**	**Para 6, 23**
2010 (10) SCR 746	**relied on**	**Para 7, 25, 26**

1979 (3) SCR 694	**relied on**	**Para 8**	A
1998 (1) Suppl. SCR 684	**relied on**	**Para 9**	
2003 (2) Suppl. SCR 245	**relied on**	**Para 9**	
2011 (6) SCR 791	**relied on**	**Para 17, 20**	
(2006) 4 CTC 433 (Mad)	**referred to**	**Para 17**	B
1990 (3) SCR 1	**relied on**	**Para 15, 18, 20**	
1995 (1) SCR 75	**relied on**	**Para 21,23**	
2010 (11) SCR 857	**relied on**	**Para 22, 25, 26**	C
(1994) 2 SCC 176	**relied on**	**Para 22**	
2010 (13) SCR	**relied on**	**Para 23, 26**	
(1970) 2 WLR 50	**referred to**	**Para 20**	
2012 ACJ 191	**relied on**	**Para 28**	D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7603 of 2012.

From the Judgment and Order dated 27.01.2010 of the High Court of Judicature at Madras in Civil Miscellaneous Appeal No. 1989 of 2005. E

Vipin Nair, Udayaditya Banerjee (For Temple Law Firm) for the Appellant.

Aishwarya Bhati, Sanjay Mittal, Aditya Dhawan, Chander Shekhar Ashri for the Respondents. F

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. Leave granted. G

2. Despite many a pronouncement in the field, it still remains a challenging situation warranting sensitive as well as dispassionate exercise how to determine the incalculable sum in calculable terms of money in cases of personal injuries. In such assessment neither sentiments nor emotions have any H

A role. It has been stated in *Davies v. Powell Duffryn Associate Collieries Ltd.*[1] that it is a matter of Pounds, Shillings and Pence. There cannot be actual compensation for anguish of the heart or for mental tribulations. The quintessentiality lies in the pragmatic computation of the loss sustained which has to be
B in the realm of realistic approximation. Therefore, Section 168 of the Motor Vehicles Act, 1988 (for brevity 'the Act') stipulates that there should be grant of "just compensation". Thus, it becomes a challenge for a court of law to determine "just compensation" which is neither a bonanza nor a windfall, and
C simultaneously, should not be a pittance.

3. In *Jai Bhagwan v. Laxman Singh and Others*[2], a three-Judge Bench of this Court, while considering the assessment of damages in personal-injury-actions, reproduced the following passage from the decision by the House of Lords in *H. West*
D *& Son, Ltd. v. Shephard*[3]:-

> "My Lords, the damages which are to be awarded for a tort are those which 'so far as money can compensate, will give the injured party reparation for the wrongful act and for all the natural and direct consequences of the wrongful
E act' [*Admiralty Comrs. v. Susquehanna (Owners), The Susquehanna*[4]]. The words 'so far as money can compensate' point to the impossibility of equating money with human suffering or personal deprivations. A money award can be calculated so as to make good a financial
F loss. Money may be awarded so that something tangible may be procured to replace something else of like nature which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which
G must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some

1. 1942 AC 601.
2. (1994) 5 SCC 5.
3. (1963) 2 All ER 625.
H 4. (1926) All ER 124 : 1926 AC 655.

uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional."

In the said case reference was made to a passage from *Clerk and Lindsell on Torts* (16th Edn.) which is apposite to reproduce as it relates to the awards for non-pecuniary losses:-

"In all but a few exceptional cases the victim of personal injury suffers two distinct kinds of damage which may be classed respectively as pecuniary and non-pecuniary. By pecuniary damage is meant that which is susceptible of direct translation into money terms and includes such matters as loss of earnings, actual and prospective, and out-of-pocket expenses, while non-pecuniary damage includes such immeasurable elements as pain and suffering and loss of amenity or enjoyment of life. In respect of the former, it is submitted, the court should and usually does seek to achieve restitutio in integrum in the sense described above, while for the latter it seeks to award 'fair compensation'. This distinction between pecuniary and non-pecuniary damage by no means corresponds to the traditional pleading distinction between 'special' and 'general' damages, for while the former is necessarily concerned solely with pecuniary losses - notably accrued loss of earnings and out-of-pocket expenses - the latter comprises not only non-pecuniary losses but also prospective loss of earnings and other future pecuniary damage."

4. In this regard, we may refer with profit the decision of this Court in *Nagappa v. Gurudayal Singh and others*[5] wherein the observations of Lord Denning M.R. in *Lim Poh Choo v.*

A *Camden and Islington Area Health Authority*[6] were quoted with approval. They read thus:-

> "The practice is now established and cannot be gainsaid that, in personal injury cases, the award of damages is
B assessed under four main heads: first, special damages in the shape of money actually expended; second, cost of future nursing and attendance and medical expenses; third, pain and suffering and loss of amenities; fourth, loss of future earnings."

C 5. While having respect for the conventional determination there has been evolution of a pattern and the same, from time to time, has been kept in accord with the changes in the value of money. Therefore, in the case of *Ward v. James*[7] it has been expressed thus:-

D

> "Although you cannot give a man so gravely injured much for his 'lost years', you can, however, compensate him for his loss during his shortened span, that is, during his expected 'years of survival'. You can compensate him for
E his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to a back injury, be unable to
F rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet judges and juries have to do the best they can and give him what they think is fair. No wonder they find it well nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The
G judges have worked out a pattern, and they keep it in line with the changes in the value of money."

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5. (2003) 2 SCC 274.
6. (1979) 1 All ER 332.
H 7. (1965) 1 All ER 563.

6. While assessing the damages there is a command to exclude considerations which are in the realm of speculation or fancy though some guess work or some conjecture to a limited extent is inevitable. That is what has been stated in *C.K. Subramania Iyer v. T. Kunhikuttan Nair*[8]. Thus, some guess work, some hypothetical considerations and some sympathy come into play but, a significant one, the ultimate determination is to be viewed with some objective standards. To elaborate, neither the tribunal nor a court can take a flight in fancy and award an exorbitant sum, for the concept of conventional sum, fall of money value and reasonableness are to be kept in view. Ergo, in conceptual eventuality "just compensation" plays a dominant role.

7. The conception of "just compensation" is fundamentally concretized on certain well established principles and accepted legal parameters as well as principles of equity and good conscience. In *Yadav Kumar v. Divisional Manager, National Insurance Company Limited and Another*[9], a two-Judge Bench, while dealing with the facet of "just compensation", has stated thus: -

> "It goes without saying that in matters of determination of compensation both the tribunal and the court are statutorily charged with a responsibility of fixing a "just compensation". It is obviously true that determination of just compensation cannot be equated to a bonanza. At the same time the concept of "just compensation" obviously suggests application of fair and equitable principles and a reasonable approach on the part of the tribunals and the courts. This reasonableness on the part of the tribunal and the court must be on a large peripheral field."

8. In *Concord of India Insurance Co. Ltd. v. Nirmala Devi*[10] this Court has expressed thus:-

8. AIR 1970 SC 376.

9. (2010) 10 SCC 341.

10. (1979) 4 SCC 365.

A "The determination of the quantum must be liberal, not niggardly since the law values life and limb in free country in generous scales."

9. In *Mrs. Helen C. Rebello and Others v. Maharashtra State Road Transport Corpn. and Another*[11], while dealing with B concept of "just compensation", it has been ruled that the word 'just', as its nomenclature, denotes equitability, fairness and reasonableness having large peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable, if it exceeds; it is termed as C unfair, unreasonable, unequitable, not just. The field of wider discretion of the tribunal has to be within the said limitations. It is required to make an award determining the amount of compensation which in turn appears to be "just and reasonable", for compensation for loss of limbs or life can D hardly be weighed in golden scales as has been stated in "*State of Haryana and Another v. Jasbir Kaur and Others*"[12].

10. It is noteworthy to state that an adjudicating authority, while determining quantum of compensation, has to keep in E view the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. Hence, while computing compensation the approach F of the tribunal or a court has to be broad based. Needless to say, it would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the fundamental criterion of "just compensation" should be inhered. G

11. Keeping in view the aforesaid aspects we shall proceed to state the factual score. The factual matrix as

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11. AIR 1998 SC 3191.

H 12. (2003) 7 SCC 484.

unfurled, exposits that on 11.3.2002 about 4.00 p.m. the claimant-appellant (hereinafter referred to as 'the claimant) was hit from the behind by an auto bearing registration number TN-9 C 7755 which was driven in a rash and negligent manner and in the accident he sustained triple fracture in spinal cord, fracture in left leg neck of femur, fracture in right hand shoulder, deep cut and degloving injury over right left thigh bone and multiple injuries all over the body.

12. After the accident the claimant was admitted in M.R. Hospital where he availed treatment. After the treatment, the dislocation of the bones got reduced, pedical screws were inserted into pedicles of D11 vertebra and pedicle screws were passed into pedicles of L1 vertebra. Two screws on left thigh were fixed using a rod each. That apart, decompression of D12 vertebra was done and bone chips were placed in the intertransverse area on both sides. He was hospitalized for 28 days. The victim had numbness below the knee joint and was facing difficulty to stand and sit comfortably. As the evidence on record would reveal he has been constantly availing physiotherapy treatment facing difficulty in carrying out his normal activities. A disability certificate contained as Ex.P4 was filed before the tribunal which showed permanent disability at 75%.

13. The tribunal, as it appears from the award, had also assessed the permanent disability at 75% as fixed by PW-4, Dr. Thiagarajan. It had awarded Rs.25,00,000/- under various heads, namely, transport charges, extra nourishment, medical expenses, additional medical expenses, pain and sufferings suffered by family members of the claimant, mental agony, additional transport charges, inability of the appellant to participate in public functions, loss of marital life, pain and suffering, permanent disability and loss of earning capacity.

14. Before the High Court as serious objections were raised pertaining to percentage of disability, the claimant was

A referred to the Medical Board and it was found that he had compression fracture which had healed with persistence of pain in the back with root involvement causing grade IV power in left lower limb and, accordingly, the Board fixed the permanent disability at 40%. The High Court adverted to the B concept of "just compensation" and opined that the quantum of damages fixed should be in proportionate to the injuries caused. It referred to certain authorities and opined that Rs.2,00,000/- towards medical expenses, Rs.5,000/- each for transport charges and extra nourishment, Rs.2,50,000/- C towards pain and suffering, Rs.50,000/- for medical expenses and Rs.4,68,000/- towards loss of earning capacity would be the just amount of compensation. Thus, the total amount as determined by the High Court came to Rs.9,78,000/-. The High Court reduced the interest to 7.5% from 9% as granted by the D tribunal. Be it noted, the said judgment and order dated 27.1.2010 passed by the High Court of Judicature at Madras in Civil Miscellaneous Appeal No. 1989 of 2005 whereby the High Court has reduced the compensation granted by the Motor Accident Claims Tribunal (II Small Causes Court), Chennai, on an application being moved under Section 166 of E the Act is the subject-matter of challenge herein.

15. Mr. Vipin Nair, learned counsel appearing for the appellant, has contended that the High Court has erroneously held that there cannot be grant of compensation under two F heads, namely, "permanent disability" and "loss of earning power". It is urged by him that the tribunal had correctly appreciated the evidence on record and fixed certain sum under various heads but the High Court on unacceptable reasons has deleted the same. It is also canvassed by him that G the High Court without ascribing any cogent reasons has reduced the expenses for continuous treatment from Rs.2,00,000/- to Rs.50,000/- as a result of which the amount had been substantially reduced and the concept of "just compensation" has lost its real characteristics.

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16. Ms. Aishwarya Bhati, learned counsel appearing for the respondent No. 1, supported the order passed by the High Court contending, inter alia, that the analysis made by the learned single Judge is absolutely flawless and the interference in the quantum cannot be faulted inasmuch as the tribunal has awarded a large sum on certain heads which are totally impermissible in law. It is also urged by her that certain sums had been allowed by the tribunal without any material on record and, therefore, the High Court has correctly interfered with the award.

17. The seminal issues that really emanate for consideration are whether the analysis made by the High Court in not granting compensation under certain heads and further reduing the amount on certain scores, are justified. Regard being had to the fundamental essence of "just compensation", we shall presently deal with the manner in which the High Court has dwelled upon various heads in respect of which the tribunal had granted certain sums towards compensation. On a perusal of the order passed by the High Court, it is manifest that the High Court relying on certain authorities of the said court has expressed the view that once a particular amount has been awarded towards `permanent disability', no further amount can be awarded relating to `loss of earning capacity'. The learned counsel for the appellant has commended us to the pronouncement of this Court in *B. Kothandapani v. Tamil Nadu State Transport Corporation Ltd.*[13], wherein the High Court had placed reliance on the Full Bench decision in *Cholan Roadways Corporation Ltd. v. Ahmed Thambi*[14]. This Court referred to the pronouncement in *Ramesh Chandra v. Randhir Singh*[15], wherein it has been stated thus:-

> "With regard to ground 19 covering the question that the sum awarded for pain, suffering and loss of enjoyment of

13. (2011) 6 SCC 420.

14. (2006) 4 CTC 433 (Mad).

15. (1990) 3 SCC 723.

A life, etc. termed as general damages should be taken to be covered by damages granted for loss of earnings is concerned that too is misplaced and without any basis. The pain and suffering and loss of enjoyment of life which is a resultant and permanent fact occasioned by the nature of
B injuries received by the claimant and the ordeal he had to undergo."

18. In *Ramesh Chandra* (supra) the learned Judges proceeded to address the issue of difficulty or incapacity to earn and how it stands on a different footing than pain and
C suffering affecting enjoyment of life and stated as under:-

"The inability to earn livelihood on the basis of incapacity or disability which is quite different. The incapacity or disability to earn a livelihood would have to be viewed not
D only in praesenti but in futuro on reasonable expectancies and taking into account deprival of earnings of a conceivable period. This head being totally different cannot in our view overlap the grant of compensation under the head of pain, suffering and loss of enjoyment of life. One
E head relates to the impairment of person's capacity to earn, the other relates to the pain and suffering and loss of enjoyment of life by the person himself."

19. After referring to the said passage, the Bench proceeded to state that it is true that compensation for loss of
F earning power/capacity has to be determined based on various aspects including permanent injury/disability, but at the same time, it cannot be construed that that compensation cannot be granted for permanent disability of any nature. It has been mentioned by way of an example that in a case of a non-earning
G member of a family who has been injured in an accident and sustained permanent disability due to amputation of leg or hand, it cannot be construed that no amount needs to be granted for permanent disability. It cannot be disputed that apart from the fact that the permanent disability affects the earning capacity
H of the person concerned, undoubtedly, one has to forego other

personal comforts and even for normal avocation they have to depend on others. A

20. In view of the aforesaid enunciation of law, the view of the High Court that no compensation can be granted towards permanent disability once compensation is computed for the loss of earning capacity and loss of future earnings is unsustainable. As is perceivable, the High Court has computed the loss of earning power at Rs.4,68,000/- instead of Rs.5,00,000/- as determined by the tribunal and deleted sum of Rs.3,00,000/- that was awarded by the tribunal towards permanent disability. In our considered opinion, total deletion is absolutely unjustified and, in fact, runs counter to the principles laid down by this Court in *Ramesh Chandra* (supra) and *B. Kothandapani* (supra). B C

21. At this juncture, we think it seemly to state that it is a case where the victim has suffered serious injuries. As far as the injuries are concerned, there is concurrence of opinion by the tribunal as well as by the High Court. The High Court has only reduced the percentage of permanent disability on the basis of assessment made by the Medical Board as there was a serious cavil with regard to the said percentage. While determining compensation payable to a victim of an accident the parameters which are to be kept in view have been succinctly stated in *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. and Others*[16]:- D E F

> "9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to G

16. (1995) 1 SCC 551. H

A appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and B physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of C expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

22. In *Arvind Kumar Mishra v. New India Assurance* D *Company Limited and Another*[17] a two-Judge Bench referred to the authority in *Kerala SRTC v. Susamma Thomas*[18] and applied the principle of multiplier for future earnings in a case of permanent disability. We have referred to this decision solely for the purpose that multiplier principle has been made E applicable to an application preferred under Section 166 of the Act.

23. In this context it is useful to refer to *Raj Kumar v. Ajay Kumar and Another*[19], wherein a two-Judge Bench after F referring to the award of compensation in personal injury cases reiterated the concepts of pecuniary damages (special damages) and non-pecuniary damages (general damages). The Bench referred to the decisions in *C.K. Subramania Iyer* (supra), *R.D. Hattangadi* (supra) and *Baker v. Willoughby*[20] G and expressed the view that it is obligatory on the part of the court or the tribunal to assess the damages objectively and

17. (2010) 10 SCC 254.

18. (1994) 2 SCC 176.

19. (2011) 1 SCC 343.

H 20. 1970 AC 467 : (1970) 2 WLR 50 : (1969) 3 All ER 1528 (HL).

exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. He is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

24. It is worthy noting that the Bench referred to the pecuniary damages and non-pecuniary damages and opined thus:-

"Pecuniary damages (Special damages)

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

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

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

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

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

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

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

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

A 25. After so stating the Bench proceeded to opine that assessment of pecuniary damages under Item (i) and under Item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses-
B Item (iii)-depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages-Items (iv), (v) and (vi)-involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability
C suffered by the claimant and the effect thereof on the future life of the claimant. It has been observed therein that what usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability-Item (ii)(a). Thereafter, the Bench adverted to the features which are
D necessary while assessing the loss of future earnings on account of permanent disability. In the said case it has been opined that permanent disability can be either partial or total and the assessment of compensation under the heads of loss of future earnings would depend upon the factum and impact of such permanent disability on his earning capacity. It has been
E laid down that the tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. It has been further observed that in most of the cases, the percentage of economic loss, i.e., the percentage of loss of earning capacity, arising
F from a permanent disability will be different from the percentage of permanent disability. However, in some cases on appreciation of evidence and assessment the percentage of loss of earning capacity as a result of the permanent disability would be approximately the same as the percentage of
G permanent disability in which case, of course, the court or tribunal would adopt the said percentage for determination of compensation. To arrive at the said conclusion reliance was placed on *Arvind Kumar Mishra* (supra) and *Yadav Kumar* (supra).

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26. In the case at hand the High Court has determined the loss of earning capacity on the base of multiplier method and reduced the quantum awarded by the tribunal from Rs.5,00,000/ to Rs.4,68,000/-. Applying the ratio in *Yadav Kumar* (supra) and *Arvind Kumar Mishra* (supra) and also *Raj Kumar* (supra) and regard being had to the serious nature of injury we do not find any error in the said method of calculation and, accordingly, we uphold the method of computation as well as the quantum. A B

27. Presently to the grant of compensation on other scores. It is noticeable that the High Court has reduced the additional medical expenses from Rs.2,00,000/- to Rs.50,000/-. In our considered opinion, the same is not correct as there is ample evidence on record as regards the necessity for treatment in future. It is demonstrable that pedicle screws were passed into pedicles of D11 vertebra; pedicle screws were passed into pedicles of L1 vertebra; and two screws on left thigh were connected using a rod each. That may be required to be removed or scanned from time to time depending upon other aspects. That apart, there is persistent pain and as medically advised physiotherapy is necessary and hence, continuous treatment has to be availed of. Thus, the High Court was not justified in reducing the said amount. C D E

28. The High Court has maintained the award in respect of transport charges, extra nourishment, medical expenses and, accordingly, they are maintained. It has enhanced the award from Rs.2,00,000/- to Rs.2,50,000 on the head of pain and suffering, but has deleted the amount awarded on permanent disability from the total compensation awarded by the tribunal by relying on the decision in *Cholan Roadways Corporation Ltd.* (supra). As has been stated earlier, the said decision has been considered in *B. Kothandapani* (supra) and is not accepted, and this Court has expressed the view that grant of compensation towards permanent disability is permissible. Regard been had to the totality of the facts and circumstances, we are inclined to think that compensation of F G H

A Rs.2,50,000/- should be granted towards permanent disability and Rs.2,00,000/- towards pain and suffering. We have so held as the injury is of serious nature and under the heading of non-pecuniary damages compensation is awardable under the headings of pain and suffering and damages for loss of B amenities of life on account of injury. In the case of *R.D. Hattangadi* (supra) this Court has granted compensation under two heads, namely, "pain and suffering" and "loss of amenities of life". Quite apart from that compensation was granted towards future earnings. In *Laxman v. Divisional Manager, C Oriental Insurance Co. Ltd. and another*[21] it has been ruled thus:-

> "The ratio of the above noted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate D compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to accident, loss of earnings and victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

E

Thus, the deletion by the High Court was not justified. However, we have restricted to the amount as stated hereinbefore.

29. The High Court has deleted the additional transport charges. We are disposed to think that while availing treatment F the said expenses would be imperative. Hence, there was no justification to reduce the same and, accordingly, we restore it.

30. It is perceptible that the High Court has deleted the G amount awarded under the head of pain and suffering by family members of the claimant and the amount granted towards loss of marital life. There is no iota of evidence with regard to loss of marital life, hence, we do not find any error in the said

H 21. 2012 ACJ 191.

deletion. As far as grant of compensation on the score of pain and suffering suffered by the family members of claimant is concerned, the same is not permissible and, accordingly, we hold that that has been correctly deleted. A

31. The High Court has deleted an amount of Rs.3,00,000/ and a sum of Rs.2,00,000/- towards mental agony and inability on the part of the claimant to participate in public functions respectively. We have already determined Rs.2,00,000/- under the heading of pain and suffering already suffered and to be suffered and Rs.2,50,000/- under the heading of permanent disability and hence, no different sum need be awarded under the heading of mental agony. As far as participation in public functions is concerned, there is no evidence in that regard and, therefore, we are disposed to think that the finding of the High Court on that score is totally justified and does not call for any interference. B C D

32. Calculated on the aforesaid base, the compensation would be payable on the headings, namely, transport charges, extra-nourishment, medical expenses, additional medical expenses, additional transport charges, pain and suffering, loss of earning capacity and permanent disability and the amount on the aforesaid scores would be, in toto, Rs.13,48,000/-. The said amount shall carry interest at the rate of 7.5% from the date of application till the date of payment. The same shall be deposited before the tribunal within a period of two months and the tribunal shall disburse 50% of the amount in favour of the claimant and the rest of the amount shall be deposited in a nationalized bank for a period of three years. Be it clarified if the earlier awarded sum has been deposited, the differential sum shall be deposited within the stipulated time as mentioned hereinabove and the disbursement shall take place accordingly. E F G

33. Consequently, the appeal is allowed in part leaving the parties to bear their respective costs.

B.B.B. Appeal partly allowed. H