

2. On 23rd March, 2014, the claimant-appellant was returning to his village Rajpur Badha from Cheel Ki Bawdi on his motorcycle bearing No.RJ 02 SC 4860, when another vehicle, a Maruti Omni bearing No.RJ 02 UA 1663 came from the opposite direction, on the wrong side of the road. The claimant-appellant suffered numerous injuries including on the head and his right leg. FIR No.81/14 was registered at Police Station Tehla, and he was taken, first to Katta Hospital, Bandikui, and thereafter, to Sawai Mansingh Hospital, Jaipur. Although, he survived his accident, he is in a comatose state.

3. The learned Tribunal framed three primary issues :

- a) Concerning rashness and negligence of the allegedly offending vehicle;
- b) The entitlement of the petitioner-claimant appellant to receive compensation and the extent thereof;
- c) Liability of the insurance company, if any.

4. On the first count, it was found that the respondents had not presented any evidence which would dislodge the case of the claimant-appellant. It was found that the Maruti Omni had indeed been responsible for the accident, being driven at high speed and negligently. On the second count, the conclusion of the Tribunal is as under :

“Therefore, according to the above discussion, the compensation amount to be given to Petitioner is determined in the following manner:-

1. 50% permanent disability on account of loss of income due to injury
 $95,370 \times 13 = \text{Rs.}12,39,810/-$

2. Five Medical reimbursement bills and transportation expenses = Rs.171,155/-
3. 37 days admitted in hospital @ Rs.500 per day for hospitalization =
Rs.18,500/- and for the attendant
4. Lump sum payment for physical and mental pain, suffering of family members, deprivation of comforts and luxuries and future treatment for the said injury etc. = 2,00,000
Total amount = Rs.16,29,465/-.”

The third issue of liability of the insurance company was decided against them.

5. On appeal, the High Court held as under:

“It is an admitted position that no neurosurgeon and treating doctor were produced by the claimant to prove hundred percent disability of the claimant before the Tribunal. So, in my considered opinion, trial court rightly came to the conclusion that disability certificate Ex.16 was not duly proved by the claimant. So, the Tribunal rightly assessed the disability of the injured to the extent of 50%. It is also admitted position that the Tribunal has not awarded any amount regarding future prospects of the injured. So, in my considered opinion, claimant was below 50 years of age, claimant is entitled to get 25% towards future prospects.

Net Annual Income of the claimant as per income tax returns	Rs.1,90,740/- x 50% = 95,370/- x 13 = Rs. 12,39,810/-
25% future prospects	Rs.12,39,810/- x 25% = 3,09,952.5/- Rounding off Rs.3,09,953/-)
Reimbursement of Medical Bill and transportation	Rs.1,71,155/-
For admission in the Hospital for 37 days @ 500/- per day and attendant	Rs.18,500/-

charges	
For physical and mental agony, pain and loss of amenities	Rs.2,00,000/-
Grand Total	Rs.19,39,418/-

Accordingly, the appeal filed by the Insurance Company is dismissed, whereas the appeal filed by the appellant-claimant is party allowed. The judgment and award dated 18.01.2017 passed by the Tribunal is modified to the extent that the amount of compensation receivable by the claimant is Rs.19,39,418/-, instead of Rs.16,29,465/-, as awarded by the Tribunal. Remaining terms and conditions of the award shall be the same. The Insurance Company shall deposit the enhanced amount alongwith the interest @7% from the date of filing the claim petition till the date of payment with the Tribunal within two months from today.”

6. Further aggrieved by the compensation as above, the claimant-appellant is in appeal before this Court. We have heard learned counsel for the parties. The claimant-appellant is aggrieved by the fact that the opinion of the Medical Board computing disability has been ignored and the Tribunal has substituted its own view. This, it is submitted in the teeth of the judgment of this Court in *Union of India v. Talwinder Singh*³; and *Raj Kumar v. Ajay Kumar*⁴.

Reliance is also placed on *Thresiamma Sebastian v. Dr. Renu Swami Das & Ors.*⁵. It is further submitted that the compensation granted towards attendant charges is insufficient. Overall, reliance has been placed on *Kajal v.*

3 (2012) 5 SCC 480

4 (2011) 1 SCC 343

5 2024 SCC OnLine Ker 4660

*Jagdish Chand*⁶; and *Abhimanyu Pratap Singh v. Namita Sekhon*⁷ among others.

7. The case of the respondent-Insurance Company is that no evidence has been led to substantiate the position that the claimant-appellant suffers from 100% disability. It is further denied that the opinion of the Medical Board stands disbelieved. It is submitted that no evidence has been led to show that a medical attendant has been hired and a salary of Rs.6,000/- per month is paid to such an attendant.

8. We find force in the submissions of the appellant. The duly constituted Medical Board has ascertained the permanent disability of the claimant-appellant to be 100%. The relevant extract of the opinion of the Medical Board is reproduced hereunder :-

- “(a) Permanent privation of the sight of either eye or the hearing or either ear or any member of joint (mention if any) : ***Now the patient has no speech and his intellectual functions are completely impaired. He cannot stand and walk. He is catheterized till now.***
- (b) Destruction or permanent impairing of the power of any member of joint mention (if any). ***He is dependent on others on Activities of Daily Living (ADL) = 100%. He falls from bad several times. He got many times during infection. Total permanent, physical impairment is 100%.***
- (c) Permanent disfiguration of head or face (mention if any).....
- (d) The other material observation having adverse bearing on the life expectancy or nor-mal functioning of the body/limb injured/affected: ***Total Permanent Impairment is 100% one hundred percent.***”

6 (2020) 4 SCC 413
7 (2022) 8 SCC 489

9. The Tribunal questioned the competence of the Medical Board to assess the permanent disability of the claimant-appellant, terming the certificate of the Medical Board as not completely reliable. If the Tribunal had reason to doubt the medical certificate, the option available before it was to have the disability re-assessed but it could not have gone into the details of the determination of disability. Since that course of action has not been adopted, the opinion of the Medical Board, being an opinion of the experts is to be treated as such. That apart, the comatose state of the claimant-appellant is not in dispute.

10. In regard to attendant charges, the claim put forward by the claimant-appellant, aggrieved by the Tribunal and the High Court refusing any compensation on this count, is at the rate of Rs.6,000/-. In the attending facts, following the computation made by this court in **Kajal** (supra), the same is calculated as $5,000 \times 12 \times 13 = \text{Rs.}7,80,000/-$.

11. The medical report clearly states that the claimant -appellant has no speech or intellectual functions. He cannot stand or walk and has a catheter. Further, he is dependent entirely on others for daily activities. The finding of 100% disability, therefore, appears to be justified. As such, the compensation ought to be recomputed. It is also to be noted that for a person in coma, who is entirely dependent on others, obviously a meagre sum of Rs.2,00,000/- stands awarded by the Tribunal towards mental and physical agony, pain, and loss of amenities. The High Court has also confirmed the same. We find the same to be

insufficient. Keeping in view the discussion made by this Court in the recent decision, *K.S Murlidhar v. R. Subbulakshmi*⁸, and having due regard to the age, nature of disability and other relevant factors, the compensation under this head is split from the general head. The amount of Rs.2,00,000/- now stands awarded under ‘Physical and Mental Agony’. However, in the attending facts and circumstances of this case, we enhance the compensation by Rs.6,00,000/- as payable under the head ‘Pain and Suffering’.

12. The final compensation payable to the claimant-appellant is tabulated as below-

Head	Tribunal	High Court	Final Compensation
Monthly Income	Rs.15,895/- p.m.	Rs.15,895/- p.m.	Rs.15,895/-p.m.
Annual Income	Rs.15,895 x 12 = Rs.1,90,740/-	Rs.15,895 x 12 = Rs.1,90,740/-	Rs.15,895 x12 = Rs.1,90,740/-
Loss of Future Income	Rs.12,39,810/- [1,90,740 x 50 x 13/100] [Disability @50% Multiplier x13]	Rs.12,39,810/- [1,90,740 x 50 x 13/100] [Disability @ 50%]	Rs.24,79,620/- [1,90,740x13X 100%] 190740 x 25/100 [Disability @ 100%]
Loss in Future Prospect	–	Rs.15,49,763/- [12,39,810 x 25/100] [Future Prospect @ 25%]	Rs.30,99,525/- [24,79,620 x 25/100] [Future Prospect @ 25%]
Attendant Charges	–	–	Rs.5,000/- x 12 x 13 = Rs.7,80,000/-
Medical Reimbursement	Rs.1,71,155/-	Rs.1,71,155/-	Rs.1,71,155/-

Hospitalization Expenses [37 Days x 500]	Rs.18,500/-	Rs.18,500/-	Rs.18,500/-
Physical and Mental Agony	Rs.2,00,000/-	Rs.2,00,000/-	Rs.2,00,000/-
Pain and Suffering	–	–	Rs.6,00,000/-
Total	Rs.16,29,465/-	Rs.19,39,418/-	Rs.48,69,180/-
Interest	7%	7%	7%

13. The amount payable to the claimant-appellant is Rs.48,69,180/-, and the same is rounded off to Rs.**48,70,000/-** with an interest @ 7% per annum due from the date of the claim petition. The appeal is allowed in the above terms.

Pending applications, if any, shall stand closed.

.....J.
[SANJAY KAROL]

.....J.
[MANMOHAN]

February 10, 2025;
New Delhi.