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RAMAN

v.

UTTAR HARYANABIJLI VITRAN NIGAM LTD. & ORS.

(Civil Appeal No. 11466 of 2014)

B

DECEMBER 17, 2014

[V. GOPALA GOWDA AND C. NAGAPPAN, JJ.]

Electricity Act, 2003 – s. 68 – Electrocution – Compensation – Four year old boy suffered 100% permanent disability in electrocution accident – Boy lost all the amenities and became a deadwood throughout his life – Award of Rs. 60 lakhs compensation by Single Judge of the High Court – Rs. 30 lakhs to be deposited in a fixed deposit account jointly in the name of the claimant in a nationalized Bank, which would be available to the claimant on attaining age of majority, and in case he does not survive, deposit amount would be revert back to the respondents – Remaining amount of Rs. 30 lakhs to be deposited in a fixed deposit account of corpus fund, out of which an interest of Rs. 20,000/- p.m. to be paid to the claimant towards the expenses – Division Bench on concession by the counsel reduced the monthly amount to Rs. 10,000/- – On appeal, held: Compensation awarded by the Single Judge restored – However, the direction by Single Judge that if the claimant is not alive at the time of attaining the age of majority, the amount deposited would be reverted to the respondent is set aside since the same is not legal and valid – Once compensation amount is awarded by the Court, it should go to the claimant/appellant and after his demise, to his legal heirs or representative - Directions issued as regards the mode of payment of amount to the appellant.

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Allowing the appeal, the Court

HELD: 1.1. The compensation awarded at Rs. 60 lakhs in the judgment of the learned Single Judge of the High Court, out of which 30 lakhs were to be deposited

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jointly in the name of the appellant represented by his A
parents as natural guardian and the Chief Engineer or
his nominee representing the respondent-Nigam in a
nationalised Bank in a fixed deposit till he attains the age
of majority, is just and proper but we have to set aside
that portion of the judgment of the learned Single Judge B
directing that if he survives, he is permitted to withdraw
the amount, otherwise the deposit amount shall be
reverted back to the respondents as the same is not legal
and valid for the reason that once compensation amount
is awarded by the court, it should go to the claimant/ C
appellant. Therefore, the victims/claimants are legally
entitled for compensation to be awarded in their favour.
If the claimants die, then the Succession Act of their
respective religion would apply to succeed to such
estate by the legal heirs of victims/ claimants or legal D
representatives as per the testamentary document if they
choose to execute the will indicating their desire as to
whom such estate shall go after their death. [Para
19][863-D-H; 864-A]

1.2 The remaining compensation amount of Rs. 30 E
lakhs to be deposited in a fixed deposit account in the
name of the appellant (minor) under joint guardianship
of the parents of Raman and the Engineer-in-Chief or
his nominee representing the respondent-Nigam, in the
Nationalised Bank as corpus fund, out of which an F
interest of Rs.20,000/- p.m. towards the expenses as
indicated in sub-para (vi) of the order passed by the
learned Single Judge, cannot be said to be on the higher
side, but in our view, the said amount of compensation G
awarded is less and not reasonable and having regard
to the nature of 100% permanent disability suffered by
the appellant, it should have been much higher as the
appellant requires permanent assistance of an attendant,
treatment charges as he is suffering from agony and loss
of marital life, which cannot be compensated by the H

A amount of compensation awarded by the learned Single
Judge of the High Court. Hence, having regard to the
facts and circumstances of the case, it would be just and
proper to restore the judgment of the learned Single
Judge on this count and we hold that the directions
B contained in the said judgment are justifiable to the
extent indicated above. The Division Bench while
exercising its appellate jurisdiction should not have
accepted the alleged requisite instructions received by
the counsel on behalf of the appellant and treated as ad
C idem and modified the amount as provided in the order
of the Single Judge which is wholly unreasonable and
therefore, it is unsustainable in law as it would affect
the right of the appellant for getting his legal entitlement
of just and reasonable compensation for the negligence
D on the part of the respondents. [Para 20][864-D-H;
865-A]

General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas and Ors. (1994) 2 SCC 176; Sarla Dixit and Anr. v. Balwant Yadav & Ors. (1996) 3 SCC 179 : 1996 (3) SCR 30; U.P. State Road Transport Corporation & Ors. v. Trilok Chandra & Ors. (1996) 4 SCC 362 : 1996 (2) Suppl. SCR 443; United India Insurance Co. Ltd. & Ors. v. Patricia Jean Mahajan & Ors. 2002 (6) SCC 281 : 2002 (3) SCR 1176; Abati Bezbaruah v. Dy. Director General, Geological Survey of India & Anr. (2003) 3 SCC 148 : 2003 (1) SCR 1229; Sarla Verma & Ors. v. Delhi Transport Corporation & Anr. (2009) 6 SCC 121 : 2009 (5) SCR 1098; Dr. Balram Prasad v. Kunal Saha (2014) 1 SCC 384 : 2013 (12) SCR 30; Rekha Jain v. National Insurance Co. Ltd. (2013) 8 SCC 389 – referred to.

Fowler v. Grace (1970) 114 Sol Jo 193 (CA) – referred to.

Case Law Reference:

(1994) 2 SCC 176	referred to	Para 8	A
1996 (3) SCR 30	referred to	Para 8	
1996 (2) Suppl. SCR 443	referred to	Para 8	
2002 (3) SCR 1176	referred to	Para 8	B
2003 (1) SCR 1229	referred to	Para 8	
2009 (5) SCR 1098	referred to	Para 17	
2013 (12) SCR 30	referred to	Para 17	C
(2013) 8 SCC 389	referred to	Para 18	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 11466 of 2014.

From the Judgment and Order dated 30-10-2013 of the High Court of Punjab and Haryana at Chandigarh in Letter Patent Appeal No. 1631 of 2013 in Civil Writ Petition No. 14046 of 2012. D

Sushil Kr. Jain, Sr. Adv., Nitin Jain, Ms. Anisha Jain, Dr. Mrs. Vipin Gupta, Advs. with him for the Appellant. E

Narender Hooda, AAG, S.S. Hooda, Ms. Bano D., Manoj Sheoran, Kamal Mohan Gupta, Advs., with him for the Respondents.

The Judgment of the Court was delivered by F

V. GOPALA GOWDA, J. 1. Leave granted.

2. The appellant, represented through his natural guardian father - Manoj Kumar, has filed this appeal questioning the judgment and order dated 30.10.2013 passed by the Division Bench of the High Court of Punjab and Haryana at Chandigarh in the Letters Patent Appeal No.1631 of 2013 in Civil Writ Petition No. 14046 of 2012. G

3. The brief facts are stated herein:

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- A The appellant, a four year old boy was electrocuted on 03.11.2011 by coming in direct contact with the naked electric wire lying open on the roof of his house. Immediately after the incident, the boy was taken for first aid to a nearby R.M. Anand Hospital in Panipat, Haryana from where he was referred to
- B Post Graduate Institute of Medical Sciences, Rohtak. The final treatment was given at Safdarjang Hospital, New Delhi, where the doctors left with no other option but to carry out triple amputation by removing both his arms upto arm pit and left leg upto knee as the grievous injuries suffered were not curable.
- C On 08.02.2012, the disability certificate was issued to the appellant certifying to be 100% permanent disability.

4. It is stated on behalf of the appellant that prior to this tragic incident, on 16.08.2011 the appellant's father along with other neighbours had approached the SDO, Chhajpur, Panipat

D i.e. respondent No. 3 through a representation, to remove the iron angle from the vicinity of the residential area, as it endangers the life of around 40 to 60 families which is densely populated. But no action was taken by him.

E 5. The appellant approached the High Court by filing a writ petition under Article 226 of the Constitution of India seeking for an award of compensation from the respondents on account of the negligence on the part of the respondents which resulted in the tragic electric shock leading to triple

F amputation of the appellant.

6. The said writ petition was opposed by the respondents by filing a written statement denying the allegations made therein stating that the iron angle found on the roof of the house was not installed by any employee of the respondent electricity

G department. It is stated by the respondents that the father of the appellant was to be squarely blamed for installing the insulator himself on the roof of the house on which high tension wire was erected to keep it at bay so as not to touch brick and mortal. Therefore, neither the first respondent-Uttar Haryana

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Bijli Vitran Nigam Ltd. nor its employees can be held responsible or accountable for the mishap occurred on the fateful day much less the damages or monetary compensation to be awarded in favour of the appellant herein. A

7. The learned Single Judge of the High Court adverted to Section 68 of the Indian Electricity Act, 2003 (for short "the Act") and Rule 91 of the Electricity Rules, 1956 (for short "the Rules") which lay down the procedure of safety and protective devices to be provided for overhead electric lines erected over any part of the street or public place or any consumer's premises and mandate that those shall be protected with a device approved by the Inspector for rendering the line electrically harmless in case it breaks. B C

8. The learned Single Judge of the High Court further referred to Rules 29, 44 and 46 of the Rules which are statutory in nature which require the electricity authorities to conduct periodical inspection of the lines maintained by them and to take all such safety measures to prevent accident and maintain the lines in such a manner that life and property of the general public is protected. The learned Single Judge has considered the position of law declared by this Court in catena of cases for awarding compensation, particularly, the electrocution cases, and held the principle of "strict liability" and consequential negligence in awarding compensation in favour of the claimant against the State Electricity Board. This Court and the various High Courts such as High Courts of Madras, Madhya Pradesh, Orissa, Kerala and Gujarat have awarded compensation to the victims of electrocution in exercise of the extraordinary and appellate jurisdiction, and have held that the Electricity Board Supply Companies are duty bound to take precautionary measures under the provisions of the Act. Therefore, the learned Single Judge has held the electricity authority - the first respondent to be liable to pay the compensation to the claimant irrespective of the fact that the harm could have been avoided by the consumer by taking D E F G H

- A precautionary measures. The learned Single Judge of the High Court has referred to various judgments of this Court as well as the aforesaid High Courts rendered under the Motor Vehicles Act for determination and awarding just and reasonable compensation in favour of the claimant, viz.
- B **General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas and Ors.**¹, **Sarla Dixit and Anr. v. Balwant Yadav & Ors.**², **U.P. State Road Transport Corporation & Ors. v. Trilok Chandra & Ors.**³, **United India Insurance Co. Ltd. & Ors. v. Patricia**
- C **Jean Mahajan & Ors.**⁴ and **Abati Bezbaruah v. Dy. Director General, Geological Survey of India & Anr.**⁵ by applying the multiplier method as specified in the schedule of the M.V. Act.

- D 9. The learned Single Judge awarded compensation to the appellant and issued directions to the respondent which runs into (xiii) clauses/paragraphs. The relevant paragraph Nos. (v) and (vi) of the judgment of the learned Single Judge, prior to modification by the Division Bench of the High Court in its judgment, are extracted below:

- E “v) In order to secure the financial and monetary future of the minor Raman, it is directed that the respondent-Nigam would pay compensation of Rs. 30 lacs to him immediately for loss of enjoyment of life, trauma suffered and to act as a guard against neglect and dependence
- F on others, loss of future employability and the agony of it all, pain and mental shock suffered and continue to be suffered by an irreconcilable event that has completely changed the life of a family. This amount would when
- G made available with interest on reaching the age of 21 years act as a financial security and building block for

¹ (1994) 2 SCC 176

² (1996) 3 SCC 179

³ (1996) 4 SCC 362

⁴ (2002) 6 SCC 306

H ⁵ (2003) 3 SCC 148

the future. The amount will be deposited in a fixed deposit account in the name of the petitioner (minor) under joint guardianship of the parents of Raman and the Engineer-in-Chief or his nominee representing the respondent-Nigam, in a nationalised bank, preferably in the State Bank of Patiala, Branch at Punjab and Haryana High Court, Chandigarh. The amount is directed to be so deposited within 60 days of receipt of certified copy of this order failing which the amount will carry 8.5% interest till deposit in the Bank where after the principal amount will earn interest at bank rates for fixed deposits fixed from time to time. However, the amount awarded under this head will only be available to the minor Raman on attaining the age of majority i.e. 21 years. In case the minor Raman does not survive till the age of majority, this amount with all interest accrued shall revert to the respondent-Nigam with no claim on it by any third party or the parents or siblings of Raman. This would ensure that the child is valued and cared for till he attains majority.

vi) Since the above amount of Rs.30 lakhs would remain inaccessible to the petitioner for his use he would require running income to meet his daily expenses for paid caregivers/attendants or family help/labour equivalent to such expenses and other bare and sundry expenses, which are quantified at about Rs.20,000/- plus per month for life as at present. To earn interest of Rs.20,000/- per month a corpus of Rs. 30 lakhs is required to be invested in the Bank to earn interest @ 8.5% being current rates on long term fixed deposits. Therefore, in addition to Rs.30 Lakhs as awarded in direction (v), the respondent-Nigam would pay and deposit compensation of a further amount of Rs.30 lakhs to be kept in a separate interest bearing account in the same bank as directed under point no. (v), under the same joint guardianship arrangement. This will be an interest accruing account with interest proceeds available to meet the day-to-day

A needs of the petitioner. The interest so accrued will be transferred in a separate savings bank account to be opened in the same branch in minor Raman's name to be operated jointly by the parents payable to the petitioner on regular monthly basis to be applied for the care of the child by the parents, his educational expenses, nutritious food, costs of attendants/care givers to minister to him day after day etc. The above amount of Rs.30 lacks from which interest will be used for the petitioner from month to month will also not be allowed to be withdrawn for any purpose, till the petitioner attains the age of 21, without obtaining orders from this Court, if circumstances so warrant, except the monthly interest as directed. The State Bank of Patiala, Branch at Punjab and Haryana High Court, Chandigarh would open the said Savings Bank Account in the name of the minor; under the guardianship of mother and father and transfer the said savings Bank Account to the Branch nearest to the residence of the petitioner and the bank would remit the interest accrued thereon every month to the said savings account at Panipat Branch, to be auto-renewed till the petitioner reaches the age of 21 years. The amount is directed to be so deposited within 60 days of receipt of certified copy of this order failing which the amount will carry 8.5% interest till deposit in the bank where after the principal amount will earn interest at bank rates for fixed deposits from time to time."

In addition to the compensation awarded by the learned Single Judge in the above terms in favour of the appellant, certain other directions were also given to the respondents for its compliance to avert any unfortunate electrocution accidents in future.

10. Being aggrieved of the judgment and order dated 02.07.2013 of the learned Single Judge, the respondents filed the LPA in the High Court urging various grounds and prayed

to set aside the same. The Division Bench of the High Court on 30.10.2013 passed a cryptic order while partially allowing the LPA filed by the respondents on the basis of the alleged concession given by the advocate on behalf of the appellant, holding that the learned counsel for the parties have obtained requisite instructions and they are ad idem that instant appeal be disposed of on the following agreed terms, which read thus:-

“(1) The impugned order is accepted by the parties, except to the extent of modification hereinafter specified.

(2) The amount of Rs. 30 lakhs specified in clause (v) of the direction would be deposited in the State Bank of Patiala, Panipat Branch, instead of Branch at Punjab and Haryana High Court, Chandigarh.

(3) This amount will be deposited within 10 days in the account number given to the appellants and to be converted immediately into FDR in terms of directions contained in same sub-para;and

(4) The directions given in sub-para (vi) will stand substituted by a direction to pay a sum of Rs.10,000/- p.m. on or before 7th of every month in advance, directly to the bank account already intimated and such payment will continue to be made till the minor attains the age of 21 years.”

11. It is urged by the learned senior counsel on behalf of the appellant Mr. Sushil Kumar Jain that the unfortunate appellant boy or his parents who are his natural guardians in the proceedings were unaware of the nexus of their advocate with the respondents and when they came to know about the order passed in LPA, a legal notice dated 27.01.2014 was sent to his advocate for purging from breach of trust and for committing professional misconduct under the Advocates Act, 1961 in giving concession before the Division Bench of the High Court without their either oral or written instructions.

A Hence, the appellant has approached this Court with this appeal questioning the correctness of the impugned judgment and order of the Division Bench of the High Court by urging various grounds.

B 12. The learned senior counsel on behalf of the appellant has contended that the order of the Division Bench of the High Court reducing the compensation amount awarded by the learned Single Judge from Rs. 60 lakhs to Rs.30 lakhs and reducing the monthly payment from Rs.20,000/- to Rs.10,000/-, till he attains the age of 21 years, on account of C ad idem, which in fact is arbitrary, unreasonable and is not correct, as the appellant has not given such instructions to his lawyer to give concessions before the Division Bench for reducing the compensation awarded by the learned Single Judge.

D 13. It is further urged by the learned senior counsel on behalf of the appellant that the Division Bench of the High Court was required to examine the case keeping in mind the nature of grievous injuries sustained by the appellant in the electrocution accident and the compensation awarded by the learned Single Judge under sub-para (vi) should not have been E modified to the extent of payment of Rs.10,000/-p.m. in place of Rs.20,000/- p.m. as per the impugned judgment, on the basis of the alleged instructions received by the counsel from the appellant and disposed of the appeal by passing impugned F judgment by reducing compensation awarded in favour of the appellant, which action of it is wholly unsustainable in law and therefore, the same is liable to be set aside.

G 14. On the other hand, Mr. Narendra Hooda, the learned senior counsel appearing on behalf of the respondents submitted that there is no reduction of compensation awarded by the learned senior counsel, except modification made as mentioned at para 4 in the impugned judgment to the extent of Rs.10,000/- p.m. instead of Rs.20,000/-p.m. towards monthly expenses of the appellant which would not affect the rights of the appellant and hence, he has prayed for dismissal of the H appeal as the same is devoid of merit.

15. We have heard learned senior counsel for the parties who have made their respective submissions in support of their respective claim which were carefully examined by us with reference to the undisputed facts, particularly, the amputation of both the arms upto the arm pit and the left leg upto knee which has resulted in 100% permanent disability caused to the appellant as per the Doctor's certificate which is produced in the case.

16. Having regard to the age of the boy as 5 years at the time of the incidence and longevity of life of Indian citizen as 70 years, the remaining 65 years the appellant is required to suffer from mental agony and hardship. He is virtually dead wood and further he has to undergo continuous pain and suffering at the time of attending the nature's call, sitting, standing, walking and sleeping. He has to face difficulties on all walks of life, which is worse than death. His childhood is lost, the marital status and happiness is lost, which cannot be compensated in terms of money. He has to undergo the great ordeal and agony throughout his life. He requires a permanent attendant throughout his lifetime to assist him for all purposes, to whom the appellant is required to pay minimum at an average of Rs.10,000/- to Rs.15,000/- p.m. and it is a hard reality that the cost of living in our country is also steadily increasing day by day. This aspect of the matter should have been taken into consideration by the Division Bench of the High Court at the time of reducing the compensation awarded to the appellant.

17. The learned Single Judge of the High Court has awarded compensation keeping all these aspects of the matter and has applied the guiding principle of multiplier method after advertng to the case of *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr*⁶. for the purpose of computation of just and reasonable compensation in favour of the appellant which method should not have been applied to

⁶ (2009) 6 SCC 121

A the case on hand, particularly, having regard to the statutory negligence on the part of the respondents in not providing the safety measures to see that live electric wires should not fall on the roof of the building by strictly following the Rules to protect the lives of the public in the residential area. This Court
 B in the case of *Dr. Balram Prasad v. Kunal Saha*⁷, has deviated from following the multiplier method to award just and reasonable compensation in favour of the claimant in a medical negligence case. The same principle will hold good in the case on hand too. The following case law is followed by this Court in
 C the above referred case, the relevant paragraphs are extracted herein to award just and reasonable compensation in favour of the appellant:

D 68. three-Judge Bench decision of this Court in *Indian Medical Assn. v. V.P. Shantha*, wherein this Court has categorically disagreed on this specific point in another case wherein “medical negligence” was involved. In the said decision, it has been held at para 53 that to deny a legitimate claim or to restrict arbitrarily the size of an award would amount to substantial injustice to the claimant.
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F 99. In *Govind Yadav v. New India Insurance Co. Ltd.* this Court at para 15 observed as under which got reiterated at SCC pp. 639-40, para 13 of *Ibrahim v. Raju*:

“15. In *Reshma Kumari v. Madan Mohan*

G [(2009) 13 SCC 422] this Court reiterated that the compensation awarded under the Act should be just and also identified the factors which should be kept in mind while determining the amount of compensation. The relevant portions of the judgment are extracted below:

⁷ (2014) 1 SCC 384

26. The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms.

27. The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another (sic situation) the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guesswork may be inevitable. That may be so.

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46. In the Indian context several other factors should be taken into consideration including education of the dependants and the nature of job. In the wake of changed societal conditions and global scenario, future prospects may have to be taken into consideration not only having regard to the status of the employee, his educational qualification; his past

A performance but also other relevant factors, namely,
 the higher salaries and perks which are being offered
 by the private companies these days. In fact while
 determining the multiplicand this Court in *Oriental*
Insurance Co. Ltd. v. Jashuben held that even
 B dearness allowance and perks with regard thereto
 from which the family would have derived monthly
 benefit, must be taken into consideration.

C 47. One of the incidental issues which has also to
 be taken into consideration is inflation. Is the practice
of taking inflation into consideration wholly incorrect?
Unfortunately, unlike other developed countries, in
India there has been no scientific study. It is expected
that with the rising inflation the rate of interest would
go up. In India it does not happen. It, therefore, may
 D be a relevant factor which may be taken into
consideration for determining the actual ground
reality. No hard-and-fast rule, however, can be laid
down therefor.'

E **101.** he has also strongly placed
 reliance upon the observations made at para 170 in
Malay Kumar Ganguly's case referred to supra wherein
 this Court has made observations as thus: (SCC p. 282)

F "170. Indisputably, grant of compensation involving an
 accident is within the realm of law of torts. It is based
 on the principle of *restitutio in integrum*. The said
principle provides that a person entitled to damages
 G should, as nearly as possible, get that sum of money
which would put him in the same position as he would
have been if he had not sustained the wrong. (See
Livingstone v. Rawyards Coal Co.)"

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103.1. In *Ningamma's* case, this Court has observed at para 34 which reads thus: (SCC p. 721) A

"34.in our considered opinion a party should not be deprived from getting 'just compensation' in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty-bound and entitled to award 'just compensation' irrespective of the fact whether any plea in that behalf was raised by the claimant or not." B

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112. The claimant has also placed reliance upon *Nizam's Institute of Medical Sciences v. Prasanth S.Dhananka's* [(2009) 2 SCC 688] case in support of his submission that if a case is made out, then the Court must not be chary of awarding adequate compensation. D
The relevant paragraph reads as under:

"88. We must emphasise that the court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the court must not be chary of awarding adequate compensation. The 'adequate compensation' that we speak of, must to some extent, be a rule of thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned." E

Further in para 119, it is heldthis Court has rejected the use of multiplier system to calculate and award the quantum of compensation which must be just and reasonable. The relevant paragraph is quoted hereunder: (SCC para 92) F

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A “92. Mr Tandale, the learned counsel for the respondent
has, further submitted that the proper method for
determining compensation would be the multiplier
method. We find absolutely no merit in this plea. The
kind of damage that the complainant has suffered, the
B expenditure that he has incurred and is likely to incur
in the future and the possibility that his rise in his chosen
field would now be restricted, are matters which cannot
be taken care of under the multiplier method.”

(emphasis supplied)

C Further under paragraph No. 121, the relevant paragraph
from **United India Insurance Co. Ltd. v. Patricia Jean
Mahajan** read as under: (SCC pp. 295-96, paras 20)

D “20. The court cannot be totally oblivious to the realities.
The Second Schedule while prescribing the multiplier,
had maximum income of Rs 40,000 p.a. in mind, but it is
considered to be a safe guide for applying the prescribed
multiplier in cases of higher income also but in cases
where the gap in income is so wide as in the present
E case income is 2,26,297 dollars, in such a situation, it
cannot be said that some deviation in the multiplier would
be impermissible. Therefore, a deviation from applying
the multiplier as provided in the Second Schedule may
have to be made in this case. Apart from factors indicated
F earlier the amount of multiplicand also becomes a factor
to be taken into account which in this case comes to
2,26,297 dollars, that is to say, an amount of around Rs
68 lakhs per annum by converting it at the rate of Rs 30.
By Indian standards it is certainly a high amount.
G Therefore, for the purposes of fair compensation, a lesser
multiplier can be applied to a heavy amount of
multiplicand. A deviation would be reasonably
permissible in the figure of multiplier even according to
the observations made in *Susamma Thomas* where a

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specific example was given about a person dying at the age of 45 leaving no heirs being a bachelor except his parents.” A

(emphasis supplied)

Further, in paragraph 177, it was held as under:- B

“177. Under the heading of loss due to pain and suffering and loss of amenities of the wife of the claimant, Kemp and Kemp write as under: C

“The award to a plaintiff of damages under the head “pain and suffering” depends as Lord Scarman said in *Lim Poh Choo v. Camden and Islington Area health Authority*, “upon the claimant’s personal awareness of pain, her capacity of suffering. Accordingly, no award is appropriate if and in so far as the claimant has not suffered and is not likely to suffer pain, and has not endured and is not likely to endure suffering, for example, because he was rendered immediately and permanently unconscious in the accident. By contrast, an award of damages in respect of loss of amenities is appropriate whenever there is in fact such a loss regardless of the claimant’s awareness of the loss.” D E

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‘Even though the claimant may die from his injuries shortly after the accident, the evidence may justify an award under this head. Shock should also be taken account of as an ingredient of pain and suffering and the claimant’s particular circumstances may well be highly relevant to the extent of her suffering.’ F G

By considering the nature of amenities lost and the injury and pain in the particular case, the court must assess the effect upon the particular claimant. In H

A deciding the appropriate award of damages, an
important consideration show long will he be deprived
of those amenities and how long the pain and suffering
has been and will be endured. If it is for the rest of his
life the court will need to take into account in assessing
 B damages the claimant's age and his expectation in
life.....”

(emphasis supplied)

18. Further, in the case of *Rekha Jain v. National*
 C *Insurance Co. Ltd.*⁸ this Court at paras 34 and 35, with regard
 to the quantum of damages, has held as under:

“34.....In deciding on the quantum of damages
 to be paid to a person for the personal injuries suffered
 by him, the Court is bound to ascertain all
 D considerations which will make good to the sufferer
 of the injuries, as far as money can do, the loss which
 he has suffered as a natural consequence of the wrong
 done to him. [K. Narasimha Murthy vs. the Manager,
 Oriental Insurance Company Limited and Anr.]. [ILR
 E 2004 KAR 2471]

35.....Therefore, the general principle which should
 govern the assessment of damages in personal injury
 cases is that the Court should award to injured person
 such a sum of money as will put him in the same position
 F as he would have been in if he had not sustained the
 injuries. But, it is manifest that no award of money can
 possibly compensate an injured man and renew a
 shattered human frame.”

39.....In *Mediana, in re* [1900 AC 113 (HL)], it is held at
 G para 32 which is extracted as herein

‘..... 32....In personal injury cases, the Court is
 constantly required to form an estimate of chances
 and risks which cannot be determined with precision.

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It is because, the law will disregard possibilities which are slight or chances which are nebulous; otherwise, all the circumstances of the situation must be taken into account, whether they relate to the future which the plaintiff would have enjoyed if the accident had not happened, or to the future of his injuries and his earning power after the accident. Damages are compensation for an injury or loss, that is to say, the full equivalent of money so far as the nature of money admits; and difficulty or uncertainty does not prevent an assessment.' [K. Narasimha Murthy vs. the Manager, Oriental Insurance Company Limited and Anr.] [ILR 2004 KAR 2471]

In *Fowler v. Grace*, [(1970) 114 Sol Jo 193 (CA)] Edmund Davies, L.J., has said that:

"It is the manifest duty of the Tribunal to give as perfect a sum as was within its power'. There are many losses which cannot easily be expressed in terms of money. If a person, in an accident, loses his sight, hearing or smelling faculty or a limb, value of such deprivation cannot be assessed in terms of market value because there is no market value for the personal asset which has been lost in the accident, and there is no easy way of expressing its equivalent in terms of money."

41. *McGregor on Damages* (14th Edn.) at Para 1157, referring to the heads of damages in personal injury actions, states as under:

"The person physically injured may recover both for his pecuniary losses and his non-pecuniary losses. Of these the pecuniary losses themselves comprise two separate items viz. the loss of earnings and other gains which the plaintiff would have made had he not been injured and the medical and other expenses to which he is put as a result of the injury, and the courts

A have subdivided the non-pecuniary losses into three categories viz. pain and suffering, loss of amenities of life and loss of expectation of life.

B Besides, the Court is well advised to remember that the measures of damages in all these cases 'should be such as to enable even a tortfeasor to say that he had amply atoned for his misadventure.' The observation of Lord Devlin that the proper approach to the problem or to adopt a test as to what contemporary society would deem to be a fair sum, such as would allow the wrongdoer to 'hold up his head among his neighbours and say with their approval that he has done the fair thing', is quite apposite to be kept in mind by the Court in assessing compensation in personal injury cases.

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(emphasis supplied)

42. In *R. Venkatesh v. P. Saravanan* the High Court of Karnataka while dealing with a personal injury case wherein the claimant sustained certain crushing injuries due to which his left lower limb was amputated, held that in terms of functional disability, the disability sustained by the claimant is total and 100% though only the claimant's left lower limb was amputated. In para 9 of the judgment, the Court held as under: (Kant LJ p. 415)

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'9. As a result of the amputation, the claimant had been rendered a cripple. He requires the help of crutches even for walking. He has become unfit for any kind of manual work. As he was earlier a loader doing manual work, the amputation of his left leg below the knee, has rendered him unfit for any kind of manual work. He has no education. In such cases, it is well settled that the economic and functional disability will have to be treated as total, even though the physical disability is not 100%.'

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43. Lord Reid in *Baker v. Willoughby* has said: (AC p. 492A) A

“... A man is not compensated for the physical injury: he is compensated for the loss which he suffers as a result of that injury. His loss is not in having a stiff leg: it is in his inability to lead a full life, his inability to enjoy those amenities which depend on freedom of movement and his inability to earn as much as he used to earn or could have earned....” B

19. In view of the law laid down by this Court in the above referred cases which are extensively considered and granted just and reasonable compensation, in our considered view, the compensation awarded at Rs. 60 lakhs in the judgment of the learned Single Judge of the High Court, out of which 30 lakhs were to be deposited jointly in the name of the appellant represented by his parents as natural guardian and the Chief Engineer or his nominee representing the respondent-Nigam in a nationalised Bank in a fixed deposit till he attains the age of majority, is just and proper but we have to set aside that portion of the judgment of the learned Single Judge directing that if he survives, he is permitted to withdraw the amount, otherwise the deposit amount shall be reverted back to the respondents as the same is not legal and valid for the reason that once compensation amount is awarded by the court, it should go to the claimant/appellant. Therefore, the victims/claimants are legally entitled for compensation to be awarded in their favour as per the principles/guiding factors laid down by this Court in catena of cases, particularly, in *Kunal Saha's* case referred to supra. Therefore, the compensation awarded by the Motor Vehicle Tribunals/Consumer Forums/State Consumer Disputes Redressal Commissions/National Consumer Disputes Redressal Commission or the High Courts would absolutely belong to such victims/claimants. If the claimants die, then the Succession Act of their respective religion would apply to succeed to such estate by the legal C
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- A heirs of victims/ claimants or legal representatives as per the testamentary document if they choose to execute the will indicating their desire as to whom such estate shall go after their death. For the aforesaid reasons, we hold that portion of the direction the of the learned Single Judge contained in sub-
- B para (v), to the effect of Rs. 30 lakhs compensation to be awarded in favour of the appellant, if he is not alive at the time he attains majority, the same shall revert back to the respondent-Nigam after paying Rs.5 lakhs to the parents of the appellant, is wholly unsustainable and is liable to be set
- C aside. Accordingly, we set aside the same and modify the same as indicated in the operative portion of the order.

20. The remaining compensation amount of Rs. 30 lakhs to be deposited in a fixed deposit account in the name of the petitioner (minor) under joint guardianship of the parents of
- D Raman and the Engineer-in-Chief or his nominee representing the respondent-Nigam, in the Nationalised Bank as corpus fund, out of which an interest of Rs.20,000/- p.m. towards the expenses as indicated in sub-para (vi) of the order passed by the learned Single Judge, cannot be said to be on the higher
- E side, but in our view, the said amount of compensation awarded is less and not reasonable and having regard to the nature of 100% permanent disability suffered by the appellant, it should have been much higher as the appellant requires permanent assistance of an attendant, treatment charges as
- F he is suffering from agony and loss of marital life, which cannot be compensated by the amount of compensation awarded by the learned Singh Judge of the High Court. Hence, having regard to the facts and circumstances of the case, it would be just and proper for this Court to restore the judgment of the
- G learned Single Judge on this count and we hold that the directions contained in the said judgment are justifiable to the extent indicated above. The Division Bench while exercising its appellate jurisdiction should not have accepted the alleged requisite instructions received by the counsel on behalf of the
- H appellant and treated as ad idem and modified the amount

as provided under sub-para (vi) of the order of the learned Single Judge and substituted the para 4 in its judgment as indicated in the aforesaid portion of the judgment which is wholly unreasonable and therefore, it is unsustainable in law as it would affect the right of the appellant for getting his legal entitlement of just and reasonable compensation for the negligence on the part of the respondents. A B

21. In view of the foregoing reasons, after considering rival legal contentions and noticing the 100% permanent disability suffered by the appellant in the electrocution accident on account of which he lost all the amenities and become a deadwood throughout his life, and after adverting the law laid down by this Court in catena of cases in relation to the guiding principles to be followed to award just and reasonable compensation in favour of the appellant, we pass the following order:- C D

(I) The appeal is allowed after setting aside the substituted paragraph No.4 of the impugned judgment and order of the Division Bench of the High Court particularly, in place of sub para (vi) of the judgment and order of the learned Single Judge with modifications made by us in this judgment in the following terms. E

(II) We restore the compensation awarded at sub-paras (v) and (vi) of the order of the learned single Judge: F

(a) in the modified form that the compensation is awarded with direction to the respondents to keep Rs.30 lakhs in the Nationalised Bank in the name of the appellant represented by his father as a natural guardian till the age of attaining majority of the appellant. G

(b) The further direction contained in the judgment of the learned Single Judge that if the appellant is not alive at the time of attaining the age of majority, the H

A deposit amount shall be reverted to the respondents, is set aside.

B (c) We further declare that the said amount of compensation of Rs.30 lakhs exclusively belongs to the appellant and after his demise it must go to the legal heirs or representatives as it is the exclusive estate of the appellant as the it is the compensation awarded to him for the 100% permanent disability suffered by him due to electrocution on account of the negligence of the respondents. The monthly interest that would be earned during the period of his minority shall be withdrawn by the appellant's guardian and spend the same towards his monthly expenses and after he attains the majority, it is open for him either to continue the deposit or withdraw the same and appropriate for himself or his legal heirs or legal representative, if he does not survive.

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E (d) The deposit of Rs. 30 lakhs as corpus amount as directed at sub-para(vi) of the judgment of the learned Single Judge shall be in the name of the appellant exclusively represented by his natural guardians/parents till he attains majority, the income that would be earned on such deposit amount can be drawn by the parents every month to be spent for personal expenses. The Bank in which the deposit is made in the name of Chief Engineer shall be deleted and the name of the appellant shall be entered as directed above. After attaining the age of majority, the appellant is at liberty to withdraw the above said amount also. If for any reason the appellant does not stay alive, his heirs/legal representatives can withdraw the said amount.

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G (e) The other directions in the judgment of the learned Single Judge to the respondents for compliance shall

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remain intact, the same shall be complied with and A
the report shall be submitted before the learned Single
Judge.

The appeal is allowed in the above said terms, but without
costs.

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Nidhi Jain

Appeal allowed.