A

V. MEKALA

v.

M. MALATHI & ANR.

(Civil Appeal No. 4880 of 2014)

APRIL 25, 2014

B

[GYAN SUDHA MISRA AND V. GOPALA GOWDA, JJ.]

Motor Vehicles Act, 1988:

C *s.166 – Motor accident – Just and reasonable compensation – 16 years old bright student became permanently disabled – Compensation under the head 'loss of earning', 'pain and suffering',' loss of amenities', 'loss of enjoyment of marriage' etc. – Held: High Court on the basis* D *of medical evidence has rightly arrived at the conclusion that appellant has suffered 70% of permanent disablement – However, the assumption of courts below as regards monthly notional income of 6,000/- is on the lower side – Appellant is a brilliant student as she has secured first rank in 10th* E *Standard, she would have had a better future in terms of educational career and employment prospects, which are lost as a result of her being permanently disabled – Therefore, for computation of just and reasonable compensation, under the head 'loss of income', her monthly income is to be taken as Rs.10,000/- and 50% of it to be added towards future* F *prospects of income – Compensation towards pain and suffering enhanced to Rs.2,00,000/- — Compensation under head loss of amenity and attendant charges enhanced to Rs.2,00,000/- — Compensation under head of 'loss of enjoyment of life and marriage prospects' enhanced to* G *Rs.3,00,000/- — Rs.50,000/- for purchase of crutches and Rs.25,000/- towards cost of litigation also awarded – Appellant, thus, entitled to a total compensation of Rs.30,93,000/- with 9% interest from date of application till payment.*

H

s.166 – Motor accident claim – Period taken in disposal – Inflation — Effect of – Held: Having regard to undisputed fact that there has been inflation of money since the accident, the same has to be taken into account by Tribunal and appellate court while awarding compensation to claimant-appellant as per the principle laid down by Supreme Court.

The appellant, a 16 years old student of class 11 holding first rank in her school, met with an accident and sustained serious injuries making her permanently disabled. The Tribunal granted her compensation of Rs. 6,46,000 and the High Court enhanced it to Rs. 18,22,000/-. The claimant filed the instant appeal contending that the High Court erred in taking her notional income as Rs. 6,000 per month. It was her case that she was a brilliant student and could have got professional degree and atleast could have earned a sum of Rs. 18,000/- per month.

The question for consideration before the court was: whether the claimant-appellant was entitled to enhancement of compensation under the heads, namely, loss of earning, pain and suffering, loss of amenities, loss of enjoyment of marriage prospects and the cost of crutches?

Allowing the appeal the court

HELD: 1.1. Upon examination of the claimant-appellant, the Doctor-PW2 has opined that she is not able to squat, her disability is ascertained at 70%. PW 2, has stated in his evidence that the appellant has sustained fracture in both bones in both the legs, the knee folding is restricted, and the legs could not be stretched fully and the knee bones are mal-united and the appellant cannot walk without crutches. The doctor has also stated that the appellant is suffering from severe pain while walking and further the thickness of the appellant's both legs has

A **been reduced. The evidence of PW2 has been accepted by the Tribunal and concurred by the High Court. The High Court on the basis of medical evidence on record has rightly arrived at the conclusion that the appellant has suffered 70% of permanent disablement. [para 5,12**
B **and 14] [781-E; 785-G-H; 786-A-B; 787-A-B]**

Raj Kumar v. Ajay Kumar and Anr. **2010 (13) SCR 179 = (2011) 1 SCC 343 – relied on.**

1.2. However, the assumption of the courts below as
C **regards monthly notional income of 6,000/- is on the lower side. The appellant is a brilliant student as she has secured first rank in the 10th Standard, she would have had a better future in terms of educational career to acquire basic or master degrees in the professional**
D **courses and she could have got a suitable public or private employment, but on account of permanent disablement she suffered due to injuries sustained by her in the accident, that opportunity is lost to her and, therefore, she is entitled to compensation as per law laid**
E **down by this Court. [para 14-15] [787-B-C, 788-A-C]**

R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. & Ors. **1995 (1) SCR 75 = (1995) 1 SCC 551;** *Govind Yadav v. New India Insurance Company Limited* **(2011) 10 SCC 683; and** *Raj Kumar v. Ajay Kumar and Anr.* **2010 (13) SCR 179 =**
F **(2011) 1 SCC 343 – relied on.**

1.3. Further, having regard to the undisputed fact that there has been inflation of money since the occurrence of the accident, the same has to be taken into account
G **by the Tribunal and appellate court while awarding compensation to the claimant-appellant as per the principle laid down by this Court. [para 16] [788-C-D]**

Govind Yadav v. New India Insurance Company Limited **(2011) 10 SCC 683; and** *Reshma Kumari v. Madan Mohan*
H **2009 (11) SCR 305 = (2009) 13 SCC 422 – relied on.**

1.4. As regards the plea of respondent No.2 that the appellant can still finish her education and find employment and, therefore, there is no necessity to enhance the amount of compensation under the head of 'loss of income' and 'future prospects', it is pertinent to note that the claimant/ appellant has been undergoing substantial pain and suffering due to the accident which has rendered both her legs dysfunctional. This has reduced the scope of her future prospects including her marriage substantially. Moreover, a tortfeasor is not entitled to dictate the terms of the claimants-appellants career. [para 17] [789-B-D]

K. Narsimha Murthy v. The Manager, Oriental Insurance Company Ltd and Anr. **ILR 2004 KARNATAKA 2471 – relied on.**

1.5. In the light of the principles laid down in the case of *Reshma Kumari,* it would be just and proper for this Court, keeping in mind past results of the appellant, to take 10,000/- as her monthly notional income for computation of just and reasonable compensation under the head of loss of income. Further, the High Court has failed to take into consideration the future prospects of income based on the principles laid down by this Court. Therefore, the appellant is justified in seeking for re-enhancement under this head as well and this Court holds that the claimant-appellant is entitled to 50% increase under this head as per the principle laid down by this Court in the case of *Santosh Devi.* Therefore, taking both the aspects into account, the total amount of compensation under this head is calculated as Rs.22,68,000/-. [para 19] [791-C-E; 792-G]

Santosh Devi v. National Insurance Company Ltd. & Ors. **2012 (3) SCR 1178 = (2012) 6 SCC 421 – relied on.**

1.6. The compensation under the head pain and

A suffering and mental agony was awarded by the High Court after recording concurrent finding with the award passed by the Tribunal. However, the courts below have not recorded the nature of the permanent disablement sustained by the appellant, while awarding 1,00,000/-
B under this head which is too meager an amount and is contrary to the judgments of this Court. Therefore, under this head the amount awarded should be enhanced to 2,00,000/- as the Doctor-PW2 has opined that at the time of walking with support of crutches, the claimant-
C appellant will be suffering pain permanently. [para 20] [792-G-H; 793-A,F]

1.7. The loss of amenity and attendant charges awarded by the courts below at 1,00,000/- is also too meager an amount as the appellant has permanently lost
D her amenity of both the legs. For the purpose of walking, squatting, running and also studying throughout her life and, particularly, at the advanced age, she will be requiring an attendant throughout. Therefore, the compensation under this head is required to be enhanced
E from 1,00,000/- to 2,00,000/- based upon the principle laid down by this court in *Govind Yadav* case. [para 21] [793-G-H; 794-A-B]

1.8. The amount of compensation awarded under the
F head of 'Loss of enjoyment of life and marriage prospects' at 2,00,000/- is totally inadequate since the appellant's marriage prospect has substantially reduced and on account of permanent disablement she will be deprived of enjoyment of life. Therefore, it would be just
G and proper to enhance the compensation from 2,00,000/- to 3,00,000/-. In so far as, purchase of crutches periodically, it would be just and proper to award a sum of 50,000/-. [para 22] [794-D-F]

1.9. Further, the accident had taken place on
H 11.4.2005 and the claimant- appellant, since then has

been fighting for justice. Therefore, she is rightfully entitled to the 'cost of litigation', which is assessed at 25000/-. [para 23] [794-F-H]

Balram Prasad v. Kunal Saha & Ors. **(2014) 1 SCC 384 – relied on.**

1.10. Thus, the claimant-appellant is entitled to a total amount of 30,93,000/- as compensation with an interest @ 9% per annum from the date of filing of the application till the date of payment. Insurance Company shall deposit the amount as directed.[para 24 and 25] [795-A-C]

Municipal Corporation of Delhi, Delhi v. Uphaar Tragedy Victims Association & Ors. **2011 (16) SCR 1 = (2011) 14 SCC 481 — relied on.**

Case Law Reference:

2012 (3) SCR 1178	**relied on**	**para 3**
1995 (1) SCR 75	**relied on**	**para 5**
(2011) 10 SCC 683	**relied on**	**para 6**
2010 (13) SCR 179	**relied on**	**para 13**
2009 (11) SCR 305	**relied on**	**para 16**
ILR 2004 KARNATAKA 2471	**relied on**	**para 17**
(2014) 1 SCC 384	**relied on**	**para 23**
2011 (16) SCR 1	**relied on**	**para 24**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4880 of 2014.

From the Judgment & Order dated 31.08.2012 of the High Court of Madras in CMA No. 2131 of 2008.

T. Harish Kumar for the Appellant.

Manjeet Chawla for the Respondent.

A The Judgment of the Court was delivered by

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

2. This appeal is preferred by the injured-claimant as she was aggrieved by the impugned judgment and award dated B 31.8.2012 passed by the High Court of Judicature at Madras in C.M.A. No. 2131 of 2008 even though it has enhanced the compensation from Rs. 6,46,000/- to Rs. 18,22,000/- with interest at the rate of 7.5% per annum from the date of filing the claim petition under various heads urging various facts and C grounds in justification of her claim.

3. The claimant-appellant is aggrieved by the determination of monthly notional income of the deceased by the High Court by taking a meager sum of Rs. 6,000/- instead of Rs. 18,000/ D - per month as she is a student studying in the 11th Standard holding first rank in her school. She had an excellent career ahead of her but for the accident in which she has sustained grievous injuries and has become a permanently disabled. Both the Motor Accident Claim Tribunal, Poonamallee (for short "the E Tribunal") as well as the High Court of Judicature at Madras failed to take into consideration all the relevant legal aspects of the matter namely, having arrived at the conclusion that on account of permanent total disablement suffered by the claimant-appellant on account of injuries sustained in the accident her future loss of income should have been assessed F taking into consideration, her age at the time of accident which was 16 and that she is a brilliant student and could have acquired professional degree and procured a well paid job either in public or private sector thereby at least she would have earned a sum of Rs. 18,000/- per month. Also, the future G prospects of revision of wages, dearness allowance, increments and promotional benefits could have been earned by her. However, because of the accident caused by rash and negligent act of the driver of the offending vehicle of the owner-respondent she has been deprived of her potential income to H eke out a comfortable livelihood as she has become

permanently disabled, this legal and factual aspect has not been taken into consideration both by the Tribunal and the High Court. Therefore, she placed reliance upon the law laid down by this Court in the case of *Santosh Devi v. National Insurance Company Ltd. & Ors.*,[1] having regard to her age, 50% of the future prospects should have been added by both the Tribunal and Appellate Court to the notional monthly income that could be fixed for determination of the loss of earning as she had lost her earning capacity as she has become permanently disabled. Therefore, the compensation under this head of loss of earnings is required to be enhanced considerably.

4. The second ground sought to be pressed into operation by the learned counsel on behalf of the claimant-appellant is that the concurrent finding of fact recorded by the High Court on the basis of evidence of Doctor-PW2, who has examined the appellant, who has made observations regarding the nature of her injuries which will be recorded in the later part of this judgment.

5. Upon examination of the claimant-appellant, the Doctor-PW2 opined that she is not able to squat, her disability is ascertained at 70%, therefore, she is not able to sit with cross legged comfortably on the floor and the right range of movement (Gionimeter) – fixed flexim deformity of 850 - ligament instability present on account of grievous injuries sustained by her in the unfortunate accident. Therefore, PW2 has assessed the permanent disability of the claimant-appellant at 70% and to this effect he has issued Ex. P12-the Disability Certificate and the same was marked as an exhibit in justification of the claim for awarding just and reasonable compensation under the loss of earning, pain and suffering, loss of amenities and mental agony. The above said substantial piece of evidence in the form of disability certificate on record has not been taken into consideration in the proper perspective by the High Court though it has concurred with the finding of fact recorded by the

1. (2012) 6 SCC 421.

A Tribunal in re-appreciating the evidence on record. The legal aspect of the matter regarding the quantum of compensation is required to be dismissed and awarded to compensate for human pain and suffering and deprivation of happiness and enjoyment of personal life of the claimant. The compensation B that would be awarded can not be equated with the human sufferings or personal deprivation as observed by this Court in the case of *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. & Ors.*[2].

C 6. Both the Tribunal and Appellate Court were required to consider the fall in the value of money which requires continuing reassessment of these awards and periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and are not subject to large variations in individual cases as held in the case of *R.D. Hattangadi* (supra). D Therefore, the learned counsel appearing on behalf of the claimant-appellant submits that pain and suffering, loss of amenities having lost both the limbs which are the relevant important material facts which have been completely ignored by both the Tribunal and the High Court while determining the E just and reasonable compensation under the aforesaid heads while awarding compensation in favour of the claimant. Therefore, learned counsel for the appellant requested this Court for an award of just & reasonable compensation under the aforesaid heads by applying the legal principles laid down F by this Court in the cases referred to supra. In support of his contention, the learned counsel has correctly relied upon the principle laid down in the case of *R.D. Hattangadi* (supra) which was reiterated in the case of *Govind Yadav v. New India Insurance Company Limited*[3], it would be appropriate to G extract certain relevant paragraphs of *R.D. Hattangadi* case, which read as under:

"10. In cannot be disputed that because of the accident the

2. (1995) 1 SCC 551.

H 3. (2011) 10 SCC 683.

appellant who was an active practising lawyer has become paraplegic on account of the injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a life long handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame.

11. In the case Ward v. James [1965] 1 All E.R. 563 it was said :

> 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 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 back injury, be unable to rise from his bed. He has lost everything that makes life worth-while. 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 judges have worked out a pattern, and they keep it in line with the change in the value of money."

7. The learned counsel for the appellant further submitted that the claimant-appellant has been deprived of the enjoyment

A of life as well as the marital prospects. Further, the concurrent finding recorded by the High Court in the impugned judgment shows that the appellant on account of the knee injuries and permanent disablement and mal-united knee bones, she is unable to walk without crutches and she is suffering from B severe pain while walking and further the thickness of both the legs are also reduced due to the injuries sustained by her in accident and multiple surgeries were conducted on her. This relevant aspect should have been taken into consideration both by the Tribunal and the High Court. Further, she has to use C crutches throughout her life for mobility which she is required to periodically purchase, the cost of which has not been awarded either by the Tribunal or by the High Court. Therefore, the learned counsel for the appellant has requested this Court to award suitable compensation keeping in view the above D mentioned facts.

8. On the other hand, Ms. Manjeet Chawla, the learned counsel on behalf of the respondent No. 2-Insurance Company sought to justify the impugned judgment and award contending that the High Court after re-appreciation of the pleadings and E evidence on record has exorbitantly enhanced the compensation under the various heads mentioned in the impugned judgment such as pain and suffering, permanent disablement, medical expenses, transport expenses, extra nourishment, loss of future career and loss of marriage F prospects. Therefore, this is not a fit case for this Court to enhance the compensation as prayed in this case by the claimant-appellant.

9. Further, the learned counsel for the respondent No. 2 G submits that the claimant-appellant can continue her studies by attending to the college and get either the public employment or alternative private employment on completion of her studies. In such circumstances, seeking for enhancement of compensation either under the head of loss of earning or future prospects as claimed by the claimant-appellant, is not H

justifiable in law. Therefore, the learned counsel for the respondent No.2 has prayed for dismissal of the Civil Appeal. A

10. With reference to the above rival factual and legal contentions, this Court is required to examine:-

(1) Whether the claimant-appellant is entitled to enhancement of compensation under the following heads namely, loss of earning, pain and suffering, loss of amenities, loss of enjoyment of marriage prospects and the cost of crutches? B C

(2) What award?

11. The first question is required to be answered in favour of the claimant-appellant for the following reasons :-

Having regard to the nature of following injuries sustained by the appellant in the accident which is an undisputed fact :- D

"Right lower limb: Hypertrophic scar extending from distal thigh to distal 2/3rd of right leg circumferentially. Decreased sensation over the M/3rd of Right leg. E

Left leg: Hypertrophic scar over middle 3rd to distal 3rd of left leg and with patchy areas decreased sensation over the scar.

Muscle wasting of both the legs present. F

Right Ankle: Equinous deformity of Right ankle of 1st present. Fixed Flexim deformity of II Joints of toes about 10th present."

12. The Doctor-PW 2, has stated in his evidence that the appellant has sustained fracture in both bones in both the legs, the knee folding is restricted between 25 degree to 85 degree and the legs could not be stretched fully and the knee bones are mal-united and the appellant cannot walk without crutches. The doctor also stated that the appellant is suffering from G H

A severe pain while walking and further the thickness of the appellant's both legs were reduced.

13. The aforesaid evidence of the Doctor-PW2 is accepted by the Tribunal and concurred by the High Court, the B High Court came to the right conclusion that the appellant has sustained permanent disablement, the same is in conformity with the principle laid down by this Court in the case of *Raj Kumar v. Ajay Kumar and Anr.*[4] at para 12, which reads thus:

> "12. Therefore, the Tribunal has to first decide whether C there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:
>
> *(i)* whether the disablement is permanent or D temporary;
>
> *(ii)* if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;
>
> E *(iii)* if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.
>
> F If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal G ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity."

H 4. (2011) 1 SCC 343.

14. The High Court on the basis of medical evidence on record with reference to the fractures sustained by the appellant to both the legs, rightly arrived at the conclusion that she has suffered 70% of permanent disablement and therefore she was awarded the compensation under the head of loss of earning in the impugned judgment taking into account monthly notional income of Rs. 6,000/- in the absence of any document on record as she was a student. This assumption of the courts below is on the lower side in view of the observations made by this Court in *R.D. Hattangadi* (supra). The said principle is reiterated in *Govind Yadav* (supra). The relevant para from *R.D. Hattangadi* is extracted below :

> "14. In Halsbury's Laws of England, 4th Edition, Vol. 12 regarding non-pecuniary loss at page 446 it has been said:
>
> Non-pecuniary loss; the pattern. Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the courts in the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstances of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award.
>
> The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases."
>
> (Emphasis laid by the Court)

15. In view of the aforesaid judgments of this Court and

A the fact that the appellant is a brilliant student as she has secured first rank in the 10th Standard, she would have had a better future in terms of educational career to acquire basic or master degrees in the professional courses and she could have got a suitable either public or private employment but on
B account of permanent disablement she suffered due to injuries sustained by her in the accident, that opportunity is lost to her and therefore, she is entitled to compensation as per law laid down by this Court in the cases of *Raj Kumar, R.D. Hattangadi and Govind Yadav* (supra).

C 16. Further, having regard to the undisputed fact that there has been inflation of money in the country since the occurrence of the accident, the same has to be taken into account by the Tribunal and Appellate Court while awarding compensation to the claimant-appellant as per the principle laid down by this court
D in the case of *Govind Yadav* which has reiterated the position of *Reshma Kumari v. Madan Mohan*[5] case, the relevant paragraph of which reads as under:

> "46. In the Indian context several other factors should be
> E 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
> F qualification; his past 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 dearness
> G allowance and perks with regard thereto from which the family would have derived monthly benefit, must be taken into consideration."

17. The fact that the appellant was a brilliant student at the

H 5. (2009) 13 SCC 422.

time of the accident should also be taken into consideration while awarding compensation to her. Therefore, taking 6,000/- as monthly notional income by the Tribunal for the purpose of awarding compensation under this head is too meager an amount. The learned counsel appearing for the respondent No.2 contended that the appellant can still finish her education and find employment and therefore, there is no necessity to enhance the amount of compensation under the head of 'loss of income' and 'future prospects'. It is pertinent to reiterate here that the claimant/ appellant has undergone and undergoing substantial pain and suffering due to the accident which has rendered both her legs dysfunctional. This has reduced the scope of her future prospects including her marriage substantially. Moreover, a tortfeasor is not entitled to dictate the terms of the claimants-appellants career as has been held by the Karnataka High Court in the case of *K. Narsimha Murthy v. The Manager, Oriental Insurance Company Ltd and Anr.* ILR 2004 KARNATAKA 2471, the relevant paragraph of which reads as under:

> "41. .... Further, it needs to be emphasized that it is not the right of the tortfeasor or a person who has taken over the liability of the tortfeasor in terms of and under the Act to dictate that the injured person should do some other work, manual or otherwise, it does not matter, may be with pain and discomfort, in order to minimize his or its liability. Such insistence is untenable in law and if such is the case, it would violate basic human rights of the injured person. In this case, the appellant is reduced to such a state that he is unable to do any work, manual or otherwise, without subjecting himself to pain and suffering, agony and discomfort. In an accident, if a man is disabled for a work which he was doing before the accident, that he has no talents, skill, experience or training for anything else and he is unable to find any work, manual or clerical, such a man for all practical purposes has lost all earning capacity he possessed before and he is required to be

A compensated on the basis of total loss. In reaching this conclusion we may derive support from the judgments in Daniels v. Sir Robert Mc Alpine and Sons Limited and Blair v. FJC Lilley (Marine) Limited. Secondly, the physical incapacity to earn income sustained by the appellant is not B temporary, but permanent and complete as per Exhibit P. 43. Thirdly, it cannot be said that since the appellant has sustained only 54% permanent physical disability in respect of the whole body as per P.W. 3, the Court should take into account functional disability also at 54% only C while assessing the loss of earning capacity. Such hypothesis does not stand to reason nor can it be accepted as valid in terms of law. An injured person is compensated for the loss which he incurs as a result of physical injury and not for physical injury itself. In other words, D compensation is given only for what is lost due to accident in terms of an equivalent in money insofar as the nature of money admits for the loss sustained. In an accident, if a person loses a limb or eye or sustains an injury, the Court while computing damages for the loss of organs or physical injury, does not value a limb or eye in isolation, E but only values totality of the harm which the loss has entailed the loss of amenities of life and infliction of pain and suffering: the loss of the good things of life, joys of life and the positive infliction of pain and distress."

F 18. Further, it has been held in the case of *Reshma Kumari* (supra) that certain relevant factors should be taken into consideration while awarding compensation under the head of future prospect of income. The relevant paragraph read as under:

G "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 H

eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another 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 guess work may be inevitable. That may be so."

19. Therefore, in the light of the principles laid down in the aforesaid case, it would be just and proper for this Court, and keeping in mind her past results we take Rs. 10,000/- as her monthly notional income for computation of just and reasonable compensation under the head of loss of income. Further, the High Court has failed to take into consideration the future prospects of income based on the principles laid down by this Court in catena of cases referred to supra. Therefore, the appellant is justified in seeking for re-enhancement under this head as well and we hold that the claimant-appellant is entitled to 50% increase under this head as per the principle laid down by this Court in the case of *Santosh Devi* (supra). The relevant paragraph reads as under:

"13. In *Sarla Verma's* case (supra), another two Judge Bench considered various factors relevant for determining the compensation payable in cases involving motor accidents, noticed apparent divergence in the views expressed by this Court in different cases, referred to large number of precedents including the judgments in *U.P. SRTC v. Trilok Chandra* (1996) 4 SCC 362, *Nance v. British Columbia Electric Railway Company Ltd.* 1951 AC 601, *Davies v. Powell Duffryn Associated Collieries Ltd.* 1942 AC 601 and made an attempt to limit the exercise of discretion by the Tribunals and the High Courts in the matter of award of compensation by laying down straightjacket formula under different headings, some of

A which are enumerated below:

(i) Addition to income for future prospects

In Susamma Thomas this Court increased the income by nearly 100%, in Sarla Dixit the income was increased only
B by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects,
C where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should
D be no addition, where the age of the deceased is more than 50 years.

Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to
E avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death.
F A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

Therefore, taking both the aspects into account, the total amount of compensation under this head is calculated as Rs.22,68,000/- [(Rs.10,000/-x 70/100 + 10,000 x 70/100 x 50/
G 100) x 12 x 18]

20. The compensation under the head pain & suffering and mental agony was awarded by the High Court after recording concurrent finding with the award passed by the Tribunal.
H However, the courts below have not recorded the nature of the

permanent disablement sustained by the appellant, while awarding Rs. 1,00,000/- under this head which is too meager an amount and is contrary to the judgment of *R.D. Hattangadi* and *Govind Yadav* cases (supra). The relevant paragraphs of *Govind Yadav* case read as under:

> "25. The compensation awarded by the Tribunal for pain, suffering and trauma caused due to the amputation of leg was meager. It is not in dispute that the appellant had remained in the hospital for a period of over three months. It is not possible for the tribunals and the courts to make a precise assessment of the pain and trauma suffered by a person whose limb is amputated as a result of accident. Even if the victim of accident gets artificial limb, he will suffer from different kinds of handicaps and social stigma throughout his life. Therefore, in all such cases, the tribunals and the courts should make a broad guess for the purpose of fixing the amount of compensation.
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> 26. Admittedly, at the time of accident, the appellant was a young man of 24 years. For the remaining life, he will suffer the trauma of not being able to do his normal work. Therefore, we feel that ends of justice will be met by awarding him a sum of Rs 1,50,000 in lieu of pain, suffering and trauma caused due to the amputation of leg."

Therefore, under this head the amount awarded should be enhanced to Rs.2,00,000/- as the Doctor-PW2 has opined that at the time of walking with support of crutches, the claimant-appellant will be suffering pain permanently. Therefore, under this head it has to be enhanced from Rs.1,00,000/- to Rs.2,00,000/-.

21. The loss of amenity and attendant charges awarded by the courts below at Rs.1,00,000/- is also too meager an amount as the appellant has permanently lost her amenity of both the legs. For the purpose of walking, squatting, running and also studying throughout her life and particularly, at the advanced age, she will be requiring the attendant for giving assistance

A to attend the nature's call and also at the time of sitting or moving around. Therefore, the compensation at this head is required to be enhanced from Rs.1,00,000/- to Rs.2,00,000/- based upon the principle laid down by this court in *Govind Yadav* case (supra), the relevant paragraph of which reads as
B under:

> "27. The compensation awarded by the Tribunal for the loss of amenities was also meagre. It can only be a matter of imagination as to how the appellant will have to live for the rest of his life with one artificial leg. The appellant can
C be expected to live for at least 50 years. During this period he will not be able to live like a normal human being and will not be able to enjoy life. The prospects of his marriage have considerably reduced. Therefore, it would be just and reasonable to award him a sum of Rs 1,50,000 for the loss
D of amenities and enjoyment of life."

22. The amount of compensation awarded under the head of 'Loss of enjoyment of life and marriage prospects' at Rs. 2,00,000/- is totally inadequate since her marriage prospect
E has substantially reduced and on account of permanent disablement she will be deprived of enjoyment of life. Therefore, it would be just and proper to enhance the compensation from Rs.2,00,000/- to Rs.3,00,000/-. In so far as, purchase of crutches periodically, it would be just and proper to award a
F sum of Rs.50,000/-.

23. Further, the accident had taken place on 11.4.2005 and the claimant- appellant, since then has been fighting for justice, first, in the Motor Accident Claim Tribunal, then the High Court and finally before us. Therefore, we consider that she is
G rightfully entitled to the cost of litigation as per the principle laid down by this Court in the case of *Balram Prasad v. Kunal Saha & Ors*[6]. Therefore, we award a sum of Rs.25000/- under the head of 'cost of litigation'.

H 6. (2014) 1 SCC 384.

24. Thus, the claimant-appellant in this appeal is entitled to a total amount of 30,93,000/- as compensation with an interest @ 9% per annum based on the principle laid down by this Court in *Municipal Corporation of Delhi, Delhi v. Uphaar Tragedy Victims Association & Ors.*[7] from the date of filing of the application till the date of payment.

25. The Insurance Company is directed to deposit 50% of the awarded amount with proportionate interest within four weeks from the date of receipt of a copy of this order, after deducting the amount if already paid, in any of the Nationalized Bank of the choice of the appellant, for a period of 3 years. During the said period, if she wants to withdraw a portion or entire deposited amount for her personal or any other expenses, including development of her asset, then she is at liberty to file application before the Tribunal for release of the deposited amount, which may be considered by it and pass appropriate order in this regard.

The rest of 50% amount awarded with proportionate interest shall be paid to the appellant/claimant by way of a demand draft within four weeks from the date of receipt of the copy of this judgment. The Insurance Company is further directed to submit compliance report before this court within five weeks thereafter.

26. The appeal is allowed accordingly. No costs.

Rajendra Prasad Appeal allowed.

7. (2011) 14 SCC 481.