

SUPREME COURT OF INDIA

Rekha Jain

Vs.

National Insurance Co.Ltd.

C.A.Nos.5370-5372 of 2013

(G.S.Singhvi and V.Gopala Gowda JJ.)

01.08.2013

JUDGMENT

V.GOPALA GOWDA, J.

1. Leave is granted by this Court vide order dated 02.07.2013 after condoning the delay in filing the special leave petitions.

2. These appeals are directed against the judgment, award and orders dated 24.2.2011 passed in MACA No. 580 of 2007, MACA No. 846 of 2007 and dated 10/03/2011 in MC No. 386 of 2011 in MACA No. 580 of 2007 of the High Court of Orissa at Cuttack allowing the appeal of the Insurance Company and dismissing the appeal of the appellant by which she has prayed to set aside the impugned judgment, award and order and has further prayed for enhancement of compensation by award of just and reasonable compensation allowing the appeals urging various facts and legal contentions.

3. The necessary brief facts for the purpose of appreciating the rival factual and legal contentions urged in these appeals are stated as under:

On 17.08.2001 the appellant was driving a Maruti Car bearing Regn. No. OR 15 D-9005 by which she was going along with her mother Grace Jain from Sambalpur towards Cuttack when the accident occurred. A truck bearing Regn. No. MP 23 D-0096 coming from the opposite direction from Cuttack towards Sambalpur hit the car which resulted in the instantaneous death of the mother of the appellant and the appellant received grievous

injuries to her body. She was admitted to the VSS Medical College Hospital, Burla, Sambalpur and subsequently, she had undergone treatment at different Nursing Homes both at Cuttack and in the State of Kerala.

4. On account of the accident, grievous injuries were sustained by the appellant on the right side of her face which left permanent scars and caused disfiguration of her face and other parts of her body including her leg. She underwent a number of surgeries due to grievous injuries sustained by her. She underwent treatment from 18.08.2001 to 10.10.2001 at Kalinga Hospital and later on, in different Nursing Homes/hospitals. The District Medical Board issued a certificate dated 24.02.2006 to the appellant certifying that she is suffering from 30% permanent disability. The appellant has approached the Motor Accident Claims Tribunal (for short 'MACT') at Sambalpur by filing a claim petition No. 119 of 2002 with a request to award just and reasonable compensation.

5. The respondents herein, the owner of the vehicle and the insurer were impleaded and after service of summons on them they filed their statement of objections disputing the claim of the appellant. The owner of the vehicle has admitted the accident and has also stated that the motor vehicle involved in the accident is covered by the insurance policy which was valid up to 30.11.2001. He has further categorically stated that the driver who drove that truck had a valid licence. The respondent Insurance Company in its statement of objections denied its liability on the ground that the accident did not take place on account of rash and negligent driving of the driver who drove the offending vehicle, but was due to a motor cyclist who came in front of the truck on account of which the accident took place. It had further denied the various claims of the appellant.

6. The case went for trial and on behalf of the appellant, three witnesses were examined including the appellant and documents were produced in justification of her claim. Both the owner and the Insurance Company have not adduced evidence in justification of their defence taken in their statement of objections. The Motor Accidents Claims Tribunal, on proper appraisal of evidence on record, has answered the contentious issues in favour of the appellant holding that the accident took place on account of rash and negligent driving of the truck by its driver. It is further held by the Tribunal that the appellant is entitled to compensation and awarded Rs. 23,51,726/- both under the heads of pecuniary and non-pecuniary damages with interest @ 6% per annum from the date of filing of the claim application i.e. 30.03.2002 till the date of payment. Aggrieved by the judgment and award of the Tribunal, both the Insurance Company and the appellant filed appeals before the High Court of Orissa in Appeal No. 580 and MACA 846 of 2007

respectively. The appeal of the Insurance Company was allowed by reducing the compensation from 23,51,726/- to Rs. 14,00,000/- after finding fault with the Tribunal in awarding a sum of Rs. 17,51,726/- towards pecuniary damages by accepting the vouchers, hospital bills, receipts which have not been marked as exhibits in evidence on behalf of the appellant. Though, the compensation awarded towards the pecuniary loss for the medical expenses, treatment charges and the purchase of medicines, supported by the documentary evidence, that is, bills, receipts, cash memos and vouchers, as per Exhs. 26-28 series worth Rs. 2,07,713/- and other documents cash memos, hospital bills and receipts etc. were marked as exhibits in the evidence, some of the hospital bills and receipts worth Rs. 5,72,000/-, though available on record, have not been marked as evidence to show that the appellant had also incurred medical expenses amounting to Rs.5,72,000/-. The Tribunal has taken into account all those documents on record as evidence by marking them as exhibits. However, only a sum of Rs.7,77,000/- in total was awarded by the High Court towards pecuniary damages and Rs.6,00,000/- towards non pecuniary damages under different heads which is rounded off in all at Rs.14,00,000/- by modifying the judgment of the Tribunal. The Misc case No. 386 of 2011 filed by the appellant was considered and the High Court modified its earlier order vide its order dated 10.3.2011 directing the Insurance Company to deposit the amount with interest with the Registry of the High Court and out of the said amount, it has directed the Registry to keep 70% in the fixed deposit in the name of the appellant in any of the Nationalized Bank for a period of five years and the balance amount be disbursed to the appellant on proper identification. The appeal of the appellant was dismissed in view of the fact that the appeal filed by the Insurance Company, MACA No. 580 of 2007 was allowed and the compensation awarded by the Tribunal was reduced. The same judgment is questioned by the appellant in these civil appeals seeking for enhancement of compensation urging various grounds.

7. The grounds urged in these appeals are that the High court has exceeded its jurisdiction in interfering with the finding of fact recorded by the Tribunal with regard to award of pecuniary damages towards medical expenses without proper appreciation of pleadings and evidence on record and has considerably reduced the amount under the heading of pecuniary damages from Rs.17,51,726/- to Rs.7,77,000/-. The correctness of the said impugned judgment and order is questioned before this Court contending that the same is not only erroneous but also suffers from error in law and therefore, the appellant prayed for setting aside the same and award just and reasonable compensation in favour of the appellant

both under the heads of pecuniary and non-pecuniary damages by applying the law laid down by this Court.

8. Further, it is contended by Mr. Sukumar Pattjoshi, learned Senior Counsel for the appellant that the High Court has erroneously interfered with the impugned judgment and award of the Tribunal which is contrary to legal evidence on record and various judgments of this Court with regard to the claim and he also contended that the High Court has not awarded just and reasonable compensation to mitigate the hardship and restore the claimant's position financially as she was in before the accident.

9. Further, the learned Senior Counsel submitted that the High Court was not justified in not enhancing the non pecuniary compensation though sufficient evidence was brought on record by the appellant before the MACT to show that she was a celebrity in the sphere of modeling and acting who had a bright future ahead of her which was doomed by the accident which resulted in number of surgeries conducted on her body. The opportunity for the appellant to act in the movies and T.V. serials is lost by her on account of the grievous injuries sustained by her. The Tribunal has referred the same in its judgment while awarding compensation under different headings of non- pecuniary damages, namely, suffering and future loss of earnings but it did not take into consideration the permanent partial disablement suffered by the appellant which was assessed at 30% and disfigurement of her face due to accident and the fact that she is a celebrity acting in movies and TV serials and also in the field of modeling. Due to disfigurement of her face, she will be losing her future income as she will not get opportunities to act in the films and T.V. serials. Therefore, the learned Senior Counsel submits that both the Tribunal and the High Court were not justified in not awarding the just and reasonable compensation under the heading of future income. They have awarded only a meager amount of Rs.2,00,000/- towards the loss of income during the period of medical treatment though she was unable to earn nearly for a period of four years as she was undergoing treatment. Also, the Tribunal did not award any amount for loss of future income but has awarded a sum of Rs. 1,00,000/- towards the pain and suffering without taking into consideration the fact that she has undergone treatment in various Nursing Homes/Hospitals for plastic surgery and other surgeries and physiotherapy. A paltry sum of Rs. 1,00,000/- was awarded for loss of income during the period of medical treatment of the appellant. A sum of Rs. 2,00,000/- was awarded towards loss of amenities and pleasure of life. Therefore, she has filed the appeals requesting this Court to award just and reasonable compensation by appreciating the legal evidence on record.

10. It is further urged that the High Court has failed to take into consideration the fact that the injured appellant is a single lady left in her family who was compelled to engage an attendant during the period of her treatment while she was in a state of immobility. It is further contended by the learned Senior Counsel that the learned members of the Tribunal and the High Court have erred in passing impugned judgment and order which are not in accordance with the cardinal principles laid down by this Court in various judgments in matters of Motor Vehicle Accidents Claims and they also did not consider the various relevant aspects such as the grievous injuries suffered by the appellant which has resulted in disfigurement of her face, who has lost her future career to act in the films and T.V. serials and also through advertisements as well as modeling. The Tribunal and High Court have erred in not taking into consideration the above said relevant aspects of the case to award pecuniary damages and adequate compensation under the heading of non-pecuniary damages without proper appreciation of pleadings and the legal evidence on record particularly when both the owner of the truck and the Insurance Company have not adduced rebuttal evidence. The Insurance Company has not obtained the permission as required under Section 170(b) of the Motor Vehicles Act to avail the defence of the insured and contest in the proceeding on the defence of the insured/owner. Therefore, the finding of the Tribunal and the High Court in the impugned judgment and order and not awarding just and reasonable compensation in favour of the appellant is not only erroneous but also suffers from error in law. Therefore, it is contended by Mr. Pattjoshi, the learned Senior Counsel that the appellant is entitled to just and reasonable compensation. The learned Senior Counsel placed strong reliance on the evidence on record and has contended that the appellant was a good actress and model and worked in many films, albums, T.V. serials etc. and she had also won many awards like "Ponds Woman of Tomorrow" for the year 1999, best actress in feature film "Maa Pari Kiye Haba" etc. The said legal evidence was neither challenged nor was any rebuttal evidence adduced on behalf of either the owner of the truck or the Insurance Company to show that the appellant is not entitled to just and reasonable compensation. However, the High Court should have taken into consideration all the relevant facts and evidence on record as the Tribunal has failed to exercise its power and discharge its statutory duty to award just and reasonable compensation in her favour. The learned Judge of the High Court should have considered that the appellant is a film actress and her beauty is an essential requirement for acting in films, T.V. Serials and modeling. When her beauty is lost on account of disfigurement of her face, she has lost everything which means that there is hundred percent functional disability in her life. But, both the Tribunal and the High Court did not even consider 30% permanent partial disablement suffered by

the appellant at the time of passing the award to determine the compensation under various heads of non-pecuniary damages. Further, it is contended by the learned Senior Counsel that the loss of future income of the appellant is on account of the fact that she had suffered grievous injuries in the accident and therefore her life has become miserable. In future as well, she will not be able to act in films and T.V. serials. The High Court as well as the Tribunal have failed to consider the evidence adduced by the injured appellant in her examination- in-chief wherein she has categorically stated about her income per annum and the loss of future income. Both the Tribunal and the High Court have not properly evaluated the evidence on record and have not applied the law on the point to determine the future loss of income of the appellant and on other heads to award just and reasonable compensation. Therefore, the learned Senior Counsel submitted that the impugned judgments of the Tribunal and the High Court are erroneous in this regard and are liable to be set aside and require modification with award of just and reasonable compensation. She has stated in her evidence that she earned Rs.50,000/- from “Ponds beauty” competition, Rs.30,000/- from Oriya feature film “Maa Pari Kiye Haba”, Rs.60,000/- from Oriya feature film “Dharma Debata”, Rs. 75,000/- from Malayalam feature film “Paith Dhigem Alam”, Rs.10,000/- from each T.V. serial, Rs.5,000 to Rs.7,000/- from each album. Further, it is urged by the learned Senior Counsel that both the Tribunal as well as the High Court erred in not differentiating between pecuniary damages and non pecuniary damages at the time of determining compensation and awarding the same. The law is well settled by this Court that pecuniary damages under various heads such as expenses incurred by the appellant that is, medical expenses, expenses spent towards surgeries, loss of earning during the period of medical treatment and expenses incurred by her to engage an attendant and other material losses suffered by her, should have been awarded by the Tribunal and the High Court under pecuniary damages. The Tribunal did not consider the above relevant aspects and evidence on record to award just and reasonable compensation. In relation to other two aspects, that is, loss of earning up to the date of trial and other losses suffered by the appellant, the same were also not considered. The Tribunal and the High Court have erred in not granting relief to the appellant considering the aspect of the loss of expectation of life on account of grievous injuries and shortened longevity of the appellant’s life. The Tribunal and the High Court have erred in not granting relief to the appellant by appreciating the facts of inconvenience, hardship, discomfort, disappointment, frustration and mental stress, pain and suffering and agony caused to her. They further failed to take into consideration the most important fact, that the face of the injured appellant was fully and hopelessly disfigured due to accident and she got plastic surgery on her entire face and other parts of her body by the plastic surgeons outside the State of Odisha. After plastic surgery, the appellant’s face

appearance got changed and she herself was not able to recognize her changed face in the mirror. It is further urged by the learned Senior Counsel on behalf of the appellant that both the Tribunal as well as the High Court have failed to take into consideration all the relevant facts deposed by her before the Tribunal- that she has been undergoing treatment due to the accident which would continue till the complications subsist and she requires a lot of money to be spent for her future treatment and she also requires an attendant for this purpose. Therefore, impugned judgments and awards of both the Tribunal and the High Court are vitiated on both the counts of erroneous finding and error in law as they have not awarded just and reasonable compensation in favour of the appellant.

11. Mr. S.L. Gupta, the learned counsel appearing on behalf of the Insurance Company has justified the impugned judgment, award and order passed by the High Court. Respondent nos. 2 and 3 however, were deleted from the array of parties in these appeals by the order of this Court at the request of the appellant. The learned counsel contended that the High Court has exercised its appellate jurisdiction, on proper appreciation of pleadings and evidence on record and it is justified in reducing the compensation awarded under the heading of pecuniary damages as the injured appellant did not establish her claim regarding the expenses incurred by her for the purpose of medical treatment, purchase of medicine and other incidental expenses by producing the bills, receipts and vouchers. Therefore, the Tribunal was not justified in placing reliance on those documents which were not marked as exhibits to prove her claim under the heading of 'Medical Expenses' and other incidental expenses and it has awarded exorbitant compensation under head of pecuniary damages which is unsustainable in law. Therefore, the High Court has rightly taken into consideration the entire documentary evidence on record and is justified in awarding compensation at Rs.7,77,000/- under the heading towards expenses, treatment charges and expenses towards medicines. Therefore, the same does not call for interference by this Court.

12. Further, it was contended by the counsel for the respondent-Insurance Company that the compensation awarded under different heads referred to supra towards non pecuniary damages is not based on proper appreciation of facts and legal evidence on record particularly in the absence of evidence to prove the fact that she is an income tax assessee since no proof is produced in this regard before the Tribunal to prove her annual income based on which her future loss of income could be determined. Therefore, he submits that the appellant is not entitled for the reliefs as prayed for in these appeals. Hence, he submits that these are not fit cases to interfere with the impugned judgments, award or the order of the High Court and the appellant is not entitled to enhancement of compensation as claimed by her

in her appeal. Hence, he has prayed for the dismissal of the appeals filed by the appellant. With reference to the above rival factual and legal contentions, the following points would arise for consideration:

(i) Whether the impugned judgment, order and award passed in MACA 580 and 846/ 2007 and Misc. Case No 386/2011 in MACA 580 is legal and valid?

(ii) Whether the Tribunal is justified in awarding Rs.17 lakhs and odd towards pecuniary damages in favour of the appellant namely, medical charges, medicine expenses and other expenses on the basis of the documentary evidence on record?

(iii) Whether the appellant is entitled to enhanced compensation under the different heads of non pecuniary damages?

(iv) If so, to what compensation and for what award the appellant is entitled to?

13. Point Nos. (i) and (ii) are answered together as they are interrelated with each other, by assigning the following reasons:

The High Court has gravely erred both on facts and in law in interfering with the impugned judgment and award of the Tribunal in reducing the pecuniary damages awarded towards medical expenses incurred by the appellant herein from Rs.17,51,726/- to Rs.7,77,000/- solely on the ground that there is no documentary evidence in relation to the amount spent towards medical expenses which is awarded by the Tribunal. This assumption by the learned Judge of High Court is factually not correct. As could be seen from the record, there are large number of medical bills and vouchers produced by the appellant for having spent the money towards the surgeries conducted upon her and payment made to the various Hospitals and Nursing Homes namely, V.S.S. Medical Hospital, Burla, Kalinga Hospital, Bhubaneshwar, Nursing Home, Cuttack along with purchase of medicines for the aforesaid period which run to Rs.17,51,726/-. The above said factual aspects are stated in unequivocal terms in her statement of evidence, and she has also referred to the documents such as bills, receipts and vouchers obtained by her from various medical stores on the basis of the prescriptions of the doctors who have treated her. Some of the documents were marked in the evidence of PW-3 - the appellant herein and she had spoken about the expenses incurred

towards her treatment and purchase of medicines. In relation to some other documents, the learned counsel for the Insurance Company has objected for making them exhibits without raising tenable objections. The learned member of the Tribunal neither upheld nor rejected the objection raised by the counsel on behalf of the respondent Insurance Company at the time of marking documents through the appellant in her evidence. Nonetheless, the learned member of the Tribunal has taken those documents into consideration and has awarded compensation under pecuniary damages having regard to the clinching evidence on record that the surgeries were conducted and treatment was taken by her in various hospitals and Nursing Homes for a period of four years. The correctness of the said claim is examined by us with reference to the documents in Ann. P-7 produced in this case, in which date-wise particulars with regard to the name of the Institutions and Medical Stores, the expenses incurred and bill numbers, payment made for the purpose of conducting blood tests, purchase of medicines, purchase of blood from the blood bank and cost of surgeries spent by the appellant are given. The Tribunal, in the absence of rebuttal evidence and the nature of cross examination of the appellant- PW3 made by the learned counsel on behalf of the Insurance Company and the evidence adduced by the appellant herein and the claim made by her under the pecuniary damages towards the medical expenses, tests, surgeries etc. and other incidental purposes, has accepted and has rightly awarded a sum of Rs. 17,51,726/- under the heading of medical expenses. The same has been arbitrarily and unreasonably, without assigning any cogent and valid reason, interfered with by the High Court and it has erroneously modified the judgment by reducing the amount from Rs. 17,51,726/- to Rs. 7,77,000/-. This has been very lightly interfered with by the learned Judge of the High Court without application of mind and consideration of legal evidence on record particularly in the absence of rebuttal evidence and further, the Insurance Company was unable to show that the documents referred to supra produced by the appellant in her evidence are fabricated documents, which have been produced with deliberate intention to prefer a false claim in this regard as contended by the learned counsel on behalf of the Insurance Company. We have carefully examined the evidence on record and the findings of the Tribunal to examine as to whether the findings recorded by the High Court in the impugned judgment for reduction of pecuniary damages from Rs.17,51,726/- to Rs.7,77,000/- is correct. On careful perusal of the evidence and documents produced by the appellant we have to hold that the finding and reason recorded by the High Court is wholly erroneous in law as the same is contrary to the facts pleaded and proved by producing

evidence on record. Therefore, the same requires to be interfered with by this Court in these appeals. Accordingly, point Nos. (i) and (ii) are answered in the affirmative in favour of the appellant. The finding and reason recorded by the High Court in not awarding just and reasonable compensation under the various heads of non pecuniary damages for which she is legally entitled to on the basis of proven facts, legal evidence on record and law laid down by this Court, is not only erroneous but also suffers from error in law. On this aspect, separate reasons are assigned while answering point Nos. (iii) & (iv).

14. Point No.(iii) is also required to be answered in favour of the appellant. We are of the view that the appellant is substantially entitled to enhancement of compensation under various heads of non-pecuniary damages having regard to the concurrent findings recorded on this aspect of the matter by the High Court. Both the Tribunal and the High Court have accepted the nature of injuries sustained by her and the percentage of permanent partial disablement suffered by her due to the Motor Vehicle Accident as per the Disability Certificate No.943 dated 24.2.2006 issued by the Chief Medical Officer of the District Medical Board of Sambalpur. This aspect of the matter is very relevant for the purpose of examining the claim of the appellant and also to find out as to whether the Tribunal and the High Court were justified in not awarding just and reasonable compensation in favour of the appellant under the various heads of non- pecuniary damages. This Court is required to keep in mind justice, equity and good conscience which must be the primary, relevant and important aspects for awarding just and reasonable compensation to an unfortunate victim, the appellant herein who has sustained grievous injuries to her body and whose future prospects are completely doomed. Further, the Tribunal and courts while awarding compensation for bodily injuries, must realise that the possession of one's own body is the first and most valuable of all human rights and that all other possessions and ownership are the extensions of the basic right. Bodily injuries should be equated with the deprivation which entitles a claimant to damages and the amount of damages varies in accordance with the gravity of injuries. In this regard, it is worthwhile to refer to certain paragraphs which have been referred to by the Karnataka High Court in the case of K. Narasimha Murthy vs. The Manager, Oriental Insurance Company Limited and Anr.[1], wherein the Division Bench of the Karnataka High Court has considered the relevant important aspects from the judgment of this Court and the House of Lords and different learned scholars and authors of books on awarding pecuniary and non pecuniary damages. The abovementioned decision states about the approach of the Motor Accidents Claim Tribunals and Courts for awarding just and

reasonable compensation in favour of the claimants in relation to the bodily injuries suffered by them. It is worthwhile to extract Paragraph 16 from K. Narasimha Murthy case (supra), which reads as under:

“16. The Courts and Tribunals, in bodily injury cases, while assessing compensation, should take into account all relevant circumstances, evidence, legal principles governing quantification of compensation. Further, they have to approach the issue of awarding compensation on the larger perspectives of justice, equity and good conscience and eschew technicalities in the decision-making. There should be realisation on the part of the Tribunals and Courts that the possession of one's own body is the first and most valuable of all human rights, and that all possessions and ownership are extensions of this primary right, while awarding compensation for bodily injuries. Bodily injury is to be treated as a deprivation which entitles a claimant to damages. The amount of damages varies according to gravity of injuries.”

15. In *R.D. Hattangadi v. Pest Control (India) Private Limited and Ors.*[2], speaking about the heads of compensation, this Court has held thus:

"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include; (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

16. Further, on this point, Justice Viscount Dunedin in *Admiralty Comrs v. S.S. Valeria*[3], has observed thus:

"The true method of expression, I think, is that in calculating damages you are to consider what is the pecuniary consideration which will make good to the sufferer, as far as money can do so, the loss which he has suffered as the natural result of the wrong done to him".

17. Further, Lord Blackburn in *Livingstone v. Rawyards Coal Company*[4], has held as under:

"Where any injury is to be compensated by damages, in settling the sum of money to be given. . . . you should as nearly as possible get at that sum of money which will put the person who has been injured. . . . in the same position as he would have been in if he had not sustained the wrong."

18. Lord Morris in his memorable speech in *H. West and Sons*, pointed out this aspect in the following words:

"Money may be awarded so that something tangible may be procured to replace of like nature which has been destroyed or lost. But, the money cannot renew a physical frame that has been battered and shattered. All the Judges and Courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Further, more it is eminently desirable that so far as possible comparative injuries should be compensated by comparable awards."

19. In *Ward v. James*[5], speaking for the Court of Appeal in England, Lord Denning laid down three basic principles while dealing with the question of awarding compensation for personal injury:

"Firstly, assessability: In cases of grave injury, where the body is wrecked or brain destroyed, it is very difficult to assess a fair compensation in money, so difficult that the award must basically be a conventional figure, derived from experience or from awards in comparable cases. Secondly, uniformity: There should be some measure of uniformity in awards so that similar decisions may be given in similar cases, otherwise, there will be great dissatisfaction in the community and much criticism of the administration of justice. Thirdly, predictability: Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular

case, for by this means cases can be settled peaceably and not brought to Court, a thing very much to the public good.

In deciding on the quantum of damages to be paid to a person for the personal injury suffered by him, the Court is bound to ascertain all 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.”

20. Further, a Division Bench of Karnataka High Court in *Basavaraj v. Shekar*[6], has held as under:

"If the original position cannot be restored - as indeed in personal injury or fatal accident cases it cannot obviously be - the law must endeavour to give a fair equivalent in money, so far as money can be an equivalent and so 'make good' the damage.

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 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.”

(Emphasis laid by the Court)

21. Lord Morris of Borth-y-Gest in *Parry v. Cleaver*[7], has said:

"To compensate in money for pain and for physical consequences is invariably difficult but. . . no other process can be devised than that of making a monetary assessment".

(Emphasis laid by the Court)

22. The necessity that the damages should be full and adequate was stressed by the Court of Queen's Bench in *Fair v. London and North Western Railway Company*[8]. In *Rushton v. National Coal Board*[9], Singleton L.J. has said that:

“When damages have to be assessed in a case of this kind there are many elements for consideration: the pain and suffering undergone and that which

may occur in the future; the loss of some of the amenities of life; the fact that a man with an injury of this kind will always require some measure of help, even though he may be able to earn considerable money. These are some of the matters which have to be taken into consideration, and another is the fact that his earnings will probably be less than they were before.”

(Emphasis laid by the Court)

23. In *Fowler v. Grace*[10], 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. Nevertheless a valuation in terms of money must be made, because, otherwise, the law would be sterile and not able to give any remedy at all. Although accuracy and certainty were frequently unobtainable, a fair assessment must be made. Although undoubtedly there are difficulties and uncertainties in assessing damages in personal injury cases, that fact should not preclude an assessment as best as can, in the circumstances be made.”

(Emphasis laid by the Court)

24. In *re the Mediana*[11], the plaintiffs were deprived of the use of their own lightship, but sustained no pecuniary loss as another lightship was kept in reserve. Yet, it was held that the plaintiffs were entitled to substantial damages for the loss of the use of their ship for a period, and Lord Halsbury L.C. answered the objection that assessment was too uncertain by observing that:

"Of course the whole region of inquiry into damages is one of extreme difficulty. You very often cannot even lay down any principle upon which you can give damages; nevertheless, it is remitted to the jury, or those who stand in place of the jury, to consider what compensation in money shall be given for what is a wrongful act. Take the most familiar and ordinary case: how is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by any arithmetical calculation establish what is the

exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident ... But, nevertheless, the law recognises that as a topic upon which damages may be given.

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

(Emphasis laid by the Court)

25. It is well-settled principle that in granting compensation for personal injury, the injured has to be compensated (1) for pain and suffering; (2) for loss of amenities; (3) shortened expectation of life, if any; (4) loss of earnings or loss of earning capacity or in some cases for both; and (5) medical treatment and other special damages. In personal injury cases the two main elements are the personal loss and pecuniary loss. Chief Justice Cockburn in Fair's case, *supra*, distinguished the above two aspects thus:

"In assessing the compensation the jury should take into account two things, first, the pecuniary loss the plaintiff sustains by the accident : secondly, the injury he sustains in his person, or his physical capacity of enjoying life. When they come to the consideration of the pecuniary loss they have to take into account not only his present loss, but his incapacity to earn a future improved income".

26. McGregor on Damages (14th Edition) at paragraph no. 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 have sub-divided the non-pecuniary losses into three categories, viz., pain and suffering, loss of amenities of life and loss of expectation of life".

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."

(Emphasis laid by the Court)

27. In *R. Venkatesh v. P. Saravanan & Ors.*[12], 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 paragraph 9 of the judgment, the Court held as under:

"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 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 per cent".

28. Lord Reid in *Baker v. Willoughby*[13], has said:

"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...."

29. The aforesaid principles laid down by this Court, Appeal Cases, House of Lords and leading authors and experts referred to supra, whose opinions have been extracted above, with all fours, are applicable to the fact situation for awarding just and reasonable compensation in favour of the appellant as she had sustained grievous injuries on her face and other parts of the body which is assessed at 30% permanent disablement by competent doctors.

30. The finding of fact is recorded by the Tribunal on the question of the accident caused on account of rash and negligent driving on the part of offending truck driver on 17.8.2001, the date of the accident on account of which the appellant herein has sustained grievous injuries and has undergone trauma and mental agony for over a period of four years. She had also gone through a number of surgeries on account of this accident in which her face has been disfigured. With regard to the nature of injuries sustained by her, the District Medical Board of Sambalpur, represented by the Chief Medical Officer has issued disability certificate certifying that the appellant has suffered disability to the extent of 30%. The finding recorded by the Tribunal on this important aspect of the case on the basis of legal evidence is not challenged either by the owner of the truck or by the Insurance Company and it could not have challenged the finding without obtaining the permission as required under Section 170(b) of the Motor Vehicles Act to avail the defence of the insured to contest the case as has been held by a three judge bench of this Court in the case of National Insurance Co. Ltd. vs. Nicolletta Rohtagi & Ors.[14] The relevant paragraphs read as under:

“15. It is relevant to note that Parliament, while enacting sub-section (2) of Section 149 only specified some of the defences which are based on conditions of the policy and, therefore, any other breach of conditions of the policy by the insured which does not find place in sub-section (2) of Section 149 cannot be taken as a defence by the insurer. If Parliament had intended to include the breach of other conditions of the policy as a defence, it could have easily provided any breach of conditions of insurance policy in sub-section (2) of Section 149. If we permit the insurer to take any other defence other than those specified in sub-section (2) of Section 149, it would mean we are adding more defences to the insurer in the statute which is neither found in the Act nor was intended to be included.

16. For the aforesaid reasons, we are of the view that the statutory defences which are available to the insurer to contest a claim are confined to what are provided in sub-section (2) of Section 149 of the 1988 Act and not more and

for that reason if an insurer is to file an appeal, the challenge in the appeal would confine to only those grounds.”

The said finding of fact has attained the finality and the compensation has been awarded by the Tribunal and affirmed by the High Court. The only aspect which was required to be examined by the High Court in the appeals filed both by the respondent Insurance Company as well as by the appellant was that the quantum of compensation required to be awarded in her favour under the different heads of non-pecuniary damages as per the principles laid down by this Court, House of Lords, Queens Bench and Authors in various judgments and extracts from various texts and books respectively, referred to supra.

31. Both the Tribunal as well as the High Court have gravely erred both on facts and in law in not evaluating the legal evidence on record to award just and reasonable compensation in favour of the appellant keeping in view the fact that the appellant was a good actress, model and has acted in many films, albums, T.V. serials etc. This evidence is not challenged though the appellant was cross examined by the counsel for the respondent Insurance Company extensively without obtaining the permission from the Tribunal as required under Section 170(b) to contest in the proceeding. In the absence of such permission, the Insurance Company has got limited defence as provided under section 149(2) of the Motor Vehicles Act, which provides for the conditions which determines breach of the terms and conditions of the insurance policy. The Tribunal did not apply the legal principles laid down by this Court to award just and reasonable compensation by following various guiding factors and legal principles under the heading of future loss of earnings. It has also not awarded compensation under the following heads namely (1) damages for mental and physical shock, pain and suffering already undergone by the appellant or she is likely to undergo in future, (2) damages for loss of amenities of life on account of injury due to which the appellant is unable to act in the films and (3) damages for the loss of expectations of life, inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life. The said principles have been recognized by this Court time and again in catena of cases reference to which are not required to be mentioned again as we have referred to the same in the preceding paragraphs of this judgment.

32. Since under the head of non pecuniary damages the Tribunal did not award reasonable compensation, the appellant has rightly approached the High Court by

filing MACA No.846 of 2007. The said appeal was heard along with MACA No. 580 of 2007 filed by the respondent Insurance Company which has affirmed the compensation awarded under the non-pecuniary damages by the Tribunal in the impugned judgment passed in the said appeal for enhancement of compensation under the aforesaid heads. Without considering the legal grounds urged in the appeal filed by the appellant, it has simply dismissed the appeal of the appellant for the reasons recorded in the judgment passed in the appeal of the Insurance Company. The dismissal of the appeal of the appellant in view of the order passed in MACA No.580 of 2007 without assigning any reason whatsoever for enhancement of compensation is arbitrary and unreasonable. Therefore, the appellant is justified in challenging the said order in these appeals. It is in the evidence of the appellant that at the time of accident her age was 24 years, which is not disputed by the respondents.

33. It is also in her evidence that she was an actress who acted in T.V. serial titled 'Swara Sudha', which was an album directed by Harish Mohanty. She also acted in the motion picture in Oriya titled 'Ma Pari Kiye Haba'. She was the lead actress in this picture. By Cane Critics Award Organisation, she was adjudged as the 'Best Actress' and the 'Best New Comer Artist' in that film and she also performed in the lead role in the Oriya Feature Film 'Dharma Debata' directed by Bijaya Bhaskar Reddy. She also acted in Malayalam Feature film named 'Paith Thingel Kalam' as heroine, which was directed by Jaya Krishna. She has further stated in her evidence that she has signed for the feature film in Oriya 'Pua Bada Jagata Jita' and another feature film in Oriya 'Pua Bhangidela Suna Sanbar'. But she could not act in those films due to the accident. Further she has stated that she was in the lead role in the two completed T.V. serials 'Atrupta Atma' and 'Akhabuluthile Chakabuluthaa'. She was an artist in the Oriya Albums 'Jhankar' and 'Mahake Rajni Gandha'. She had also signed Hindi T.V. Serial 'Silla Padma' by Dr. Pravita Roy as heroine but could not perform in the serial due to the accident. She has acted in advertisement films for products like Coca Cola, Saree and Saree house etc. She had also performed in Oriya Cassette namely 'Mu Kendrapada Jhia' which was an audiocassette.

34. Further, she has stated in her evidence that at the time of accident she had completed her graduation in Commerce from G.M. College, Sambalpur and she was pursuing her studies for her post graduate degree in that College. Prior to her admission to P.G. Class, she had done P.G. Diploma course in Hotel Management from the Institute of Hotel Management and Catering Technology, Bhubaneswar. She has further stated that while pursuing her studies she was performing in the

films referred to supra. She has further stated that after the accident, her physical fitness, physical appearance and her zeal to perform in films have been reduced to zero. The vital statistics required of her for modeling has also become disproportionate after the accident. She has categorically stated that she became permanently handicapped and disabled. She has also stated that prior to the accident she was lean and thin. But due to continued treatment after accident, she gained 4 to 5 k.gs. The aforesaid positive and substantive legal evidence remained unshaken in the cross examination of the appellant – PW-3 by the counsel of the respondent Insurance Company, though he was not entitled to cross examine all these aspects since the Company did not obtain the permission from the Tribunal. Nonetheless, permission was granted by the Tribunal to cross examine the appellant-PW3. Despite her cross examination by the counsel, the aforesaid important facts could not be shaken and the same remained unchallenged and undisturbed.

35. The registered owner of the car in which she was traveling belonged to her mother. The truck dashed against her car at the driver's seat which was occupied by the appellant. The Tribunal has not accepted the case of the Insurance Company that the appellant was driving the car negligently.

36. In the cross examination of the appellant – PW-3 except eliciting answer that there is no written contract for playing the role of modeling for the Ponds Products for 3 years so also for acting in Albums, T.V. serials or films, the fact remained that even in the absence of written contracts, the fact that she has been acting as an actress in the aforesaid films is proved since the said portion of the evidence remained unchallenged. The case pleaded by the appellant that she has been acting in films, T.V. serials, modeling and participating in the award competition is established by pleadings and evidence on record. There is no rebuttal evidence adduced in this regard by either the insured or by the Insurance Company.

37. The finding of fact recorded by the Tribunal stating that she has been acting as an actress has been re-affirmed by the High Court by affirming the award of compensation under the various heads of non-pecuniary damages. Despite the cogent and substantive evidence adduced on record by the appellant before the Tribunal, neither has it awarded just and reasonable compensation nor the High Court has enhanced the same in exercise of its appellate jurisdiction by re-appreciating the pleadings and evidence on record.

38. For a film actress, the physical appearance particularly the facial features are very important to act in the films and in T.V. serials. It is in her evidence that on account of the accident her face was disfigured, she has put on weight and has become fat and therefore she is unable to perform the role as an actress in films in future. Having regard to the nature of vocation she has been carrying on and wishes to carry on with in future, the opportunity is lost on account of the disfigurement of her face, to act in the films as an actress either as a heroine or actress in supporting role or any other role to be played in T.V. serials, albums and also as a model. It is in the evidence of the appellant that as per the District Medical Board of Sambalpur, her permanent disability is 30%. Having regard to the nature of injuries and observations made by this Court and Karnataka High Court in the cases referred to supra, we have to record a finding of fact that the appellant's permanent disability should be treated as 100% functional disablement as she cannot act in the films and in T.V. serials in future at all. Therefore, on account of the aforesaid reasons, she has suffered functional disability. In this regard, it is relevant to refer to the judgment of this Court in the case of National Insurance Company Ltd. V. Mubasir Ahmed[15]. This Court has held that loss of earning capacity is not a substitute for percentage of physical disablement. It is simply one of the factors taken into account to award just and reasonable compensation. Even though the claimant does not suffer from 100% physical permanent disability, he suffers from 100% functional disability if he loses the capacity to pursue his work as a result of the accident. It is worthwhile to extract paragraph no. 8 from the aforesaid judgment which reads as under:

“8. Loss of earning capacity is, therefore, not a substitute for percentage of the physical disablement. It is one of the factors taken into account. In the instant case the doctor who examined the claimant also noted about the functional disablement. In other words, the doctor had taken note of the relevant factors relating to loss of earning capacity. Without indicating any reason or basis the High Court held that there was 100% loss of earning capacity.”

39. In *Palraj v. North East Karnataka Road Transport Corpn.*[16], where the appellant was a driver, this Court held that although the appellant has lost the use of his legs, the same amounts to total disablement as far as driving a vehicle is concerned.

40. In *Nizam's Institute of Medical Sciences v. Prasanath S. Dhananka*[17], this Court has observed 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.

.....

90. At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity.

(emphasis supplied)

91. We can also visualise the anxiety of the complainant and his parents for the future after the latter, as must all of us, inevitably fade away. We, have, therefore computed the compensation keeping in mind that his brilliant career has been cut short and there is, as of now, no possibility of improvement in his condition, the compensation will ensure a steady and reasonable income to him for a time when he is unable to earn for himself.”

41. In this regard, in Baker’s case supra, it has been stated by Lord Reid that a man is not compensated for the physical injury; he is compensated for the loss which he suffers as a result of that injury. Therefore, the functional disability is a forceful alteration of career option of the appellant who has already undergone physical and mental injuries because of the accident. It would amount to adding distress to injury if one is forced to work with difficulty to earn his/her livelihood so as to reduce the burden of the wrongdoer in terms of compensation.

42. In view of the aforesaid decisions of this Court and various courts and High Court of Karnataka and authors referred to supra, we have to record the finding of fact having regard to the nature of grievous injuries and her disfigured face and that she was acting as an actress in the films, T.V. serials, etc. her functional disablement is 100%. This relevant aspect of the matter has been conveniently omitted to be considered both by the Tribunal as well as by the High Court while determining compensation under various heads of non-pecuniary damages. For the foregoing reasons, we are of the view that under the different heads of non-pecuniary damages she is entitled to higher compensation in her appeal. For that purpose, we are required to consider her annual income for the purpose of computation of just and reasonable compensation under the aforesaid different heads of non-pecuniary damages. It is in her evidence that her income depends upon the project. She got 30,000/- for her first film "Maa Pari Kiye Haba" and Rs.75,000/- for Malayalam film 'Paith Digem Alam'. For her performance in a serial, she used to get within Rs.7000/- to 10,000/-. She had received Rs.50,000/- for winning the "Ponds Women of Tomorrow" Contest. The said evidence remains unchallenged in the cross examination by the counsel for the respondent Insurance Company. Having regard to her age and qualification and that she was acting in various Oriya and Malayalam films, T.V. serials and that she was in the beginning stage of her acting career and having regard to the fact that she has acted in various films, she would have definitely had a very good chance for acting in future if she had not suffered the grievous injuries, facial disfigurement and other injuries on account of the accident. She has also stated in her evidence that she is an assessee for income tax. She has got PAN card and has produced the same. Having regard to the aforesaid legal evidence on record and in the absence of documentary evidence to show her probable annual income, it would be proper for this Court to take her probable annual income as Rs.5,00,000/- for the purpose of computation of her future loss of earning. We have already held that though the disability certificate speaks of her disability at 30% on account of disfigurement of the face and other injuries to her body, her physical fitness is completely changed, she has put on weight 4 to 5 kgs., she is not fit to act and no film producer will offer her roles in their films to act as an actress. Having regard to the nature of the vocation, we have to hold that she is suffering from 100% functional disability. In the light of the facts of this case and keeping in view the aforesaid evidence on record that she is a film actress and also taking into consideration that in the film world of this country the heroine will certainly get the substantial sum for acting in films, T.V. serials, modeling, it would be just and proper for us to take 50% of her annual income for the purpose of computation of her future loss of income keeping in

view that throughout her life she may not be in a position to act in the films, albums and modeling. Her annual income is assessed at Rs.5,00,000/-. 50% of which is Rs.2,50,000/- per annum which is multiplied by 17 as the proper multiplier considering her age at the time of accident by applying the legal principle laid down by this Court in Sarla Verma & Ors. v. Delhi Transport Corp. & Anr.[18], which amounts to Rs.42,50,000/-. Hence, we award Rs.42,50,000/- compensation under the aforesaid head. The Tribunal awarded only Rs.2,00,000/- which is enhanced to Rs.42,50,000/- under the said head.

43. The Tribunal awarded compensation of Rs.2,00,000/- for the loss of amenities, pleasure of life and her inability to attend social functions in future, which is inadequate, therefore, it should be enhanced to Rs.10,00,000/-.

44. Towards the pain and suffering, the Tribunal awarded Rs.1,00,000/-. It should be proper to award another Rs.9,00,000/- as she has undergone ordeal for the period of 4 years continuously taking treatment in Odisha and Kerala States and the damages for mental and physical shock, pain and suffering, disfigurement of the face and other bodily injuries she already suffered continuously or likely to suffer.

45. The Tribunal awarded Rs.17,15,726/- towards the medical expenses based on the legal evidence and, therefore we affirm the compensation awarded by the Tribunal.

46. Thus, the total compensation amounting to Rs.79,65,726/- which is rounded off to Rs. 79,66,000/- along with interest at the rate of 6% per annum is awarded from the date of application till the date of deposit of the amount. The aforesaid enhancement of compensation under different heads referred to supra, in our considered view would be just and reasonable compensation in this case.

47. Before parting with the judgment, it would be just and necessary for this Court to make observation that the Motor Accidents Claims Tribunals and the Appellate Courts should keep in view the rights of the claimants under the provisions of the M.V. Act to determine the compensation claims of the claimants by considering the facts of each case and the legal position laid down by this Court on relevant aspects.

48. Accordingly, the appeals of the appellant are allowed in the above said terms. We set aside the impugned judgment, award and orders passed by the High Court.

The respondent Insurance Company is directed to deposit 70% of the awarded compensation along with proportionate interest with any Nationalized Bank of the choice of the appellant in fixed deposit and the remaining 30% with proportionate interest, after deducting any amount if already paid by the respondent as awarded by the High Court should be disbursed to the appellant within six weeks on proper identification. There will be no order as to costs.

- [1] ILR 2004 Karnataka 2471
- [2] 1995 (1) SCC 551
- [3] (1922)2 A.C. 242 at p. 248
- [4] 1880 5 App. Cas. 25 at p. 39
- [5] 1966 1 Q.B. 273 at pp. 299-300
- [6] ILR 1987 Kar. 1399
- [7] [1970] 1 AC 1 at p. 22
- [8] 21 L.T. (N.S.) 326 (1869)
- [9] 1953 1 QB 495 at p. 499
- [10] (1970) 114 Sol. Jo.193
- [11] [1900] AC 113 at p. 116
- [12] 2001(1) Kar. L.J. 411
- [13] (1969) 3 All ER 1528 at p. 1532
- [14] (2002) 7 SCC 456
- [15] 2007 (2) SCC 349
- [16] 2010 (10) SCC 347
- [17] 2009 (6) SCC 1
- [18] 2009 (6) SCC 121