



**FAO-1923-2008 (O&M) &
FAO-3500-2008 (O&M)**

-1-

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO-1923-2008 (O&M)

United India Insurance Company LimitedAppellant

Vs.

Narinder Pal Singh and othersRespondents

FAO-3500-2008 (O&M)

Narinder Pal SinghAppellant

Vs.

Subash and othersRespondents

**Reserved on:- 31.10.2025
Pronounced on:- 21.01.2026
Uploaded on:- 23.01.2026**

*Whether only the operative part of the judgment is pronounced? NO
Whether full judgment is pronounced? YES*

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present : Mr. Vikas Mohan Gupta, Advocate,
for the appellant (in FAO-1923-2008)
for respondent No.3 (in FAO-3500-2008).

Mr. M.S.Sachdev, Senior Advocate, with
Mr. Arsh Gupta, Advocate,
for the appellant (in FAO-3500-2008)
for respondent No.1 (in FAO-1923-2008).



**FAO-1923-2008 (O&M) &
FAO-3500-2008 (O&M)**

-2-

SUDEEPTI SHARMA J.

1. Vide this common judgment, this Court, shall dispose of FAO-1923-2008 filed by the Insurance Company as well as FAO-3500-2008 filed by the appellant/claimant, as the same have arisen out of the common award dated 01.05.2008 passed by the learned Motor Accident Claims Tribunal, Jalandhar.
2. The appeal, i.e. FAO-3500-2008, has been preferred by the appellant/claimant against the Award dated 01.05.2008 passed by the learned Tribunal in the claim petition under Section 166 of the Motor Vehicles Act, 1988, for enhancement of compensation, granted to the appellant/claimant to the tune of Rs.52,00,000/- along with interest at the rate of 9% per annum, on account of injuries suffered by the appellant/claimant in Motor Vehicular Accident, occurred on 13.10.2002.
3. The appeal, i.e. FAO-1923-2008, has been preferred by the appellant-Insurance Company against the Award dated 01.05.2008 passed by the learned Tribunal in the claim petition under Section 166 of the Motor Vehicles Act, 1988, whereby the claim petition filed by the respondent No.1/claimant was allowed and the appellant-Insurance company was held liable to pay the compensation to respondent No.1/claimant to the tune of Rs.52,00,000/- along with interest @ 9% per annum.

FACTS NOT IN DISPUTE

4. The brief facts of the case are that on 13.10.2002 at about 1.30 p.m. claimant along with Shri Vijay Bhushan Mehta was coming from the



**FAO-1923-2008 (O&M) &
FAO-3500-2008 (O&M)**

-3-

side of Jyoti Chowk to Skylark Chowk, Jalandhar. Scooter No. PB-08-X-9546 was driven by Shri Vijay Bhushan Mehta, whereas the claimant was sitting on the pillion. When the said scooter reached near Montique Restaurant a Maruti Zen Car bearing No. CH-03-J-0329 driven by respondent no. 1 came from the opposite side with high speed. It was coming on the wrong side and by this it struck into the scooter driven by Vijay Bhushan Mehta and as a result of strong hitting of the right side of the Car with scooter, the claimant and Vijay Bhushan Mehta fell from the scooter. The claimant suffered serious multiple injuries on his head and shoulder.

5. Upon notice of the claim petition, the respondents appeared and filed their separate replies denying the factum of accident/compensation.
6. From the pleadings of the parties, the learned Tribunal framed the following issues:-

- “1. *Whether Narinder Pal Singh claimant has suffered injuries in a motor vehicle accident caused by Subash, Respondent no. 1 by driving car no. CH-03-J-0329 rashly and negligently on 13.10.2002 in the jurisdiction of Police Station Division No. 4, Jalandhar? OPP.*
2. *Whether the claimant is entitled to compensation, if so, to what amount? OPP.*
3. *Whether Subash, respondent No. 1 was not holding a valid driving licence at the time of accident? OPR*
4. *Who are liable to pay the amount of compensation? OP Parties.”*



7. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.52,00,000/- along with interest at the rate of 9% per annum on account of injuries suffered by the appellant/claimant and the appellant-Insurance company was held liable to pay the compensation. Hence, the present appeals.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

8. The learned counsel for the appellant/claimant contends:-

- (i) that the compensation awarded by the learned Tribunal is wholly inadequate and contrary to the evidence on record. It is contended that the appellant/claimant, a practicing advocate, had duly proved his pre-accident income through Income Tax Returns, yet his income has been assessed on the lower side, resulting in an erroneous computation of loss of earning capacity.
- (ii) that the appellant/claimant was about 26 years of age at the time of the accident and sustained multiple grievous injuries, including fracture of the right clavicle and severe head and brain injuries, leading to complete bilateral hearing loss, permanent neurological impairment, and persistent tinnitus. The appellant/claimant continues to undergo medical treatment and has not recovered from the effects of the accident.



- (iii) that no amount has been awarded towards future medical expenses despite overwhelming medical evidence establishing the necessity of lifelong treatment, further surgical intervention, and continuous medical supervision.
- (iv) that the amounts awarded under the heads of attendant charges, loss of marriage prospects, loss of amenities of life, pain and suffering, and other non-pecuniary damages are grossly inadequate, particularly in view of the 100% permanent disability of the appellant/claimant and complete dependence on attendants.
- (v) that as per consistent expert medical opinion on record, the advanced surgical treatment required by the appellant/claimant is not available in India, compelling him to seek treatment abroad, particularly in the United States of America, a factor which has not been adequately considered by the learned Tribunal.

Therefore, he prays that the present appeal be allowed.

9. *Per contra*, the learned counsel for respondent No.3-Insurance Company, however, vehemently argues that the learned Tribunal has erred in holding that accident occurred due to rash and negligent driving of respondent No.1 i.e. driver of Maruti Zen Car bearing registration No.CH-03-J-0329. He further contends that the amount of compensation awarded by the learned Tribunal is on the higher side. Therefore, he prays that the



**FAO-1923-2008 (O&M) &
FAO-3500-2008 (O&M)**

-6-

appeal i.e. FAO-1923-2008 filed by the Insurance Company be allowed and the appeal i.e. FAO-3500-2008 filed by the appellant/claimant be dismissed.

10. I have heard learned counsel for the parties and perused the whole record of this case with their able assistance.

11. Before proceeding further, it would be apposite to reproduce relevant portion of the award dated 01.05.2008 passed by the learned Tribunal:-

“Issue No.1.

9. *The onus to prove this issue was on the claimant. For this, the claimant has examined Shri Vijay Bhushan Mehta. He filed his affidavit affirming the accident and stated that on 13.10.2002 at about 1.30 p.m. he along with Advocate Narinder Pal Singh were going on scooter no. PB-08-X-9546 from Jyoti Chowk to Skylark Chowk. Narinder Pal Singh was sitting on the pillion seat. When they reached near Montique Restaurant, a Maruti Car No.CH-03-J-329 came from the opposite side with great speed and its driver rashly and negligently hit their scooter. Resultantly, Narinder Pal Singh fell down and received injuries, which included head injury and shoulder bone injury. However, he was saved and received minor injuries. At the time of accident, blood started oozing from the nose and ears of Narinder Pal Singh. He was taken to Hospital, Jalandhar where he was given first aid. Thereafter, due to his deteriorating condition, he was referred to Doaba Hospital, Jalandhar for further treatment. The accident has taken place due to the rash and negligent driving of the driver of the car.*



**FAO-1923-2008 (O&M) &
FAO-3500-2008 (O&M)**

-7-

10. *PW 2 is Chakrawarti. He has also filed his affidavit affirming the deposition of PW1 Vijay Bhushan Mehta.*

11. *PW3 is Phuman Singh father of the claimant. He has stated in his affidavit that he came to know regarding the fact of accident from Shri M.S. Multani on telephone. He came to the hospital, where he found his son bleeding profusely.*

12. *The claimant himself appeared as PW7. He filed his affidavit stating that the accident took place due to the rash and negligent driving of respondent no. 1.*

13. *It has been argued by the learned counsel for the claimant, Shri M.S. Sachdev, Advocate that the evidence led by the claimant goes to show that the accident took place due to rash and negligent driving of respondent no.1. There is no rebuttal to this evidence. Respondent No. 1 has admitted the factum of accident in his written statement. Accordingly, FIR was lodged in the Police Station Division no. 4, Jalandhar having no. 291 dated 13.10.2002. So it is clear that in the absence of any rebuttal evidence to the positive evidence led by the claimant that the accident took place and it was due to rash and negligent driving of respondent no. 1.*

14. *After going through the record and considering the arguments, I find that there is sufficient evidence on record to show that the accident took place between scooter no. PB-08-X-9546 driven by Shri Vijay Bhushan Mehta, Advocate, while the claimant was sitting on his pillion that Maruti Zen car bearing no. CH-034-J-0329. Two eye witnesses have been examined by the claimant, which goes to show that the accident took place. The factum of the accident has also been admitted by*



respondent no, 1 and 2, but the negligence has been contributed towards the claimant. But I find that in the absence of positive rebuttal evidence, it can be safely held that the accident took place, in which the FIR was lodged in Police Station Division No. 4, Jalandhar, in which claimant Narinder Pal Singh got the head and shoulder bone injuries and the accident was due to the rash and negligent act of respondent No. 1. Accordingly, this issue is decided in favour of the claimant and against the respondent.

Issue No. 3:

15. This issue has to be decided first. The onus to prove this issue was upon the respondents. There is nothing on record to show that respondent no. 1 was not holding a valid licence at the time of accident. None of the respondent no. 1 and 2 has come to contest the claim of the claimant. However, there is deposition of RWI Surinder Singh, Assistant Manager, United India Insurance Company examined by respondent no. 3. He in his affidavit has stated that respondent no. 1 has not stepped into the witness box, nor has subjected himself to the cross examination. All the allegations of negligence on his part is wrong. Neither, the owner has stepped into the witness box. The respondent no. 1 was incompetent, disable and physically unfit to drive the vehicle. The Insurance Company does not own the responsibility to pay the compensation. The status of the criminal case against Subash is purposely kept concealed due to the collusion. No accident has taken place. Except this, there is not even a single word uttered in the affidavit regarding none holding of driving licence by respondent no.1.



16. *The learned counsel for respondent no. 1 has argued that respondent no. 1 was having a valid driving licence at the time of accident, as the report of District Transport Officer, Jalandhar regarding the issuance and genuineness of the valid driving licence is on the file. The respondent no. 2 is also not liable to pay the compensation to the claimant that the accident was due to the rash and negligent driving of the scooter driver, as per the information received by her from respondent no. 1. He further argued that the vehicle no. CH-03-J-0329 stands fully insured with respondent No.3.*

17. *It has been argued by the learned counsel for respondent no. 3, Shri R.S. Arora, Advocate that respondent no.1 was not holding any licence to drive the vehicle. The vehicle was given by respondent no.2 to respondent no. 1 against the policy of the Insurance Company. So, the Insurance Company has no liability to pay / the compensation.*

18. *After going through the record and considering the arguments, I find that there is nothing on record to show that respondent no. 1 was not holding any valid licence at the time of accident. The learned counsel for respondent no. 1 has proved on record one application Ex. RZ along with photo copy of the driving licence of respondent Subash to the office of District Transport Officer, Jalandhar, He made his endorsement on the application that driving licence no. 1439/DR/03-04 which has been issued duplicate on 22.10.2003 in the name of Subash son of Gian Singh resident of NA 234 Kishanpura, Jalandhar for scooter and car valid up to 2.4.2015. The last replaced number of the said driving licence is 2100/DR/2002-03 as per office record. This*



driving licence is valid on 13.10.2002, at the time of accident. In fact the onus to prove this issue was on respondent no.3. No cogent evidence has been led by respondent no.3. All the arguments advanced by the learned counsel for respondent no.3 are vague. The respondents were under the obligation to prove that respondent no. 1 was not holding the valid licence. The address of respondent no. 1 has been given in the claim petition. No inquiry has been conducted by respondent no. 3 to take out the licence or to bring the evidence that respondent no. 1 was not holding any valid licence at the time of accident. Moreover, from the endorsement made by the DTO Jalandhar, it is proved that the respondent was holding a valid licence at the time of accident. So, keeping in view of this, I decide this issue against the respondents and in favour of claimant by saying that the respondent no.1 was holding the legal and valid driving licence at the time of the accident.”

12. A perusal of the impugned award reveals that the learned Tribunal has correctly returned a finding that the accident in question occurred due to the rash and negligent driving of the offending vehicle by respondent No. 1-Subash, the driver of the said vehicle.

13. The award further demonstrates that the First Information Report pertaining to the accident was lodged promptly on the very date of occurrence, i.e., FIR No. 291 dated 13.10.2002, wherein it was specifically recorded that the accident took place on account of the rash and negligent driving of the respondent driver. The prompt lodging of the FIR lends considerable credence to the version put forth by the appellant/claimant.



14. Additionally, PW-1 Vijay Bhushan Mehta, eyewitness to the occurrence, categorically deposed that the accident was caused due to the rash and negligent driving of the offending vehicle by respondent No. 1. His testimony remained consistent, cogent, and unimpeached during cross-examination, thereby successfully withstanding the test of credibility. The appellant/claimant himself stepped into the witness box as PW-7 and reaffirmed the factum of negligence attributable to the respondent driver.

15. It is also evident from the record that the respondents failed to lead any substantive or convincing rebuttal evidence to discredit or demolish the consistent and trustworthy testimony of the eyewitnesses examined by the appellant/claimant. In the absence of such rebuttal evidence, the version advanced by the appellant/claimant stands duly corroborated.

16. The learned Tribunal has, therefore, rightly appreciated the entire evidence on record in its correct perspective and has applied the settled principle of law that proceedings before the Motor Accident Claims Tribunal are governed by the standard of proof based on the preponderance of probabilities and not proof beyond reasonable doubt, as consistently held by the Hon'ble Supreme Court in a catena of judgments. Reference at this stage can be made on the judgment passed by Hon'ble the Supreme Court in

in Anita Sharma v. New India Assurance Co. Ltd., 2021(1) SCC (Cri)

475. The relevant extract of the *Anita Sharma's* case (supra) is reproduced as under:-

22. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a



*criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. A somewhat similar situation arose in **Dulcina Fernandes v. Joaquim Xavier Cruz (2013) 10 SCC 646**. wherein this Court reiterated that:*

"7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pickup van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt. (Bimla Devi v. Himachal RTC I(2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101)

(emphasis supplied)"

17. In view of the foregoing discussion and the settled legal position, this Court finds no infirmity, illegality, or perversity in the findings recorded by the learned Tribunal. The conclusions drawn are sound, well-reasoned, and supported by the evidence on record. Consequently, the findings of the learned Tribunal do not call for any interference and are hereby affirmed. Accordingly, this Court finds no merit in the contention of Insurance Company regarding the rash and negligent driving of respondent No.1 or occurrence of the accident to be not proved. The said contention is, therefore, rejected. As a natural corollary, the issue of liability also has been correctly appreciated and adjudicated by learned Tribunal, and no inference is warranted on that count. Hence, this argument also stands rejected.



NOW COMING TO THE DECISION ON COMPENSATION AWARDED BY LEARNED TRIBUNAL AND AS TO WHETHER THE COMPENSATION HAS TO BE ENHANCED OR NOT, AS PER THE LATEST PHYSICAL/MEDICAL STATUS OF THE APPELLANT/ CLAIMANT

18. A perusal of the record reveals that the appellant/claimant sustained grievous injuries in a motor vehicle accident that occurred in the year 2002. Though more than two decades have elapsed since the occurrence of the accident, the appellant/claimant continues to suffer from the debilitating consequences of the injuries till date. The injuries have neither healed nor stabilized, and he remains under continuous medical supervision. Despite having undergone treatment at several hospitals over the years, the appellant/claimant has not attained complete recovery. As per the consistent medical opinion of the treating doctors, the requisite specialized treatment is not available in India and can be effectively undertaken only in the United States of America.

19. It is pertinent to note that, owing to the progressive nature of his medical condition and the continuing requirement of advanced medical care, the appellant/claimant was constrained to approach this Court by filing application i.e. **CM-1654-CII-2020** seeking permission to lead additional evidence. By way of the said application, the claimant/appellant sought to place on record voluminous medical documentation to substantiate the assertion that the appellant/claimant requires further specialized treatment, which is available only in America. In the said application, the following order dated 07.02.2020 was passed by Co-ordinate Bench of this Court:-



"This is an application for leading additional evidence. The appellants by way of the present application seeks to exhibit medical record in order to prove that he requires further treatment and the said treatment is available only in America. Since the documents produced by him are voluminous, I deem it appropriate to remit the matter to the Tribunal to submit a report after allowing both the parties to lead their evidence, in accordance with law.

The Tribunal shall give a report within a period of three months after evaluating the entire oral as well as documentary evidence led by the parties. For awaiting report of the Tribunal, adjourned to 15.05.2020. Photocopy of this order be placed on the connected case file."

20. Pursuant thereto, the learned Tribunal submitted its report dated 21.04.2023 after evaluating the entire oral as well as documentary evidence placed on record. The report dated 21.04.2023 passed by learned MACT, Jalandhar, is reproduced as under:-

"Respected Sir,

It is respectfully submitted that in reference to the subject cited above, I was in receipt of letter of the Hon'ble High Court bearing no.5157 dated 29.09.2022 along with copy of order dated 16.09.2022 passed by the Hon'ble Justice Alka Sarin of Hon'ble Punjab & Haryana High Court. In said order, reference of order dated 07.02.2020 passed in CM-1654-CII-2020 has also been made.



**FAO-1923-2008 (O&M) &
FAO-3500-2008 (O&M)**

-15-

It is pertinent to mention here that earlier claimant filed a claim application before the then Learned Motor Accident Claims Tribunal on 29.04.2004, which was decided in his favour vide award dated 01.05.2008. The Insurance Company assailed the said award vide FAO No.1923 of 2008 and dissatisfied with the compensation and the claimant also approached the Hon'ble Punjab & Haryana High Court vide FAO No. 3500 of 2008. In the said appeal, the claimant filed an application for leading additional evidence his recurring and continuously treatment after passing the award till date vide which he sought to exhibit medical record in order to prove that he requires further treatment and the said treatment is available only in America. Since the documents produced by him were voluminous, so the matter was remitted back to this Tribunal to submit a report after allowing both the parties to lead their evidence, in accordance with law.

1. *First of all, in compliance of the said orders, present case was treated as Civil Misc which is bearing CM/450/2022 & thereafter, on the basis of the application moved by the learned Counsel for the claimant/injured, a request letter was made to the Hon'ble High Court for requisitioning of the original medical record appended with FAO No.3500 of 2008, which was received in this court on 23.02.2023, On receipt of the said record, the parties were called to lead their evidence.*

2. *In his evidence, claimant Narinder Pal Singh has examined himself as PW7. He also examined Som Raj as PW9 and exhibited the following documents in his evidence:*

Ex.P-544 MRI Report of Inner ear



**FAO-1923-2008 (O&M) &
FAO-3500-2008 (O&M)**

-16-

Ex.P-545 Super Scanning Report

Ex.P-546 Opinion of Dr. Shamit Chopra

Ex.P-547 Opinion of Dr.Kuldeep Singh

Ex.P-548 Opinion of Dr.S.K.Bansal

Ex.P-549 Opinion of Dr.Mandeep Singh

Ex. P-550 Opinion of Dr.Anurag Arora

*Ex.P-551 to Ex.P-561 Opinion of Dr Harinder Singh
on different dates*

Ex.P-562 Opinion of Dr.Neha Singla

Ex.P-563 Opinion of Dr.Raman Gupta

Ex.P-564 Certificate issued by Dr.Gurwinder S.Bansal

Ex.P-565 Affidavit given by Som Raj (PW9)

Ex.P-566 to Ex.P-574 Reports & tests of applicant

*Ex.P-575 to Ex.P-577 Copies of Appointments given
by Cleveland*

Clinic

Ex.P-578 to Ex.P-586 Copies of Income Tax Returns

Ex.P-587 Copy of PAN Card of applicant

*Ex.P-588 to Ex.P-1064 Subsequent prescriptions issued
by various doctors all over India, medical bills, receipts
& medical reports regarding various tests.*

Ex.P-1065 Report of MRI dated 25.08.2021

Ex. P-1066 Report of MRI dated 14.08.2019

Ex.P-1067 Opinion of Dr.Tushar Arora, M.S.Mch

*Ex.P-1068 Opinion of Dr.Akshata Desai, MBBS, MD
(USA)*

*Ex.P-1069 Opinion of Dr.Karanbir Singh, MBBS, MD
(USA)*

Ex.P-1070 Prescription of doctor

Ex.P-1071 Evaluation report dated 13.10.2020



Ex.P-1072 to Ex.P-1546 Medical bills, prescription, opinion of various doctors all over India, MRI reports, other investigation reports and their bills

Ex.P-1547 Documents pertaining to the appointment from Mayo Clinic, USA

Ex.P-1548 Copy of death certificate of mother of applicant

Ex.P-1549 Disability certificate dated 25.11.2022.

Ex.P-1550 Opinions of Professor & Head of the ENT Deptt, PIMS, Jalandhar.

Ex.P-1551 to Ex.P-1695 Prescriptions of various doctors, Medical bills, reports of various tests & opinion of various doctors along with certificate U/s 65-B of Indian Evidence Act.

Ex.P-1696 Certified copies of Dr.Col.Harinder Singh, Command Hospital, Chandi Mandir, Chandigarh.

Ex.P-1697 Certified statement of Dr.Pankaj Trivedi, Neuro Surgeon.

Ex.P-1698 Report dated 10.12.2022 issued by Krishna Path Lab

Ex.P-1699 X-ray report

Ex.P-1700 Digital X-ray report

Ex.P-1701 Digital X-ray report

Ex.P-1702 OPD slip dated 11.03.2022

Ex.P-1703 Copy of I.T.R acknowledgment for 2021-22

Ex.P-1704 to Ex.P-1706 Medicine Bills

3. *On the other hand, the respondent Insurance Company examined RW-2 Dinesh Kumar Deputy Manager, Raksha Health Insurance TPA Pvt.Ltd. & tendered the following documents:*

Ex.RW2/ Email dated 11.04.2023

Ex.RW2/ Schedule of charges



Ex.RW2/ Pricing Guidelines 2020-21

Ex.RW2/ Packages Tariff

Ex. RW2/ Certificate U/s 65-B of Indian Evidence Act.

4. *I have heard learned counsel for the parties and have gone through the record carefully.*

5. *The claimant Narinder Pal Singh met with a road accident on 13.10.2002 and sustained serious injuries on his head and shoulder and other parts of the body, as is evident from the award dated 01.05.2008. The claimant filed a claim application before the then Learned Motor Accident Claims Tribunal on 29.04.2004, which was decided in his favour vide award dated 01.05.2008. The insurance company assailed the said award vide FAO No. 1923 of 2008 and dissatisfied with the compensation, the claimant approached the Hon'ble Punjab & Haryana High Court vide FAO No. 3500 of 2008 and the claimant filed an application for leading additional evidence his recurring and continuously treatment after passing the award till date vide which he sought to exhibit medical record in order to prove that he requires further treatment and the said treatment is available only in America. Since the documents produced by him were voluminous, so the matter was remitted back to this Tribunal to submit a report after allowing both the parties to lead their evidence, in accordance with law.*

6. *In this evidence, claimant Narinder Pal Singh vide his affidavit Ex. PW7/A/1 initially stated about the facts of the case and also about his incapacity to carry on any work as an offshoot of the head injuries and other injuries on his entire body, sustained in the road accident and produced several hundreds of documents. His attendant/caretaker PW-9 Som Raj has been examined*



who stated that he is working as full time attendant/caretaker with the claimant since 26.10.2002 and also deposed about his monthly salary of Rs. 12,000/- P.M since 2010 plus free accommodation and three times food. He also extensively deposed about the condition of the claimant including visits to doctors and medical treatment and medication being provided to the claimant on daily and regular basis.

It is pertinent to mention that counsel for claimant /injured categorically submitted that the medical condition of claimant/injured is worsening with each passing day and being chronically bed ridden, he was not in a position to collect all the medical bills/boarding and lodging bills or transportation bills pertaining to his continuous medical treatment from doctors all over India, the overall medical expenses far exceeds the bill collected and produced on record. The bills shown in evidence are less as compared to the actual expenses incurred by the claimant. The counsel for the claimant vehemently also submitted that his financial condition is very critical and claimant is under heavy debt and after passing of the award, the claimant during cross-examination had stated that he got a loan of Rs. 50 lakh from different persons to meet the expenditure his treatment.

The medical & incidental expenditure proved on record by claimant:

7. *In the present proceedings, the claimant has brought on record original bills qua the medical and some conveyance expenditure to the tune of Rs. 22,17,844/-, which pertain to the period after the passing of the award dated 01.05.2008, till today. These*



**FAO-1923-2008 (O&M) &
FAO-3500-2008 (O&M)**

-20-

expenditures are in addition to those already produced on record in the claim petition. The documents have been produced in original and no rebuttal evidence has been led by the respondent insurance company to deny the genuineness of these documents. Although the Learned Counsel for the respondent insurance company has hammered heavily on the point that the medical bills are exaggerated and are even forged and fabricated. He has further stressed that the issuing authority of the bills showing expenditure have not been examined by the claimant intentionally and as such, adverse inference is liable to be drawn. However the said argument is without any merits. The issue regarding the proof of medical expenditure is no longer res-integra. Strict proof of the medical expenditure is not required and mere exhibition of the bills is sufficient to draw the conclusion that this amount is spent by the claimant on his treatment. The proceedings under Motor Vehicles Act are summary and strict proof of evidence, as required in criminal law, is not applicable to the summary proceedings. The respondent insurance company, despite availing a number of effective opportunities, did not lead any evidence to depict that any of the bill is not genuine and has been fabricated and on this ground, adverse inference is liable to draw against them. As such, the claimant has been able to prove his medical and some conveyance expenditure to the tune of Rs.22,17,844/- At the same time, some of the bills have been tendered twice, which have been duly taken note of and the second copy has been not taken into consideration, while arriving at the total expenditure of Rs.22,17,844/-.

Medical & physical condition of claimant:



8. Coming to the next point for determination, which is the medical and physical condition of the claimant, regarding which several documents have been brought on record. Before analyzing the documents and evidence led on record, this Court first wishes to take note of its observation regarding the condition of the claimant, when he was brought before this Court at the time of his evidence. When the claimant Narinder Pal Singh examined himself as PW7, during his cross examination, this Court noticed that while he was being cross examined, the claimant expressed his inability to hear and he requested for the questions to be given in writing. However, with the help of the Learned Counsel for the claimant, the questions were asked loudly and in writing to the witness. This observation was even recorded in the evidence of the witness recorded on 21.03.2023. Since his evidence was not concluded on the said day, when the witness again appeared on the next day i.e. 22.03.2023, feeling the helplessness of the claimant and the manner in which the question were being asked loudly and in written form, this Court had appointed Local Commissioner to record the evidence of the witness.

9. Now coming to the evidence led regarding the condition of the patient. The claimant has brought on record original certificate Ex. P-1067 issued by Dr. Tushar Arora, M.S. Ch. (Neurosurgery), Senior Consultant Neurosurgeon, Shrimann Superspeciality Hospital, Jalandhar who gave his opinion that the claimant Narinder Pal Singh is suffering from severe bilateral tinnitus with bilateral hearing loss with right sided 7th - 8th nerve complex vascular conflict, depression, headache, insomnia and diabetes, he had further stated



**FAO-1923-2008 (O&M) &
FAO-3500-2008 (O&M)**

-22-

that the claimant has consulted various Neurosurgeons in India and has got no relief in his symptoms. Another certificate Ex.P-1068 issued by Dr. Akshata Desai, MBBS MD(USA) DM eq(USA), Endocrinologist and Diabetologist, Apex Hospital, Jalandhar has been brought on record, vide which the doctor has opined that the claimant has been suffering from diabetes type II tinnitus, vertigo from many years since he met with a road traffic accident, which completely disrupts sleep and has had a negative impact on his blood sugar, blood pressure, weight and overall health. On the similar lines is the certificate issued by Dr. Karanbir Singh, MBBS MD(USA) DM (USA), Consultant Neurologist, Apex Hospital, Jalandhar which has been brought on record as Ex. P-1069. The said doctor has treated upon the claimant, wherein the occipital nerve i.e. first nerve of the brain of the claimant was blocked by injecting injections in brain and the prescription in this regards in Ex.P-1070. There is also a hearing evaluation report issued by PIMER, Chandigarh as Ex.P-1071, which depicts that claimant Narinder Pal Singh is suffering from complete hearing loss from both ears. The claimant has also brought his permanent disability certificate as Ex. P-1549, vide which the claimant Narinder Pal Singh has been certified to be 100% permanently disabled, being suffering from hearing impairment and the said disability has been assessed in the month of November, 2022. Ex. P-1550 is the certificate issued by the Professor and Head of ENT Department, Punjab Institute of Medical Sciences Hospital, Jalandhar, vide which it has been certified that both the ears of patient Narinder Pal Singh have been rendered dead and he cannot hear



from both his ears. He has further mentioned that claimant's 7th - 8th nerve of the brain have been permanently damaged and the claimant Narinder Pal Singh is suffering from severe insomnia, depression, vertigo, headache and is highly diabetic. Apart from the certificates, several hundreds of medical record in the shape of OPD slips cum prescriptions slips showing visit and consultation to the doctors of the above said hospitals have been brought on record by the claimant, to prove that the claimant had in fact been visiting and consulting the doctors, issuing the certificates. The said condition of the claimant Narinder Pal Singh is also evident from copy of affidavit of Dr. Col. Harinder Singh, Head of ENT Department, Command Hospital, Chandi Mandir, Chandigarh as Ex. P-1696 and copy of affidavit of Dr. Pankaj Trivedi, Brain and Spine Surgeon, Jalandhar as Ex. P-1697, which pertain to their evidence recorded during the pendency of the claim application averring that medical treatment is available and possible from USA claimant injured requires advance treatment of brain and ears which is not possible in India.

10. Although the medical record has been assailed by the Learned Counsel for the respondent insurance company on the grounds that the medical evidence in shape of statement in the Court of doctors, issuing the certificates is missing in the present case as the claimant has failed to examine the doctor issuing the said certificates, but to my mind, merely because the claimant has not examined the doctors, it does not ipso facto establish that the medical record are not genuine. The certificates issued by the doctors have been duly corroborated with the OPD and prescription slips of the



doctors which have been produced on record and runs into hundreds of page numbers. Also, the certificates have issued by doctors of leading hospitals i.e. PIMER, Chandigarh, PIMS Hospital, Jalandhar, Shrimann Hospital, Apex Hospital who possess high medical qualifications, duly corroborated by evidence of treating doctor of Command Hospital, Chandi Mandir, Chandigarh, Dr. Col. Harinder Singh, who was examined during the pendency of claim application. Thus, it is fully evident that the claimant has lost hearing in both his ears and is suffering from tinnitus in brain and both inner ears, vertigo, headache, insomnia and depression, diabetes etc. causing adverse effect on the health of the claimant.

11. As per "New Concise Medical Dictionary" by Gupta & Gupta, "Tinnitus is ringing, buzzing, whistling, hissing or other noise heard in silent environment. There is some element of hearing loss. Tolerance of tinnitus varies considerably from one person to another. Some may find it most intolerable. It is an unformed auditory hallucinations of sound. It is usually of whistling or pulsating nature accompanied with sensorineural deafness. Tinnitus may be associated with depression. Pharmacological treatment is ineffective". The claimant is constantly facing problem on which there is a continuous ringing voices in his brain and both inner years. This Court can well imagine the apathy and suffering of the claimant, which he is suffering since the date of accident i.e. 13.10.2002. There are no words even to describe the suffering and measure is immeasurable. The claimant has consulted a number of doctors including Neurologists and Otologists in Jalandhar,



Durgapur (West Bengal), Ludhiana and Mumbai, however has found no solace and relief to his suffering and complications. The entire medical evidence is consistent with the fact that due to tinnitus in his brain and both inner years, the claimant is suffering from insomnia, depression, vertigo, high blood sugar level, high blood pressure. Thus it is evident that, due to the constant sound in his brain and both inner ears, the claimant is unable to sleep whole night and day which is required for a healthy human. The constant buzzing in ears, sound would not let the claimant sleep straight for even five minutes, as rightly stated by the claimant in his affidavit Ex. PW-7/A/1.

12. *PW-9 Som Raj has been examined who has stated regarding his job as an attendant/caretaker with the claimant since 2002 and his salary of Rs. 12,000/- per month. There is no escape from the conclusion that the condition of the patient requires him to engage attendant/caretaker for his day to day activities. The doctors have even mentioned about the need of attendant/caretaker in their certificates Ex. P-1067 and Ex.P-1068. Even otherwise, the condition of the patient itself depict the need of attendant/caretaker. The name of Som Raj even finds mentioned in some of the records of the transportation expenditure, wherein the said attendant/caretaker Som Raj is depicted to be accompanying the claimant to Mumbai and Delhi for the doctor visit. It will not be out of place to mention here that due to complete hearing loss with constant ringing sound in his brain and both inner ears, the claimant will not be able to carry out his daily schedule and his high blood sugar level and other medical requirements for*



daily survival necessitate his engaging an attendant/caretaker, rather his condition depict that he would be dependent on two attendant/caretaker as it cannot be expected from one single human to look after the claimant round the clock for 24 hours. Although salary of Rs. 12,000/- has been alleged to be paid to the attendant/caretaker, but the said plea is without any proof. But at the same time, salary ought and must have been paid to the attendant/caretaker Som Raj soon after accident, even till today. Moreover, services of the family members, which are not depicted in evidence, cannot be ignored as already stated above, one single attendant/caretaker cannot look after the claimant.

13. As regards the future medical treatment towards purchase of medicines and other medical expenditure, the claimant in his affidavit has claimed he is under constant medication. Several documents have been brought on record depicting the condition of the claimant. It is evident that due to multiple head injuries sustained in the road accident his hearing has been lost from both the ears and constant ringing and buzzing sound is appearing in the ears/brain of the claimant and an offshoot his both ears permanently dead and his seventh and eights nerves of the brain are permanently damaged after the accident, he has become highly diabetic, and is suffering from insomnia, depression, vertigo and headache and so many problems are creating day by day. The claimant is under daily requirement of medicines for his upkeep and as mentioned by the Dr. Akshta Desai in certificate Ex. P-1068, he is requiring more than 160 units of insulin with 4 oral agents to prevent glycemic spikes. The claimant will have to spend regular monthly



expenditure on his upkeep and prevent further complications to arise.

14. *Certificate Ex.P-543 issued by Dr. Kuldeep Singh, Orthopedic Surgeon, has been brought on record vide which the claimant has been advised major surgery for non-union right side clavicle bone with plating and bone grafting and claimant is his affidavit has also claimed amount for the said surgery. Claimant has also claimed charges to be incurred on dental implant towards implant of teeth, lost during the course of accident. Ex.P-1584 is the Dental OPD slip of the claimant issued on 09.11.2022, vide which the Medical Officer of Dental department of District Hospital, Jalandhar has advised the claimant Dental implant with FPD (Fixed Partial Denture) for the missing teeth to get balanced occlusion.*

Requirement of Medical Treatment in U.S.A:

15. *Now coming to the next contention of the claimant that he requires a medical treatment, which is only available in USA. The claimant in this case has brought on record copy of affidavit of Dr. Col. Harinder Singh, Head of ENT Department, Command Hospital, Chandi Mandir, Chandigarh as Ex.P-1696, who was examined during the pendency of the claim application as PW-10. His evidence in the shape of affidavit Ex.PW10/A depicts that the said doctor has stated that the doctors at Command Hospital are of the view that brain/ head injuries sustained by Narinder Pal Singh, due to which there has been permanent echo oozing out of the brain, the present case in hand is a case of major head surgery to be operated upon by leading neurosurgeon as the ear and brain nerve are interconnected to each other leaving permanent impact on the brain and ears of Narinder Pal*



**FAO-1923-2008 (O&M) &
FAO-3500-2008 (O&M)**

-28-

Singh. He has further opined that the surgery in such a complicated case should be got done in abroad which is very costly. The claimant has further brought on record copy of affidavit of Dr. Pankaj Trivedi, Brain and Spine Surgeon, Jalandhar as Ex. P-1697, who was examined during the pendency of the claim application as PW-11. His evidence in the shape of affidavit Ex. PW11/A depicts that doctor has stated about the condition of the claimant and has stated that despite best treatment given by him, the patient Narinder Pal Singh has not been able to recover and he always complain of echo oozing out the right side of the brain round the clock as well as sleepless night. He has further opined that patient Narinder Pal Singh requires Neuro brain surgery, which is a very advanced treatment available only abroad in selected countries like USA, Canada and is also very expensive. The claimant have brought on record a certificate issued by Dr. Shamit Chopra, Department Head and Neck Surgery, Patel Hospital, Jalandhar as Ex. P-546, who has mentioned that the patient Narinder Pal Singh has been using hearing aids and tinnitus masker since 15 years, but the patient has not improved and the patient will get benefit with surgical intervention and the patient requires bilateral cochlear implantation and post operative auditory rehabilitation and its tentative cost is Rs.35,00,000/-. Dr. Harinder Singh Professor and HOD, Department of ENT, Narayana Multispeciality Hospital, Durgapur has certified that the patient Narinder Pal Singh get benefit from cochlear implant in both ears and its approximate cost of Rs. 35,00,000/-. Ex. P-1067 is the certificate issued by Dr. Tushar Arora, Senior Consultant Neurosurgeon, who has stated that the patient Narinder



**FAO-1923-2008 (O&M) &
FAO-3500-2008 (O&M)**

-29-

Pal Singh required urgent advance treatment for his head and ear injuries from USA and Dr. Akshata Deasi of Apex Hospital vide her certificate Ex. P-1068 has certified that patient Narinder Pal Singh is in serious need of help for tinnitus and vertigo. On the similar lines is the certificate Ex. P-1069 issued by Dr. Karanbir Singh Consultant (Neurology) who has certified that the despite consultations with several doctors in India, the patient Narinder Pal Singh has minimal to no relief and he has severe systems affecting his day to day living and may benefit from urgent treatment from abroad. Hence it is evident from the record that considering the nature of injuries and complications being faced by the claimant, his further treatment in the shape of surgery and implants is required and as per the opinion of the doctors, the said treatment can only be done by top Neurosurgeon. Professor and Head of ENT Department, PIMS Hospital, Jalandhar, has also certified that patient Narinder Pal Singh requires urgent advanced treatment for his head and ear injuries from USA by surgical operation, vide his certificate Ex.P-1550. Hence it is evident from the record that considering the nature of injuries and complications being faced by the claimant, his further treatment in the shape of surgery and implants is required and as per the opinion of the doctors, the said treatment can only be done by top Neurosurgeon. Even otherwise, as the record speaks, the claimant has already consulted a number of Neurologists and Otologists in different hospitals and in different parts of the country, however his condition has not yet improved and there appears to be no end to his suffering, unless given an advanced treatment.



**FAO-1923-2008 (O&M) &
FAO-3500-2008 (O&M)**

-30-

16. The claimant has also brought on record, appointments, sought by him at Mayo Clinic, Minnesota, United States of America for his assessment and treatment. Ex.P-1547 is the detailed record regarding the appointments sought by the claimant from time to time. Initially in the month of December, 2019 and January, 2020, the claimant has sought appointments at the said clinic and thereafter, again in the month of February, 2020 and March, 2020, the claimant had sought appointment. Again in the month of August, 2022, the appointments sought and finally in the month of October, 2022 appointments resought by the claimant. However, the claimant could not attend the appointments at the Clinic, due to paucity of funds and unavailability to arrange for huge expenditure. The claimant has further brought on record the estimate expenditure issued by the Mayo Clinic for cochlear implant and for brain lesion removal, which relates to the nerve damage of the brain, as certified by the treating doctor. For the cochlear implant surgery with estimate of appointment, an estimate of USD \$ 7903 has been given for appointments and surgery an estimate of US \$ 1,02,197 has been given. The said estimate has been given by the Finance Specialist of the Mayo Clinic at USA. For the brain lesion removal surgery an estimated total cost of \$ 66,635 to \$ 1,46,600 has been given and estimated average total cost of \$ 1,08,950 has been given vide estimate no. 500758. The said estimates are attached at page 49 to 51 of Ex.P-1547. Although the said documents have been in email printout form, but they are duly supported by the affidavit U/s 65-B of Indian Evidence Act filed by the wife of the claimant Rupinder Kaur vide



Ex.P-1675. On the other hand, except giving mere suggestions regarding the genuineness of the documents produced, no contrary evidence has been led by the respondent insurance company. The respondent insurance company did not examine any witness to put forth its own estimate regarding the estimated expenditure of the treatment of the claimant. No contrary estimate has even been produced on record so as to rebut the estimate produced by the claimant. All the medical records shows that presently he is under various doctors all India under treatment since the date of accident to till date.

17. Apart from all the evidence discussed above, the claimant has brought on record a certificate Ex. P-564 issued by Dr. Gurvinder Singh Bansal, B.P.T., Bansal Physiotherapy Centre, Bhogpur, Jalandhar who has certified that the claimant Narinder Pal Singh is getting physiotherapy treatment from him since January, 2012 and he charges a sum of Rs. 500/- per visit and on an average, there are almost 15/20 visits in a month. He has further certified that the claimant requires physiotherapy treatment in future also. Considering the nature of injuries and the inability of the claimant to carry on his daily routine and even to take sound rest, the claimant has suffered insomnia, depression and he must have to remain restless throughout the day. Hence the need of physiotherapy treatment for keeping his body in a working condition appears to be a justified. The learned counsel for the claimant submitted that treatment of the injured claimant is already very much delayed for the last 20 years, he went to more than 100 hospitals all over India, but could not get relief keeping in view of his



health condition claimant injured immediately need of advance treatment of medical science.

18. *Both Cochlear implants surgeries are to be done along with brain surgery are to be done from the best Neuro Surgeon with advanced medical science because brain and ears nerves are inter connected with each other and all these surgeries relating with the brain and these three surgeries are to be done simultaneously in order to safe guard the life and future of the deponent. Apart from this there is a right Collar bone surgery is to be done and 14 teeth implant surgeries are to be done and claimant injured has to take diabetic treatment throughout life.*

19. *All the other documents are in shape of OPD and prescription slips of the above-mentioned doctors and hospitals, medical test reports etc, which have been dealt above.*

20. *The respondent's Insurance Company in rebuttal has examined RW-2 Sh.Dinesh Kumar, Deputy Manager Rakhsha Health Insurance TPA Private Limited Feroz Gandhi Market, Ludhiana has stated that he has direct interaction in different hospitals in India. The facility of brain lesion surgery and cochlear implant is widely available in different hospitals in India and some of those hospitals are Indraprasth, Apollo Hospital, New Delhi, Fortis Hospital Ltd.Gurgaon, Max Superspecialty Hospital, New Delhi. In his cross-examination, he has deposed that he has no idea as to in which part/portion of the brain, the part known as brain lesion is located. Before making statement in the court, he did not go through medical record of claimant as to what sort of injury had received by him in the motor accident. He has*



no idea as to whether the brain is divided into four different portions. He has further deposed that he did not know if the brain in a human body is the nerve center. He did not know if any nerve emanating from the brain is damaged, that part of the body becomes dead which is connected to the brain through that particularly nerve. He has no idea in the case of claimant, his 7th & 8th nerves coming from brain, had been permanently damaged. In his examination-in-chief, he failed to produce cost of surgery for the repair of 7th & 8th nerves known as carinal nerve. He has only produced schedule list of the charges of hospital available with him. He has not produced any record to show that any hospital in India is capable to perform joint surgery of brain lesion and cochlear implants at one and same time. He did not know if any treatment to cure the problem of present claimant is available in India or not. He has made statement only on the basis of expenditure list available in their hospital.

21. *It is pertinent to mention here that the treatment in respect of which the claimant a seeking compensation from the Insurance Company is available in India and to prove the cost of such treatment, he has also placed on record the list of expenditure received by his company from various hospitals. The said statement made by Dinesh Kumar is liable to be discarded for the simple reason when he is in cross-examined stated that the claimant is required to undergo surgery at one of the same time for his brain as well as for the implant of the cochlear in both of his ears, but the witness failed to bring on record any evidence to show that the said surgery can be performed in any hospital in India and*



**FAO-1923-2008 (O&M) &
FAO-3500-2008 (O&M)**

-34-

similarly he failed to state as to what would be the cost of the aforesaid surgery i.e. the surgeries to the brain of the claimant and the implant of the cochlear of both the ears at one of the same time, therefore, from the evidence, it cannot be concluded that treatment for the problem faced by the claimant, is available in India therefore the statement of the claimant cannot be discarded when he stated that treatment for his problem is available in USA, especially when his statement is corroborated by the opinion of the doctors who examined him during his treatment.

Hence my report is submitted for your kind perusal.”

21. This Court now proceeds to examine and decide the enhancement of compensation in view of the above referred to report dated 21.04.2023.

22. A perusal of the record as well as latest report dated 21.04.2023 shows that the claimant/appellant has endured prolonged physical pain, mental agony, and financial hardship for over two decades. The appellant/claimant seeks enhancement of compensation not as a matter of largesse, but as a rightful claim grounded in law, equity, and compassion, so as to enable him to secure necessary medical treatment and to live the remainder of his life with dignity in the face of permanent and continuing disability.

23. A careful perusal of the record reveals that the appellant/claimant was aged about 26 years at the time of the accident and



was a practicing advocate by profession. The evidence on record further indicates that prior to the accident, the appellant/claimant was regularly filing income tax returns, reflecting a monthly income of ₹25,000/-, as duly noticed by the learned Tribunal.

24. It is also borne out from the record that subsequent to the accident, the appellant/claimant has filed income tax returns showing nil income. The said circumstance clearly establishes that owing to the injuries sustained in the accident, the appellant/claimant has been rendered incapable of pursuing his professional work. There is nothing on record to suggest that the appellant/claimant has any alternative source of livelihood post-accident.

25. Having regard to the age of the appellant/claimant, the nature of his profession, the permanent impact of the injuries on his earning capacity, and the fact that but for the accident he would have continued to earn and progressively enhanced his income, this Court is of the considered view that strict adherence to post-accident income figures would result in grave injustice.

26. It is well settled that strict proof of income is not always possible in the case of self-employed persons, and the Tribunal/Court is required to adopt a pragmatic and realistic approach while assessing income, keeping in view the nature of occupation, surrounding circumstances, and prevailing economic realities.

27. In this context, reliance can be placed on the judgment of the Hon'ble Supreme Court in **Chandramani Nanda Vs. Sarat Chandra**



Swain and another, 2024 INSC 777. The relevant extract of the same is reproduced as under:-

13. *For the purpose of clarification, the High Court enhanced the compensation to Rs.30,99,873 from Rs. 20,60,385 as awarded by Tribunal. This was done by considering the functional disability at 100% as opposed to 60%, as assessed by the Tribunal.*

14. *On the issue of assessment of income, we are of the view that that an enhanced income should be considered for calculation of compensation. In this regard, the appellant has produced on record his income tax returns for the assessment years 2010-11 and 2011-12 as Exhibits 14 and 15, respectively. As per the records, for the assessment year 2010-11 (the financial year will be 2009-10), the income shown by the appellant was to the tune of Rs.1,65,100/-. For the assessment year 2011-12 (the financial year will be 2010-11), the income was shown as Rs.1,77,400/-. Further, as per the Salary Certificate Exhibit-22 placed on record by the appellant, he was working as Branch Manager for Padma Infrastructure and he was getting a consolidated salary of Rs.22,000 one year prior to the date of accident. Now, it is to be noted that the accident took place on 16.01.2014, in the financial year 2013-14. If we calculate the annual income considering Rs.22,000, it would come out to Rs.2,64,000/- per annum. However, as per the High Court and the Tribunal, the annual income is assessed at Rs.1,62,420/-. However, both the courts below failed to consider the fact that there is a gap of approximately 02 years and 09 months between the said income tax returns and the date of accident. It can be*



seen that the income of the appellant, based on the income tax returns so produced on record is progressive, there is a possibility that he may have left his business and join service to improve his income. Thus, in our view, it would be reasonable to take the income of the appellant at Rs.2,00,000/- per annum, i.e., Rs.16,666.67 per month.

28. A perusal of the award shows that learned Tribunal has wrongly held the appellant/claimant to be entitled to minimum wages at the rate of Rs.3,000/- per month and has awarded compensation for loss of earning by applying the multiplier of 18 as Rs.6,48,000/-, whereas as per the record, his monthly income is shown to be Rs.25,000/- per month, which is evident from Income Tax Returns. Significantly, the learned Tribunal itself taken note of this fact and has further observed that, with the passage of time, the income of the appellant/claimant ought to have increased to Rs.50,000/- per month.

29. Therefore, taking into consideration the pre-accident income disclosed in the income tax returns and the surrounding circumstances, this Court deems it just and reasonable to assess the monthly income of the appellant/claimant at **Rs.40,000/-** for the purpose of computation of compensation, in order to meet the ends of justice.

SETTLED LAW ON COMPENSATION

30. Hon'ble Supreme Court has settled the law regarding grant of compensation with respect to the disability. The Apex Court in the case of



Raj Kumar Vs. Ajay Kumar and Another (2011) 1 Supreme Court Cases 343, has held as under:-

General principles relating to compensation in injury cases

5. *The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 Supreme Court 376, R.D. Hattangadi v. Pest Control (India) Ltd., 1995 (1) SCC 551 and Baker v. Willoughby, 1970 AC 467).*

6. *The heads under which compensation is awarded in personal injury cases are the following :*

Pecuniary damages (Special Damages)

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

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

- (a) *Loss of earning during the period of treatment;*
- (b) *Loss of future earnings on account of permanent disability.*

(iii) *Future medical expenses. Non-pecuniary damages (General Damages)*

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

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



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

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

xxx xxx xxx xxx

19. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

20. The assessment of loss of future earnings is explained below with reference to the following

Illustration 'A': The injured, a workman, was aged 30 years and earning Rs. 3000/- per month at the time of accident. As per Doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued



**FAO-1923-2008 (O&M) &
FAO-3500-2008 (O&M)**

-40-

in employment, but in a lower grade. Calculation of compensation will be as follows:

- a) Annual income before the accident : Rs. 36,000/-.
- b) Loss of future earning per annum
(15% of the prior annual income) : Rs. 5400/-.
- c) Multiplier applicable with reference to age : 17
- d) Loss of future earnings : (5400×17) : Rs. 91,800/-

Illustration 'B': The injured was a driver aged 30 years, earning Rs. 3000/- per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows :

- a) Annual income prior to the accident : Rs. 36,000/- .
- b) Loss of future earning per annum
(75% of the prior annual income) : Rs. 27000/-.
- c) Multiplier applicable with reference to age : 17
- d) Loss of future earnings : (27000×17) : Rs. 4,59,000/-

Illustration 'C': The injured was 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows :

- a) Minimum annual income he would have got if had been employed as an Engineer : Rs. 60,000/-
- b) Loss of future earning per annum
(70% of the expected annual income) : Rs. 42000/-
- c) Multiplier applicable (25 years) : 18
- d) Loss of future earnings : (42000×18) : Rs. 7,56,000/-



[Note : The figures adopted in illustrations (A) and (B) are hypothetical. The figures in Illustration (C) however are based on actuals taken from the decision in Arvind Kumar Mishra (supra)].

31. Hon'ble Supreme Court in the case of National Insurance Company Ltd. Vs. Pranay Sethi & Ors. [(2017) 16 SCC 680] has clarified the law under Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988, on the following aspects:-

- (A) Deduction of personal and living expenses to determine multiplicand;
- (B) Selection of multiplier depending on age of deceased;
- (C) Age of deceased on basis for applying multiplier;
- (D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;
- (E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

The relevant portion of the judgment is reproduced as under:-

“Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”

32. Hon'ble Supreme Court in the case of Erudhaya Priya Vs. State Express Tran. Corp. Ltd. 2020 ACJ 2159, has held as under:-

“7. There are three aspects which are required to be examined by us:

(a) the application of multiplier of '17' instead of '18';



The aforesaid increase of multiplier is sought on the basis of age of the appellant as 23 years relying on the judgment in National Insurance Company Limited v. Pranay Sethi and Others, 2017 ACJ 2700 (SC). In para 46 of the said judgment, the Constitution Bench effectively affirmed the multiplier method to be used as mentioned in the table in the case of Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another, 2009 ACJ 1298 (SC) . In the age group of 15-25 years, the multiplier has to be '18' along with factoring in the extent of disability.

The aforesaid position is not really disputed by learned counsel for the respondent State Corporation and, thus, we come to the conclusion that the multiplier to be applied in the case of the appellant has to be '18' and not '17'.

(b) Loss of earning capacity of the appellant with permanent disability of 31.1%

In respect of the aforesaid, the appellant has claimed compensation on what is stated to be the settled principle set out in Jagdish v. Mohan & Others, 2018 ACJ 1011 (SC) and Sandeep Khanuja v. Atul Dande & Another, 2017 ACJ 979 (SC). We extract below the principle set out in the Jagdish (supra) in para 8:

"8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:

- (i) Pain, suffering and trauma resulting from the accident;*
- (ii) Loss of income including future income;*
- (iii) The inability of the victim to lead a normal life together with its amenities;*
- (iv) Medical expenses including those that the victim may be required to undertake in future; and*
- (v) Loss of expectation of life."*

[emphasis supplied]

The aforesaid principle has also been emphasized in an earlier judgment, i.e. the Sandeep Khanuja case (supra) opining that the multiplier method was logically sound and legally well established to quantify the loss of



income as a result of death or permanent disability suffered in an accident.

In the factual contours of the present case, if we examine the disability certificate, it shows the admission/hospitalization on 8 occasions for various number of days over 1½ years from August 2011 to January 2013. The nature of injuries had been set out as under:

"Nature of injury:

- (i) compound fracture shaft left humerus
- (ii) fracture both bones left forearm
- (iii) compound fracture both bones right forearm
- (iv) fracture 3rd, 4th & 5th metacarpals right hand
- (v) subtrochanteric fracture right femur
- (vi) fracture shaft femur
- (vii) fracture both bones left leg

We have also perused the photographs annexed to the petition showing the current physical state of the appellant, though it is stated by learned counsel for the respondent State Corporation that the same was not on record in the trial court. Be that as it may, this is the position even after treatment and the nature of injuries itself show their extent. Further, it has been opined in para 13 of Sandeep Khanuja case (supra) that while applying the multiplier method, future prospects on advancement in life and career are also to be taken into consideration.

We are, thus, unequivocally of the view that there is merit in the contention of the appellant and the aforesaid principles with regard to future prospects must also be applied in the case of the appellant taking the permanent disability as 31.1%. The quantification of the same on the basis of the judgment in National Insurance Co. Ltd. case (supra), more specifically para 61(iii), considering the age of the appellant, would be 50% of the actual salary in the present case.

(c) The third and the last aspect is the interest rate claimed as 12%

In respect of the aforesaid, the appellant has watered down the interest rate during the course of hearing to 9% in view of the judicial pronouncements including in the Jagdish's case (supra). On this aspect,



once again, there was no serious dispute raised by the learned counsel for the respondent once the claim was confined to 9% in line with the interest rates applied by this Court.

CONCLUSION

8. The result of the aforesaid is that relying on the settled principles, the calculation of compensation by the appellant, as set out in para 5 of the synopsis, would have to be adopted as follows:

| <i>Heads</i> | <i>Awarded</i> |
|--|------------------------------|
| <i>Loss of earning power (Rs.14,648 x 12 x 31.1/100)</i> | <i>Rs. 9,81,978/-</i> |
| <i>Future prospects (50 per cent addition)</i> | <i>Rs.4,90,989/-</i> |
| <i>Medical expenses including transport charges, nourishment, etc.</i> | <i>Rs.18,46,864/-</i> |
| <i>Loss of matrimonial prospects</i> | <i>Rs.5,00,000/-</i> |
| <i>Loss of comfort, loss of amenities and mental agony</i> | <i>Rs.1,50,000/-</i> |
| <i>Pain and suffering</i> | <i>Rs.2,00,000/-</i> |
| <i>Total</i> | <i>Rs.41,69,831/-</i> |

The appellant would, thus, be entitled to the compensation of Rs. 41,69,831/- as claimed along with simple interest at the rate of 9% per annum from the date of application till the date of payment.



**CATEGORIC DECISION ON HEADWISE COMPENSATION AFTER
TAKING INTO CONSIDERATION THE LATEST REPORT DATED
21.04.2023:-**

**1. MEDICAL BILLS / MEDICAL EXPENDITURE (PROVED BY
ADDITIONAL EVIDENCE, AS PER REPORT DATED 21.04.2023)**

33. It transpires from the report dated 21.04.2023 that the learned Tribunal, while passing the original award, had granted a sum of Rs.15,00,000/- towards medical expenses, the same being duly supported by medical bills forming part of the record.

34. It is further revealed that pursuant to the order dated 07.02.2020 passed by the Co-ordinate Bench of this Court, the claimant/applicant placed additional evidence on record to substantiate the medical expenditure incurred subsequent to the passing of the award dated 01.05.2008. Upon consideration of the said additional evidence and after affording due opportunity of hearing to the respondent–Insurance Company, the learned Tribunal, in its report dated 21.04.2023, recorded a categorical finding that the appellant/claimant had incurred an additional medical expenditure of Rs.22,17,844/- during the period commencing from the date of the award till the date of submission of the said report.

35. In view of the report dated 21.04.2023 of the learned Tribunal and having regard to the continuing nature of the treatment necessitated by the injuries sustained in the accident, this Court finds no reason to disbelieve the said assessment. Consequently, this Court holds that the appellant/claimant is entitled to a total sum of **Rs.37,17,844/-** towards medical



**FAO-1923-2008 (O&M) &
FAO-3500-2008 (O&M)**

-46-

expenses, being the aggregate of the amount originally awarded and the additional expenditure subsequently proved on record.

2. FUTURE MEDICAL EXPENSES AND REQUIREMENT OF MEDICAL TREATMENT IN THE UNITED STATES OF AMERICA, AS PER LATEST REPORT DATED 21.04.2023:

36. Before assessing the claim for future medical expenses, it is necessary to advert to the present physical and medical condition of the appellant/claimant. From the recent report dated 21.04.2023 of the learned Tribunal, it emerges that when the appellant/claimant, Narinder Pal Singh, appeared as PW-7 and was subjected to cross-examination, the Tribunal recorded a significant observation that the appellant/claimant expressed his inability to hear the questions and requested that the same be put to him in writing. This contemporaneous observation of the learned Tribunal lends substantial credence to the appellant/claimant's assertion regarding severe hearing impairment.

37. The report dated 21.04.2023 further reveals that the appellant/claimant has produced an original medical certificate (Ex. P-1067) issued by Dr. Tushar Arora, M.S., M.Ch. (Neurosurgery), Senior Consultant Neurosurgeon, Shrimann Superspeciality Hospital, Jalandhar, wherein it has been opined that the appellant/claimant is suffering from **severe bilateral tinnitus with bilateral hearing loss, right-sided VIIth nerve complex vascular conflict, depression, chronic headache, insomnia, and diabetes.**

The medical expert has further certified that the appellant/claimant has

**FAO-1923-2008 (O&M) &
FAO-3500-2008 (O&M)****-47-**

consulted several neurosurgeons across the country but has derived no significant relief from the persistent symptoms.

38. Additionally, certificate Ex.P-1068 issued by Dr. Akshata Desai, MBBS, MD (USA), DM eq. (USA), Endocrinologist and Diabetologist, Apex Hospital, records that the appellant/claimant has been suffering from **Type-II diabetes, tinnitus, and vertigo ever since the road traffic accident**, which has severely disrupted his sleep cycle and has adversely impacted his blood sugar levels, blood pressure, weight, and overall health.

39. On similar lines, certificate Ex.P-1069 issued by Dr. Karanbir Singh, MBBS, MD (USA), DM (USA), Consultant Neurologist, Apex Hospital, Jalandhar, has been brought on record. The said certificate reflects that the appellant/claimant has undergone neurological intervention, including **occipital nerve block procedures by way of therapeutic injections**, the corresponding prescription whereof stands proved as Ex.P-1070.

40. Further corroboration is found in the hearing evaluation report issued by PGIMER, Chandigarh (Ex. P-1071), which conclusively establishes that the appellant/claimant is suffering from **complete bilateral hearing loss**.

41. Significantly, as certified by Dr. Akshata Desai in certificate Ex. P-1068, the appellant/claimant **requires administration of more than 160 units of insulin daily along with four oral anti-diabetic agents to prevent glycemic spikes**. This medical opinion unequivocally establishes that the



appellant/claimant will be compelled to incur substantial recurring monthly expenditure towards medicines, investigations, and supportive care for the rest of his life in order to prevent further complications.

42. Additionally, certificate Ex. P-543 issued by Dr. Kuldeep Singh, Orthopedic Surgeon, has been brought on record, wherein the appellant/claimant has been advised to undergo **major surgical intervention for non-union of the right clavicle, involving plating and bone grafting**. The appellant/claimant has also asserted in his affidavit that he is required to incur substantial expenditure for the said surgery.

43. The cumulative effect of the aforesaid medical evidence—emanating from specialists in neurosurgery, neurology, endocrinology, and otorhinolaryngology, as well as from a premier government medical institution clearly establishes that the appellant/claimant is **suffering from permanent, irreversible, and progressive medical conditions**. These conditions necessitate continuous medical care, supervision, and treatment for the remainder of his life. In such circumstances, the entitlement of the appellant/claimant to future medical expenses stands fully justified.

44. In view of the medical evidence discussed herein-above, this Court is satisfied that the appellant/claimant is **suffering from permanent and irreversible disabilities, including complete bilateral hearing loss, damage to cranial nerves, chronic neurological disorders, diabetes, insomnia, depression, and vertigo, all of which are direct sequelae of the accident**. The record further establishes that despite prolonged treatment and consultations with specialists across the country, the appellant/claimant



continues to require ongoing medical intervention, monitoring, medication, and supportive therapy.

45. Having regard to the nature of the ailments, the continuing requirement of neurological, endocrinological, and ENT treatment, the cost of lifelong medication, periodic investigations, and the likelihood of future therapeutic procedures, this Court is of the considered view that the need for future medical expenditure is neither speculative nor remote but a certainty.

46. Though no precise mathematical calculation of future medical expenses is possible, the law does not require exactitude in such matters, and the Court is obligated to award just compensation based on reasonable estimation.

47. Reliance at this stage can be made to judgment of Hon'ble the Supreme Court in **K. Ramya & Ors. Vs. National Insurance Co. Ltd. & Anr., 2022 INSC 1044**, wherein the Apex Court has held that compensation must be fair, reasonable and equitable. It is further held that the determination of quantum is a fact-dependent exercise which must be liberal and not parsimonious. Hon'ble the Apex Court emphasized that compensation is a more comprehensive form of pecuniary relief which involves a broad-based approach.

48. As per latest report dated 21.04.2023, the appellant/claimant is suffering from 100% permanent functional disability.

49. The next issue requiring consideration is whether the advanced medical treatment necessitated by the appellant/claimant is available within

**FAO-1923-2008 (O&M) &
FAO-3500-2008 (O&M)****-50-**

the country or whether such treatment is required to be undertaken abroad, particularly in the United States of America.

50. As per latest report dated 21.04.2023, the affidavit of Dr. Col. Harinder Singh, Professor and Head of the Department of ENT, Command Hospital, Chandimandir, Chandigarh (Ex. P-1696), who was examined as PW-10, categorically deposed that the appellant/claimant sustained serious head and brain injuries resulting in permanent neurological damage, requiring major and complex neurosurgical intervention. The doctor opined that such surgery ought to be undertaken abroad owing to its complexity and specialized nature.

51. The opinion stands corroborated by Dr. Pankaj Trivedi, Brain and Spine Surgeon, Jalandhar (Ex. P-1697), examined as PW-11, who testified that despite best treatment, the appellant/claimant has not improved and continues to suffer from constant echoing sensations and insomnia, and that the required neuro-brain surgery is available only in select foreign countries, including the United States of America.

52. Further corroboration is available from certificates issued by Dr. Shamit Chopra, Head of the Department of Head and Neck Surgery, Patel Hospital, Jalandhar (Ex. P-546), and Dr. Harinder Singh, Professor and Head of the Department of ENT, Narayana Multispeciality Hospital, Durgapur, both recommending bilateral cochlear implantation with post-operative rehabilitation, with an estimated cost of ₹35,00,000/-. Similar urgency for advanced treatment abroad is recorded in certificates Ex. P-1067 (Dr. Tushar Arora, Senior Consultant Neurosurgeon), Ex. P-1068 (Dr.



**FAO-1923-2008 (O&M) &
FAO-3500-2008 (O&M)**

-51-

Akshata Desai), and Ex. P-1550 issued by the Professor and Head of ENT, PIMS Hospital, Jalandhar.

53. The medical evidence on record, emanating from specialists across premier institutions of the country, speaks in one voice that the appellant/claimant is in dire need of advanced surgical intervention, which, given the complexity of his condition, is realistically available only at select foreign medical centers, particularly in the United States of America. This position is further reinforced by certificate Ex. P-1550 issued by the Professor and Head of the Department of ENT, Punjab Institute of Medical Sciences (PIMS) Hospital, Jalandhar, certifying that the appellant/claimant requires urgent advanced surgical treatment for his head and ear injuries from the U.S.A.

54. It is also significant to note that the appellant/claimant has already consulted numerous neurologists and otologists across various parts of the country, including Jalandhar, Ludhiana, Durgapur, Mumbai, and other centers, without any meaningful improvement. The persistent deterioration of his health condition resulting into overall physical condition and the absence of relief despite exhaustive treatment in India clearly establish that advanced intervention is the only remaining option to alleviate his suffering.

55. The appellant/claimant has further produced on record documentary evidence relating to appointments sought at the Mayo Clinic, Minnesota, United States of America, for assessment and treatment. The estimated expenditure issued by the said institution has also been placed on record. For cochlear implant surgery, an estimated cost of United States

**FAO-1923-2008 (O&M) &
FAO-3500-2008 (O&M)****-52-**

Dollar 7,903 has been indicated for appointments, and United States Dollar 1,02,197 for surgery. For brain lesion removal surgery relating to nerve damage, an estimated cost ranging from United States Dollar 66,635 to United States Dollar 1,46,600 has been furnished, with an average estimated cost of United States Dollar 1,08,950, vide estimate No. 500758. These estimates form part of Ex. P-1547 (pages 49 to 51).

56. Notably, the respondent–Insurance Company has failed to impeach the testimony of medical witnesses/doctors, who are specialist of highest repute or place on record any contrary medical opinion or cost estimate.

57. In view of the consistent and expert medical evidence, coupled with the appellant/claimant's failure to obtain relief despite extensive treatment within the country, this Court finds no reason to disbelieve the conclusion of the learned Tribunal in its recent report dated 21.04.2023 that the advanced treatment required by the appellant/claimant is not readily available in India. The finding that the appellant/claimant requires treatment in the United States of America, therefore, merits affirmation.

58. Based on the estimates produced on record from the Mayo Clinic, Minnesota, U.S.A., the average estimated cost for brain lesion removal surgery is United States Dollar 1,08,950, which, at the prevailing exchange rate, converts to approximately ₹99.76 lakhs (about ₹1 crore).

59. For clarity and judicial precision, the conversion of the foreign medical estimates may be recorded as under:

- Brain lesion removal surgery:



Estimated range: United States Dollar 66,635 to United States
Dollar 1,46,600

Average estimate: United States Dollar 1,08,950 \approx ₹99.76 lakhs

- Cochlear implant surgery:

Appointment and evaluation: United States Dollar 7,903 \approx ₹7.2
lakhs

Surgical procedure: United States Dollar 1,02,197 \approx ₹93.6 lakhs

60. Thus, the cumulative projected expenditure for advanced treatment and surgical intervention in the United States of America runs into well over Rs.2,00,00,000/- (Rupees Two Crores), exclusive of travel, stay, incidental expenses of appellant/claimant and his attendants and his post-operative rehabilitation.

61. These figures are based on official estimates issued by the Mayo Clinic and remain unrebutted, as the respondent–Insurance Company has neither produced any contrary estimate nor led evidence to dispute the necessity or cost of such treatment. Consequently, the foreign medical expenditure claimed by the appellant/claimant cannot be termed speculative and deserves due consideration while awarding just compensation.

62. In view of the above, this Court deems it just, fair and reasonable to award a consolidated sum of **Rs.6,00,00,000/- (Rupees Six Crores only)** towards foreign medical treatment, including post-operative rehabilitation, incidental expenses and future follow ups, in the interest of justice.



3. ATTENDANT CHARGES

63. So far as the claim for attendant charges is concerned, the issue is no longer res integra. The Hon'ble Supreme Court, in **Kajal v. Jagdish Chand and others, 2020 (2) R.C.R. (Civil) 27**, has authoritatively held that in cases of permanent and severe disability, the assessment of attendant charges must be made by applying the multiplier method, keeping in view not only the medical condition of the injured but also the requirement of lifelong assistance. The relevant extract of the same is reproduced as under:-

“22. The attendant charges have been awarded by the High Court @ L 2,500/- per month for 44 years, which works out to L 13,20,000/-. Unfortunately, this system is not a proper system. Multiplier system is used to balance out various factors. When compensation is awarded in lump sum, various factors are taken into consideration. When compensation is paid in lump sum, this Court has always followed the multiplier system. The multiplier system should be followed not only for determining the compensation on account of loss of income but also for determining the attendant charges etc. This system was recognised by this Court in Gobald Motor Service Ltd. v. R.M.K. Veluswami, AIR 1962 Supreme Court 1. The multiplier system factors in the inflation rate, the rate of interest payable on the lump sum award, the longevity of the claimant, and also other issues such as the uncertainties of life. Out of all the various alternative methods, the multiplier method has been recognised as the most realistic and reasonable method. It ensures better justice between the parties and thus results in



award of 'just compensation' within the meaning of the Act.

23. XXX XXX XXX

24. XXX XXX XXX

25. *Having held so, we are clearly of the view that the basic amount taken for determining attendant charges is very much on the lower side. We must remember that this little girl is severely suffering from incontinence meaning that she does not have control over her bodily functions like passing urine and faeces. As she grows older, she will not be able to handle her periods. She requires an attendant virtually 24 hours a day. She requires an attendant who though may not be medically trained but must be capable of handling a child who is bed ridden. She would require an attendant who would ensure that she does not suffer from bed sores. The claimant has placed before us a notification of the State of Haryana of the year 2010, wherein the wages for skilled labourer is L 4846/- per month. We, therefore, assess the cost of one attendant at L 5,000/- and she will require two attendants which works out to L 10,000/- per month, which comes to L 1,20,000/- per annum, and using the multiplier of 18 it works out to L 21,60,000/- for attendant charges for her entire life. This takes care of all the pecuniary damages. ”*

64. A perusal of the recent report of the learned Tribunal, read in conjunction with the medical evidence on record, clearly demonstrates that the appellant/claimant has been continuously suffering since the date of the accident i.e. 13.10.2002. The appellant/claimant is afflicted with persistent tinnitus resulting in constant ringing and buzzing sounds in the brain and



both inner ears. The Court can reasonably infer the magnitude of physical and mental agony endured by the appellant/claimant, which is incapable of precise quantification.

65. The evidence further reveals that despite consulting multiple specialists, including Neurologists and Otologists at Jalandhar, Durgapur (West Bengal), Ludhiana, and Mumbai, the appellant/claimant has not derived any lasting relief. The entire medical record is consistent in establishing that due to the continuous tinnitus, the appellant/claimant suffers from chronic insomnia, depression, vertigo, uncontrolled diabetes, and hypertension. The appellant/claimant is unable to sleep either during the night or the day, which is essential for normal human functioning. The persistent buzzing sound does not permit him to rest even for short intervals, thereby severely impairing his daily functioning and mental well-being.

66. In support of the claim for attendant charges, PW-9 Som Raj has been examined, who has categorically deposed that he has been working as an attendant/caretaker for the appellant/claimant since the year 2002 and has been receiving a salary of ₹12,000/- per month. His testimony has remained unshaken. Further, the medical experts have specifically recommended the requirement of an attendant/caretaker in their certificates Ex. P-1067 and Ex. P-1068.

67. Having regard to the nature of latest medical health and the multiple neurological and systemic complications, this Court has no hesitation in holding that the appellant/claimant requires continuous assistance for his day-to-day activities as well as for medical care. The facts



of the present case clearly establish that the appellant/claimant cannot manage his affairs independently and necessarily requires the services of attendants.

68. Considering the severity of the condition and the constant medical needs of the appellant/claimant, this Court is of the considered view that the engagement of at least two attendants is indispensable. Taking a conservative approach, the minimum amount payable to an attendant is reasonably assessed at Rs.30,000/- per month. Accordingly, for two attendants, the monthly attendant charges would work out to Rs.60,000/-. This expenditure is minimum to be incurred by the appellant/claimant through out his life in India. Minimum amount payable to attendant to attend the patient with such medical condition is reasonably assessed as Rs.30,000/- per month. Accordingly, for two attendants monthly attendant charges would be Rs.60,000/- per month.

69. In view of the law laid down by the Hon'ble Supreme Court in *Kajal v. Jagdish Chand* (supra), the attendant charges so assessed are required to be capitalized by applying the appropriate multiplier. The appellant/claimant is, therefore, held entitled to attendant charges calculated at the rate of Rs.60,000/- per month, multiplied by 17 and further multiplied by the applicable multiplier, in order to award just and reasonable compensation. Consequently, the compensation under the head of attendant charges is assessed as **Rs.1,22,40,000/-**.



4. PAIN AND SUFFERING

70. Insofar as compensation under the head of pain and suffering is concerned, the material on record leaves no room for doubt that the claimant/appellant has endured extraordinary physical pain and profound mental anguish. The gravity of the injuries sustained, the prolonged and continuous medical treatment, and the permanent functional disabilities resulting therefrom have subjected the appellant/claimant to suffering of an intensity and duration that is incapable of precise quantification.

71. This Court cannot but observe that the compensation in injury cases is not merely about numbers; it is about acknowledging pain, restoring dignity and securing the future of a person whose life has been irreversibly altered. The trauma and distress undergone by the appellant/claimant since the date of the accident are such that monetary assessment can only ever be an approximation. Nevertheless, the appellant/claimant is entitled to just, fair, and reasonable compensation under this head, commensurate with the extent of pain and suffering endured.

72. Reference at this stage can be made to the judgment passed by Hon'ble the Supreme Court in the case of **K.S. Muralidhar v. R. Subbulakshmi and another 2024 SCC Online SC 3385**, has settled the law regarding grant of compensation under the head of "Pain and Suffering". The relevant portion of the ***K.S.Muralidhar's*** case is reproduced as under:-

"12. It is to be noted that both the Tribunal and the High Court have taken the disability suffered by the claimant-appellant to be at 100%. We find no ground to take a different view.



13. While acknowledging that 'pain and suffering', as a concept escapes definition, we may only refer to certain authorities, scholarly as also judicial wherein attempts have been made to set down the contours thereof.

13.1 The entry recording the term 'pain and suffering' in P. Ramanatha Iyer's Advanced Law Lexicon[9] reads as under:-

[9 3rd Edition reprint 2009, Lexis Nexis, Butterworths Wadhwa, page 3441]

"Pain and suffering. The term 'Pain and suffering' mean physical discomfort and distress and include mental and emotional trauma for which damages can be recovered in an accident claim.

This expression has become almost a term of art, used without making fine distinction between pain and suffering. Pain and suffering which a person undergoes cannot be measured in terms of money by any mathematical calculation. Hence the Court awards a sum which is in the nature of a conventional award [Mediana, The (1900) AC 113, 116]"

13.2 Eric Cassell[10], an American Physician and Bioethicist, defines 'pain' not only as a sensation but also 'as experience embedded in beliefs about causes and diseases and their consequences', and 'suffering' as 'the state of severe distress associated with events that threaten the intactness of person'.

[10 <http://www.ericcassell.com/bio.html>]

13.3 In a recent article[11] published in the journal of the International Association for the Study of Pain, it has been recorded that there is no consensus on what exactly the concept of pain-related suffering includes, and it is often not precisely operationalised in empirical studies.



The authors in their systematic review analysed 111 articles across a variety of disciplines such as bioethics, medical ethics, psycho-oncology, anaesthesiology, philosophy, sociology etc., we may refer to few of them:

[11 Noe-Steinmüller et.al, (2024) "Defining suffering in pain: a systematic review on pain-related suffering using natural language processing." 165 (7) : p1434-1449]

13.3.1 Eugene V. Boisaubin[12], who is currently a Professor at the University of Texas, at Houston, in a 1989 article defined it as "Suffering is experienced by individual and arises from threats to the integrity of the individual as a complex social and psychological entity."

[12 <https://med.uth.edu/oep/members-2/eugene-v-boisaubin-md/>]

13.3.2 Andrew Edgar, who is currently a Reader Emeritus in Philosophy at Cardiff University at UK has defined, in a 2007 article suffering as an "experience of life never getting better, revealing in the sufferer only vulnerability, futility, and impotence."

13.3.3 Arthur W. Frank[13], Professor Emeritus, Department of Sociology, University of Calgary in his well-known article "Can We Research Suffering?", published in 2001, observed that "at the core of suffering is the sense that something is irreparably wrong with our lives, and wrong is the negation of what could have been right. Suffering resists definition because it is the reality of what is not."

[13 <https://sps.columbia.edu/faculty/arthur-w-frank-phd>]

13.3.4 Daryl Pullman[14] who currently serves as University research Professor, Bioethics at the Memorial University of Newfoundland, Canada in his 2002 article defined suffering as the "product of [physical],



psychological, economic, or other factors that frustrate an individual in the pursuit of significant life projects."

[14 <https://www.mun.ca/medicine/faculty-and-staff-resources/faculty-a-z/pullman-daryl.php>]

13.4 The Judicial Studies Board, now known as the Judicial College in the United Kingdom, produced guidelines in 1992 to produce greater consistency of awards and make the judicial scale of values more easily accessible. They have been deduced from a study of past cases, examining the range of awards therein. The latest edition of these guidelines was published in 2021[15]. They record the difficulty of computing 'pain and suffering' as under :-

[15 See : *Hassam and Anr. v. Rabot and Anr. (2024) UKSC 11*]

"It is widely accepted that making of an award of general damages for pain and suffering is a somewhat artificial task. It involves the Judge seeking to convert the pain and suffering of a given claimant into a monetary award which he or she considers to be reasonable by way of compensation. That is a difficult task and one which has historically led to judges making widely varying awards of damages in respect of relatively comparable injuries a result which not only offends the principle of equality before law but results in unnecessary appeals and the incurring of additional cost, apart altogether from the burden that such appeals place on the Court's own scarce resources."

*13.5 In determining non-pecuniary damages, the artificial nature of computing compensation has been highlighted in *Heil v. Rankin [2001] QB 272*, as referred to in*



Attorney General of St. Helena v. AB & Ors. Privy Council Appeal No. 0034 of 2018 as under:-

"23. This principle of 'full compensation' applies to pecuniary and non-pecuniary damage alike. But, as Dickson J indicated in the passage cited from his judgment in Andrews v. Grand & Toy Alberta Ltd, 83 DLR (3d) 452, 475-476, this statement immediately raises a problem in a situation where what is in issue is what the appropriate level of 'full compensation' for non-pecuniary injury is when the compensation has to be expressed in pecuniary terms. There is no simple formula for converting the pain and suffering, the loss of function, the loss of amenity and disability which an injured person has sustained, into monetary terms. Any process of conversion must be essentially artificial. Lord Pearce expressed it well in H West & Son Ltd v. Shephard [1964] AC 326, 364 when he said:

'The court has to perform the difficult and artificial task of converting into monetary damages the physical injury and deprivation and pain and to give judgment for what it considers to be a reasonable sum. It does not look beyond the judgment to the spending of the damages.'

24. The last part of this statement is undoubtedly right. The injured person may not even be in a position to enjoy the damages he receives because of the injury which he has sustained. Lord Clyde recognised this in Wells v. Wells [1999] 1 AC 345, 394H when he said: 'One clear principle is that what the successful plaintiff will in the event actually do with the award is irrelevant.'

*13.6 In the context of the United States, the most important piece of legal literature regarding 'pain and suffering' is an article titled *Valuing Life and Limb in**



Tort: Scheduling Pain and Suffering, published in the year 1989. Relevant extracts thereof read as under :

"Pain and suffering and other intangible or non-economic losses are even more problematic. Physical pain and attendant suffering have for centuries been recognised as legitimate elements of damages, and "modern" tort law has seen a marked expansion of the rights to recover for forms of mental anguish. Some Courts have even permitted recovery for emotional trauma unaccompanied by physical injury, including derivative losses stemming from injuries to family members. The precise elements of compensable non-economic loss vary by jurisdiction. Pain and suffering may be used as a catch-all category for the jury's consideration of all non-pecuniary losses in a case of a nonfatal injury, subsuming other qualitative categories such as mental anguish and humiliation. More commonly, though, other non-economic elements - such as "loss of enjoyment of life" are accorded independent standing ..."

Another important observation is that:

"Whatever the categories of non-economic damages allowed in a given jurisdiction, the law provides no objective benchmarks valuing them. As one commentator notes, "Courts have usually been content to say that pain and suffering damages should amount to 'fair compensation', or a 'reasonable amount', 'without any definite guide'."

13.7 Consideration of the above, underlines that while each discipline has its own conception of the meaning of pain/suffering, within its confines, the commonality that emerges is that a person's understanding of oneself is shaken or compromised at its very root at the hands of



consistent suffering. In the present facts, it is unquestionable that the sense of something being irreparably wrong in life, as spoken by Frank (supra); vulnerability and futility, as spoken by Edgar, is present and such a feeling will be present for the remainder of his natural life.

14. *In respect of 'pain and suffering' in cases where disability suffered is at 100%, we may notice a few decisions of this Court:-*

14.1 *In R.D Hattangadi v. Pest Control (India) (P) Ltd. (1995) 1 SCC 551. It was observed :*

"17. The claim under Sl. No. 16 for 'pain and suffering' and for loss of amenities of life under Sl. No. 17, are claims for non-pecuniary loss. The appellant has claimed lump sum amount of Rs.3,00,000 each under the two heads. The High Court has allowed Rs.1,00,000 against the claims of Rs.6,00,000. When compensation is to be awarded for 'pain and suffering' and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration. According to us, as the appellant was an advocate having good practice in different courts and as because of the accident he has been crippled and can move only on wheelchair, the High Court should have allowed an amount of Rs.1,50,000 in respect of claim for 'pain and suffering' and Rs.1,50,000 in respect of loss of amenities of life. We direct payment of Rs.3,00,000 (Rupees three lakhs only) against the claim of Rs.6,00,000



under the heads "pain and suffering" and "Loss of amenities of life".

(Emphasis Supplied)

*14.2 This Judgment was recently referred to by this Court in *Sidram v. United India Insurance Company Ltd. (2023) 3 SCC 439* reference was also made to *Karnataka SRTC v. Mahadeva Shetty (2003) 7 SCC 197* (irrespective of the percentage of disability incurred, the observations are instructive), wherein it was observed :*

"18. A person not only suffers injuries on account of accident but also suffers in mind and body on account of the accident through out his life and a feeling is developed that his no more a normal man and cannot enjoy the amenities of life as another normal person can. While fixing compensation for pain and suffering as also for loss of amenities, features like his age, marital status and unusual deprivation he has undertaken in his life have to be reckoned."

*14.3 In *Kajal v. Jagdish Chand (2020) 4 SCC 413* considering the facts of the case, i.e., 100% disability, child being bedridden for life, her mental age being that of a nine-month-old for life - a vegetative existence, held that "even after taking a conservative view of the matter an amount payable for the 'pain and suffering' of this child should be at least Rs.15,00,000/-."*

*14.4 In *Ayush v. Reliance General Insurance (2022) 7 SCC 738* relying on *Kajal (supra)* the amount awarded in 'pain and suffering' was enhanced to Rs.10,00,000. The child who had suffered the accident was five years old and the Court noted in paragraph 2 that :*

"As per the discharge certificate, the appellant is not able to move both his legs and had complete sensory loss in the



legs, urinary incontinence, bowel constipation and bed sores. The appellant was aged about 5 years as on the date of the accident, hence has lost his childhood and is dependent on others for his routine work."

14.5 In Lalan (supra) cited by the claimant-appellant, the Tribunal awarded Rs.30,000/- which was enhanced to Rs.40,000/- by the High Court. Considering the fact that the appellant therein has suffered extensive brain injury awarded compensation under 'pain and suffering' to the tune of Rs.3,00,000/-.

15. Keeping in view the above-referred judgments, the injuries suffered, the 'pain and suffering' caused, and the life-long nature of the disability afflicted upon the claimant-appellant, and the statement of the Doctor as reproduced above, we find the request of the claimant-appellant to be justified and as such, award Rs.15,00,000/- under the head 'pain and suffering', fully conscious of the fact that the prayer of the claimant-appellant for enhancement of compensation was by a sum of Rs.10,00,000/-, we find the compensation to be just, fair and reasonable at the amount so awarded."

73. Therefore, in view of the above referred to judgment and prolonged hospitalization and nature of injuries sustained by the appellant/claimant, this Court deems it appropriate to grant a compensation of **Rs.30,00,000/-** under the head of 'Pain and Suffering'.

74. Having regard to the facts and circumstances of the present case, this Court deems it appropriate to further observe that in such kind of cases, the pain and suffering is not confined to the injured person alone. The



parents, family members, and near and dear ones of a person, who has suffered such functional disability endure almost the same degree of pain and anguish. When the injured is unable to sleep throughout the night, the near and dear ones also remain sleepless, sharing the agony in equal measure. In effect, they too suffer each day along with the injured. Indeed, the attendant and family members often experience even greater distress than the person who is actually suffering, for while the injured may be administered medicines or injections to obtain rest, the near and dear ones remain continuously anxious 24 hours a day about the health, future prospects, and medical condition of the injured. In these circumstances, justice demands that the compensation under the head of pain and suffering should also be granted to the parents, family members and nears and dears ones of the injured.

75. However, considering that the total amount of compensation in the present case runs into crores, this Court has consciously restrained itself from granting compensation under the head of Pain and Suffering to the parents, family members, nears and dears ones, which should actually be granted if justice is to be done emphatically.

76. Further perusal of the record shows that the compensation awarded by the learned Tribunal under the heads of transportation, special diet and marriage prospects is on lower side. Therefore, the award requires indulgence of this Court.

77. In view of the law laid down by the Hon'ble Supreme Court in the above referred to judgments, the appeal i.e. FAO-1923-2008 filed by the


**FAO-1923-2008 (O&M) &
FAO-3500-2008 (O&M)**
-68-

appellant-Insurance Company is **dismissed** and the appeal i.e. FAO-3500-2008 filed by the appellant/claimant (Narinder Pal) is **allowed**. The award dated 01.05.2008 of the learned Tribunal is modified accordingly. The appellant/claimant is entitled to enhanced compensation as per the calculations made here-under:-

| <i>Sr. No.</i> | <i>Heads</i> | <i>Compensation Awarded</i> |
|-----------------------|--|---|
| 1 | Monthly Income | Rs.40,000/- |
| 2 | Loss of future prospects (40%) | Rs.16,000/- (40% of Rs.40,000/-) |
| 3 | Annual Income | Rs.6,72,000/- $\{(40,000 + 16,000) \times 12\}$ |
| 4 | Loss of earning due to disability (100%) | Rs.6,72,000/- (100% of Rs.6,72,000) |
| 5 | Multiplier | 17 |
| 6 | Loss of future earning per annum | Rs.1,14,24,000/- (Rs.6,72,000 X 17) |
| 7 | Medical Treatment in the United States of America and future medical treatment | Rs.6,00,00,000/- |
| 8 | Medical Expenses | Rs.37,17,844/- |
| 9 | Pain and Suffering | Rs.30,00,000/- |
| 10 | Special Diet | Rs.5,00,000/- |
| 11 | Transportation charges | Rs.2,00,000/- |
| 12 | Attendant Charges | Rs.1,22,40,000/- |
| 13 | Loss due to diminishing of marriage prospects | Rs.6,00,000/- |
| | Total Compensation | Rs.9,16,81,844/- |
| | <u>DEDUCTION</u> Compensation awarded by the Tribunal | Rs.52,00,000/- |
| | Enhanced Compensation | Rs.8,64,81,844/- (Rs. 9,16,81,844 – 52,00,000) |



78. So far as the interest part is concerned, as held by Hon'ble Supreme Court in *Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma* 2019 ACJ 3176 and *R. Valli and Others VS. Tamil Nadu State Transport Corporation* (2022) 5 Supreme Court Cases 107, the appellant/claimant is granted the interest @ 9% per annum on the enhanced amount.

79. Since in the present case, the medical condition of the appellant was deteriorating and as on date, he requires medical treatment from United States of America, therefore, interest @ 9 percent per annum is to be bifurcated in two parts.

(a) the enhanced amount of compensation to the tune of Rs. 2,64,81,844/- (excluding the medical treatment in USA i.e Rs.6,00,000/-) shall carry 9 @ interest from the date of filing of the claim petition till the date of realization.

(b) the amount of compensation awarded under the head of Medical Treatment in USA and future medical treatment i.e Rs.6,00,00,000/- shall carry 9 @ interest from the date of filing of the application for additional evidence i.e 07.02.2020 till the date of its realization.

80. The respondent-Insurance Company is directed to deposit fifty per cent (50%) of the total enhanced compensation amount, along with accrued interest, before the learned Tribunal within a period of forty-five (45) days as the first installment. The remaining fifty per cent (50%) of the enhanced amount, along with interest thereon, shall be deposited within a further period of forty-five (45) days from the date of receipt of the certified

**FAO-1923-2008 (O&M) &
FAO-3500-2008 (O&M)****-70-**

copy of this judgment. The learned Tribunal is further directed to disburse the enhanced compensation amount along with interest to the appellant/claimant by crediting the same to his bank account immediately upon receipt of the deposited amount. The appellant/claimant is directed to furnish his bank account details to the Tribunal.

81. Before parting with the case, this Court deems it necessary to observe that cases of the present nature are not merely disputes over figures, but solemn reminders of lives irreversibly altered by unforeseen misfortune. The appellant/claimant has lived with the consequences of the accident for more than two decades, enduring continuous pain, repeated medical interventions, and persistent uncertainty about his health and future. The purpose of awarding compensation in such cases is not to bestow the amount, but to acknowledge suffering, alleviate hardship and secure the livelihood and the dignity of a person, who has been compelled to live with permanent and continuing disability as far as possible.

82. The Insurance Company(ies), in cases of this nature, is also expected to adopt a sympathetic and liberal approach in accepting the amount of compensation awarded to the claimant.

83. Normally, in 10 out of 100 cases approximately, the Insurance Company is required to pay compensation. Otherwise, as per procedure, the vehicle is insured for a period of one year only, and the amount of premium deposited by the public at large, which is in lieu of the coverage granted by the Insurance Company, through out the year, if not claimed, is not refunded. This amount of public money goes to the exchequer of private insurance



companies, and in the case of government insurance companies, it goes to the Government and they enjoy interest on that amount as well. Logically speaking in accident claims cases, the amount of premium paid by the public at large in cases where no claim is made, ultimately goes to the public only. It is not that the Insurance Company has to arrange this money separately in order to pay compensation in the cases like the present one. The amount of compensation paid by the Insurance Company in the present case would amount to merely taking out a drop of water from vast ocean.

84. Courts, while discharging their statutory obligation, cannot remain oblivious to the human dimension underlying such claims. A just, fair, and reasonable compensation must therefore be one that responds not only to the injuries of the past, but also to the medical needs of the future, so that the appellant/claimant is not left to face a lifetime of suffering without adequate means of care. It is in this spirit of fairness, equity, and compassion that the present claim has been examined and determined by this Court.

85. Pending application(s), if any, also stand disposed of.

21.01.2026

Virender

**(SUDEEPTI SHARMA)
JUDGE**

| | |
|-------------------------------|------------|
| Whether speaking/non-speaking | : Speaking |
| Whether reportable | : Yes |