



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

WEDNESDAY, THE 21ST DAY OF MAY 2025 / 31ST VAISAKHA, 1947

MACA NO. 1085 OF 2013

OPMV NO.2255 OF 2006 OF MOTOR ACCIDENTS CLAIMS

TRIBUNAL, THRISSUR

APPELLANT/PETITIONER

SUMISHA (MINOR)
RESIDING AT KOTTEKKATTIL HOUSE, ELAMTHURUTHY P.O
MARATHAKKARA, THRISSUR DISTRICT. (THE MINOR
APPELLANT REPRESENTED BY HER GUARDIAN FATHER
SUBASH, RESIDING AT KOTTEKKATTIL HOUSE,
ELAMTHURUTHY PO, MARATHAKKARA, THRISSUR DISTRICT)
(SMT. SUBISHA, SISTER OF THE APPELLANT, AGED 29
YEARS, D/O SUBASH, RESIDING AT VEETUTHOTTUNGAL
HOUSE, VELLANIKKARA P.O, THRISSUR DISTRICT 680654,
IS APPOINTED AS THE NEXT FRIEND AS PER ORDER DATED
28/1/2025 IN IA 1/2025 IN MACA 1085/2013)

BY ADVS.
T.C.SURESH MENON
A.R.NIMOD

RESPONDENTS/RESPONDENTS

- 1 SHAJI.P.Y.
RESIDING AT 44/265, PUTHENPURAPARAMBU, KACHERY
PADY NORTH, ERNAKULAM - 682 018.
- 2 SHAJU K.Y. SO.YOUSUF
RESIDING AT PUTHENPARAMBIL HOUSE, SRM ROAD
ERNAKULAM - 682 018.
- 3 THE NATIONAL INSURANCE COMPANY LIMITED



DAMODAR CHAMBERS, STATUTE JUNCTION, THRI-PUNNITHURA
ERNAKULAM - 682 301.

ADDL.R4 SECRETARY,
DISTRICT LEGAL SERVICES AUTHORITY, THRISSUR
(IMPLEADED AS PER ORDER DATED 18/2/25 IN MACA
1085/13)

ADDL.R5 SECRETARY, 'THANAL', VMV ORPHANAGE, KALATHODE,
OLLUKKARA P.O., THRISSUR
(IMPLEADED AS PER ORDER DATED 21.5.2025 IN MACA)

BY ADVS.
A.A.MOHAMMED NAZIR-SC
PMM.NAJEEB KHAN

THIS MOTOR ACCIDENTS CLAIMS APPEAL HAVING BEEN
FINALLY HEARD ON 28.3.2025, THE COURT ON 21.05.2025,
DELIVERED THE FOLLOWING:



C.R.

JUDGMENT

Dated : 21st May, 2025

Kumari Sumisha, a minor girl aged 7, who suffered 70% neurological disability and 70% orthopedic disability, whose four limbs are function-less because of the injuries sustained in a motor vehicle accident that occurred on 30.7.2006 and who has been admitted in an orphanage as she lost her parents in the meantime, is before this Court in appeal, being dissatisfied with the quantum of compensation awarded by the Tribunal.

2. On 30.7.2006 at about 10.00 a.m., while the child was going through the western side of Kuttanellur-paliakkara NH bypass, a car bearing registration No.KL07/BC-5811 driven by the 2nd respondent in a most rash and negligent manner and in high speed, hit her down and as a result of which she sustained severe head injury. The child was rushed to the Jubilee Mission hospital, Thrissur and was treated as inpatient for a total period of 77 days. The 1st respondent is the owner and 3rd respondent is the insurer of the offending motor vehicle.

3. The 3rd respondent insurer filed a written statement admitting the accident and valid insurance policy. However, it was contended that the vehicle did not have valid permit and fitness certificate. It was also contended that the accident occurred due to the negligence of the petitioner.

4. The evidence in the case consists of Exts.A1 to A11, X1 and B1. After evaluating the evidence on record, the Tribunal found that the accident



occurred due to the negligence of the 2nd respondent and assessed a compensation of Rs.11,54,519/- but limited to Rs.1104550/- and directed the 3rd respondent/insurer to pay the same. Since the Tribunal found that the vehicle did not have valid permit and fitness certificate, the Tribunal permitted the 3rd respondent to recover the amount from the 1st respondent.

5. Heard Sri.A.R.Nimod, the learned Counsel appearing for the petitioner/appellant, and Sri.A.A.Mohammed Nazir, the learned Standing Counsel for the 3rd respondent.

6. In the light of the arguments advanced by both sides, the following points arise for consideration :

- 1) Is not a victim of road accident, staying in an orphanage, entitled to get compensation in par with others?*
- 2) Whether an admission made by the counsel can stand in the way of awarding just compensation to the victim?*
- 3) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?*

7. Point No.1:- In this case the accident as well as valid insurance policy of the offending vehicle are admitted. One of the contentions raised by the learned counsel for the petitioner is that the compensation awarded by the Tribunal is too meager when compared to the injuries sustained by the petitioner. On the other hand, the learned Standing Counsel would argue that the compensation awarded by the Tribunal is reasonable and no enhancement is called for.

8. In the accident the petitioner sustained the following injuries :

Severe head injury, seizures, left temporo parietal acute subdural haematoma, sub arachnoid haemorrhage, brain stem contusion, fracture left



occipital, fracture left temporal, fracture left orbital roof, maxillary hemosinus, fracture both bones of left forearm, derubins upper/external otitis + condidal intertrigo.

9. Because of the injuries sustained in the accident, the petitioner has been completely bedridden and unable to move from the bed, as her all four limbs are function-less. As per Ext.X1 disability certificate issued by the Medical Board, her neurological disability was assessed as 70% and orthopedic disability was assessed as 70%. The Tribunal has taken her notional income as Rs.2000/-, adopted a multiplier of 18 and assessed the compensation as stated above, without adding any future prospects.

10. After the ill-fated accident on 30.07.2006, the child lost her mother in 2009 and her father in 2020, leaving her sister Smt.Subisha as the only relative. As per order in I.A.1/2025 the sister of the petitioner Subisha was appointed as her next friend. Since her sister Subisha is living along with her husband and child and there was nobody else in the family to take care of the petitioner, she has been admitted in the orphanage, “Thanal V.M.V.Orphanage, Kalathode, Ollukkara (PO), Thrissur (in short, ‘Thanal’).

11. In the meantime, on behalf of the 3rd respondent/insurer I.A.2/2024 was filed under Section 151 CPC praying for a direction to the appellant to produce before this Court the bills, receipts, other records etc., relating to the expenses incurred for the treatment and care of the appellant, subsequent to the impugned award. The main contention taken in the above IA is that the insurance investigator, Francy Jose Emmatty deputed from the office of the insurer, after



investigation, submitted a report dated 9.10.2009 after contacting persons including the father of the appellant, V.M.V. Orphanage and Jubilees Mission hospital. It further states that the total medical bills produced before the Tribunal was only for Rs.61,719/- and hence, for an effective adjudication of the dispute involved in the appeal, it is necessary to direct the appellant to produce the records, bills etc., relating to the expenses incurred for the treatment of the appellant, other than the bills already produced before the Tribunal.

12. The intention behind filing such an application at the instance of the insurer appears to be to show that since the petitioner has been admitted in an orphanage and since she is under the care of the orphanage authorities, much amount may not be required for her future treatment. In response to the above application, the learned counsel for the appellant submitted that, as per the information received by him, the condition of the petitioner is such that further treatment will not in any way improve her pathetic condition.

13. In I.A.2/2024 filed by the insurer, the report relied upon was of the year 2009. In the above circumstance, in order to get a first hand information about the present condition of the child and about the condition of the orphanage in which she has been admitted, this court felt it necessary to implead the Secretary, District Legal Services Authority (DLSA), Thrissur as an additional respondent in this appeal. Accordingly, the Secretary, DLSA, Thrissur was impleaded as additional 4th respondent in this appeal, as per order dated 18.02.2025 and a detailed report from the Secretary DLSA was called for in that respect.



14. As per the direction of this court, on 11.3.2025 the Secretary, DLSA, along with the Chairman DLSA, Thrissur visited 'Thanal', contacted the victim, her sister and officials of 'Thanal' and filed a report dated 22.3.2025. The above report is marked as Ext.C1, for the purpose of reference. In Ext.C1 report, the Secretary, DLSA, Thrissur has given a detailed description of the present condition of the petitioner as well as about the orphanage, which is extracted below for reference:

"The total number of inmates in the orphanage is 145. On an interaction with the office bearers of the institution it is revealed that, the day to day expenses for all functioning of the institution is from the offerings and donations of public. This institution have no its own source of income other than the donations from the public.

During the interaction with the victim and her sister, Subisha, it is revealed that their parents are no longer alive. Subisha is the victim's only sibling. She is married, living with her seven year old child in her maternal house. Her husband works as a driver. Subisha frequently visits the victim along with her child.

Currently, Sumisha (victim) is bedridden and unable to stand or move on her own. She remains lying in bed at all times, and occasionally, she is taken out of her room with the help of a wheelchair. According to her sister and the orphanage staff, her health is in a critical condition, making it impossible for her to be moved outside.

The accident occurred when the child was in the first standard, after which she was unable to continue her studies. According to the orphanage management, previously physiotherapy was given to the victim. But due to her current physical condition, it is no longer possible to give physiotherapy for her lower limbs. The Chairman DLSA interacted closely with the child and instructed the orphanage authorities to arrange physiotherapy for her both arms and fingers so that muscle strength of her forearm and finger can be retained. If proper movement (of) her fingers are recovered she can use mobile



phone for her entertainment.

Her sister stated that the child is receiving good care and protection at her current residence, and presently she is not in a position to relocate the victim Sumisha to her paternal house or elsewhere. Other than her sister and her sister's daughter, no other women have visited the child.

Since the television is installed outside the room no entertainment facilities are available in the room of the victim. Despite her condition, the child has no difficulty in using mobile phone with her left hand.

She was not abandoned but was placed in the orphanage due to the helplessness and financial constraints of her family. The home, as well as the room where the victim is lodged, is very neat and hygienic. She shares a deep attachment with her sister and the attending staff. The child appeared to be happy.

The child has only one sister, no landed property and house are inherited. Physiotherapy, speech therapy and Counselling should be given to her to maintain improve her physical and mental stability.

The child victim is shifted to any other mode of care and accommodation with her own fund there maybe many unforeseen inconvenience to provide proper medical attention, service of a trained care taker 24x7, and her removal to hospitals in emergency including security issue etc. If any other similar institutions are ready to take care of the child by providing more better care and protection willingness of such institution can be considered.

Since the child cannot do anything on her own, she always needs someone's help. It is not easy to bring it back to a normal life through treatment. As far as her physical and mental improvement expert medical opinion is necessary. The only thing that can be suggested that physiotherapy can help her to get some strength in her hands and she can even hold someone or something with her hands.

The child can't even stretch her legs. She can't even eat a single meal. It doesn't seem like such a problem will go away even with treatment.

On interaction it is understood that her mental stability and capacity is not fully affected, she answered certain rational questions properly. But her speech is not so clear but she can convey her ideas and thoughts. She is not remembering her date of birth.



In the room, which accommodates 10 persons, one attendant assigned. Additionally, a nursing staff member is deputed to care for the inmates. The warden of the room, Ms.Soudha, was also present during the visit.”

15. Copy of Ext.C1 report was given to both sides and they were again heard on 28.3.2025. From Ext.C1 report it is revealed that the child now aged 25 is living at the mercy of the orphanage having 145 inmates. The above orphanage is functioning with the offerings and donations received from the public, as it has no income of its own. The victim is completely bedridden and unable even to move from the bed. Only occasionally she is being taken out of the room in wheelchair. After closely interacting with the victim, the Secretary DLSA reported that providing physiotherapy to her arms and fingers may improve the strength of her forearms and fingers. The only relative of the victim is her sister, who is presently living along with her husband and child and there is no other near relative to the victim. The only relative who used to visit her is her sister Subisha.

16. Presently the victim has been accommodated in a room having 10 inmates. There is no entertainment facilities in the said room. The Secretary DLSA recommended physiotherapy and speech therapy as well as counselling to the victim so as to improve her physical and mental stability. It has been reported that presently the victim is comfortable in the orphanage. Further, it was reported by the Secretary, DLSA, that since the victim cannot do anything of her own, she always needs someone's help, for all her daily necessities.

17. It is true that, at present the petitioner is staying in an orphanage and living at the mercy of the officials of the orphanage. It is because of her hapless



condition, on account of the injuries sustained in the accident. Since the orphanage has no income of its own and for all the day to day expenses it is depending on the offerings and donations of public, there is no guarantee that they will be able to manage it for ever, as at present. Therefore, the victim cannot be left at the mercy of the officials of the orphanage, by denying her the legitimate compensation due, for the injuries sustained in the accident. Otherwise, on a fine morning, if the officials of the orphanage finds it difficult to run the institution due to paucity of fund or for any other reason, there will be nobody to look after the victim. In such an eventuality, she also will not be able to approach this court again, seeking further compensation. Therefore, in this case itself, the petitioner is entitled to get just and reasonable compensation due to her, as in the case of any other victims of road traffic accident. Point No.1 answered accordingly.

18. The learned Standing Counsel has relied upon the decision of the Hon'ble Supreme Court in **C.K.Subramania Iyer and Others v. T.Kunhikuttan Nair and Others**, 1969 (3)SCC 64 and argued that the compensation to be awarded must be in tune with the pecuniary loss caused because of the injuries. For ascertaining such pecuniary loss, according to him, first it is to be proved that the victim earned money in the past and secondly that the victim had contributed to the support of the petitioner. His thrust was on the fact that since the victim herein was a child of 7 years and was a non-earning person, the compensation awarded by the Tribunal do not require any enhancement.

19. It is true that in the above decision, in paragraph 6 and 7 the Apex



Court held that:

6. *In ascertaining pecuniary loss caused to the relations mentioned in S.1A, it must be borne in mind that these damages are not to be given as solatium but are to be given with reference to a pecuniary loss. The damages should be calculated with reference to a reasonable expectation of pecuniary benefit from the continuance of the life of the deceased - see Franklin v. South Eastern Railway Co., (1862) 157 ER 3 H and N 448. In that case Pollock, C. B., observed:*

"We do not say that it was necessary that actual benefit should have been derived, a reasonable expectation is enough and such reasonable expectation might well exist, though from the father; not being in need, the son had never done anything for him. On the other hand a jury certainly ought not to make a guess in the matter, but ought to be satisfied that there has been a loss of sensible and appreciable pecuniary benefit, which might have been reasonably expected from the continuance of the life."

7. *In Taff Vale Railway Company v. Jenkins, 1913 AC 1, the Judicial Committee observed that it is not a condition precedent to the maintenance of an action under the Fatal Accidents Act, 1846, that the deceased should have been actually earning money or money's worth or contributing to the support of the plaintiff at or before the date of the death provided that the plaintiff had a reasonable expectation of pecuniary benefit from the continuance of the life. Therein Lord Atkinson stated the law thus:*

"I think it has been well established by authority that all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact - there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first, that the deceased earned money in the past, and second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can I think be drawn from circumstances other than and different from them."



20. In the above decision, the question that arose for consideration was the principles governing the assessment of damages under Sections 1A and 2 of the Fatal Accidents Act, 1885. The above suit was filed by the parents of an 8 year old child who died in a motor vehicle accident. The compensation payable under Section 1A of the Fatal Accidents Act was proportional to the loss resulting from such death to the parties. As per Section 2 of the Fatal Accidents Act, claim for loss to the estate of the deceased occasioned by such wrongful act, neglect or default can also be made.

21. However, under the Motor Vehicles Act, the claim is not limited to loss resulting from the death alone, but just and reasonable compensation is to be awarded. Moreover, in the instant case the victim herself is the claimant and not the legal representatives of the deceased as in **C.K.Subramania Iyer** (supra). The compensation payable to the parents of a 7 year old child who died in an accident can never be compared to compensation payable to a child lying in vegetative condition for the rest of its life. In other words, **C.K.Subramania Iyer** (supra) has no application to the facts of the present case.

22. Point No.2:- The learned standing counsel would argue that, before the Tribunal, the counsel for the petitioner agreed for a notional income of Rs.3000/- and as such, this Court cannot fix the notional income of the petitioner above what is suggested by the counsel for the petitioner before the Tribunal. In support of the above argument he has relied upon the decision of the Hon'ble



Supreme Court in **Gurwinder Singh v. Pirthi Singh and Others, 2022 KHC 3448** and argued that, in the above decision in the case of a 27 year old victim of road traffic accident in the year 1997, the Apex Court has awarded only a sum of Rs.3,00,000/- towards pain and suffering and that the notional income of the victim was taken as Rs.2000/- per month being the income canvassed by the victim.

23. On the other hand, the learned counsel for the petitioner would argue that, since at the time of the accident, the petitioner was a minor child of 7 years, it is the duty of this Court to protect the interest of the minor by awarding just and reasonable compensation.

24. In **Gurwinder Singh** (supra) the victim was a major person of 27 years, represented by a duly appointed lawyer. In this case the victim was a minor in almost vegetative state when the lawyer made such a suggestion. Further, in **Gurwinder Singh** (supra), the Apex court refused to interfere with the income fixed by the Tribunal mainly on two reasons. The first reason was that, the accident therein was in the year 1997. In the year 1997, Rs.2000/- was not a small amount. The crucial and second reason relied upon by the Apex court was that, before the High Court, the calculations were taken out on the basis that the appellant was having monthly income of Rs.2000/-. Further, in **Gurwinder Singh** (supra), the income suggested by the counsel was accepted as such. It was in the above circumstances the Apex court refused to increase the income any further.

25. In the instant case, the facts are entirely different from that in



Gurwinder Singh (supra). The victim herein was a minor at the time of the alleged admission. Since the victim was a non-earning child of 7 years, only notional income can be fixed for assessing the loss of disability. The accident herein was in the year 2006 wherein Rs.3000/- was not a considerable amount. As per the decision of the Hon'ble Supreme Court in **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd.** [2011 (13) SCC 236], the notional income of a coolie during the year 2006 will come to Rs.5,500/-. Therefore it is evident that Rs.3000/- conceded by the counsel far below the notional income of a coolie will not in any way protect the best interest of the minor. Moreover, the said income as suggested by the counsel was not accepted by the tribunal. Instead, the Tribunal proceeded to fix the notional income of the child at a paltry sum of Rs.2000/-. Therefore, the decision in **Gurwinder Singh** (supra) does not apply to the facts of the present case.

26. Even in **Gurwinder Singh** (supra) there is no finding that the notional income could not be fixed more than what is proposed by the counsel. As I have already noted above, in the above decision, before the High Court, the calculations were taken out on the basis that the appellant was having monthly income of only Rs.2000/-. In this context it is also to be noted that, a client is not bound by a statement or admission which he or his lawyer was not authorised to make (See **Himalayan Co-operative Group Housing Society v. Balwan Singh**, (2015) 7 SCC 373; **Jayaprakash K.R. v. State of Kerala**, 2023(4)KHC 384; and **Central Bank of India and Another v. Beena Thirivenkitam**, 2019(3)KHC



819). In this case, even the learned Standing Counsel has no case that the counsel for the petitioner has made such an admission as authorised by the claimant.

27. Moreover, in a proceeding under section 166 of the M.V.Act, the Tribunal and the appellate court have the duty to award just compensation to the claimant. In the decision in **Nagappa Vs. Gurudayal Singh and Ors.**(AIR2003 SC 674) the Apex Court held in paragraph 10 thus:

“Thereafter, Section 168 empowers the Claims Tribunal to “make an award determining the amount of compensation which appears to it to be just”. Therefore, only requirement for determining the compensation is that it must be ‘just’. There is no other limitation or restriction on its power for awarding just compensation”.

28. Since a duty is cast upon the tribunal and appellate court to award just compensation to the claimant, it is not material whether the amount of compensation due has been precisely stated or whether the claimant has restricted the claim in the claim petition, as observed by the Apex Court in **Nagappa** (supra) in paragraph 13 in the following words:

“Hence, as stated earlier, it is for the Tribunal to determine just compensation from the evidence which is brought on record despite the fact that claimant has not precisely stated the amount of damages of compensation which he is entitled to. If evidence on record justifies passing of such award, the claim cannot be rejected solely on the ground that claimant has restricted this claim.

29. The law is also well settled that, while awarding just and reasonable compensation, there is no restriction that Tribunal/Court cannot award compensation amount exceeding the amount claimed. The above point was made clear by the Apex court in **Nagappa** (supra), in paragraph 21 in the following



words:

“For the reasons discussed above, in our view, under the M.V. Act, there is no restriction that Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award 'Just' compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under Sub-section (4) to Section 166, even report submitted to the Claims Tribunal under Sub-section (6) of Section 158 can be treated as an application for compensation under the M.V. Act. ...”

30. In the decision in **Minu Rout and Ors. v. Satya Pradyumna Mohapatra and Ors.** (2013)SCC 695, the Apex Court has held that it is the statutory duty of the Tribunal and appellate Court to award just and reasonable compensation to the victims of road traffic accident and for that purpose, in deserving cases, even the notional income can be fixed over and above what is claimed in the Original Petition. In the above decision, though the monthly salary claimed was Rs.5000/-, the Apex court has fixed the same at Rs.6000/-, to award just and reasonable compensation.

31. Relying upon the decision of the Apex court in **Minu Rout** (supra), this court in the decision in **Sasidharan Namboothiri and Others v. Rajeev Kesavan and Others**, (2025 KHC OnLine 85; 2025 ICO 130), also fixed the notional income of the victim over and above the income claimed in the Original Petition.

32. In the decision in **Surekha and Ors. v. Santhosh and Ors.** 2020



ACJ 2156, a 3 Judge Bench of the Apex Court has held that absence of appeal or cross-objection will not stand in the way of awarding just and reasonable compensation, even in an appeal filed by the insurer. In the above decision, the High Court declined enhancement of compensation on the ground that no cross-objection was filed. However, the Apex court held that:

“By now, it is well settled that in the matter of insurance claim compensation in reference to the motor accidents, the court should not take hyper-technical approach and ensure that just compensation is awarded to the affected person or the claimants”.

33. In the light of the decisions of the Apex Court in **Nagappa** (supra), **Minu Rout** (supra) and **Surekha** (supra) it can be seen that, irrespective of the claim made, the Tribunal and the appellate court have a duty to award just and reasonable compensation to the victims of road traffic accidents. It is true that in the impugned award there is an observation made by the Tribunal that the learned counsel for the petitioner canvassed for fixing the notional income of the petitioner at Rs.3000/-, which the Tribunal did not accept. Considering the severity of the injuries sustained by the petitioner in the accident, she will have to remain in bed for the rest of her life, depending on others for everything, including daily necessities. Unless and until just and reasonable compensation is awarded and provision is made for its effective utilisation, there will not be anybody to look after the petitioner, who is also an orphan, during the rest of her life. In the above circumstance, the insurer cannot be permitted to take advantage of the suggestion made by the counsel before the Tribunal to fix the notional income at Rs.3000/-,



and which was not accepted by the Tribunal. In other words, I hold that, this court sitting in appeal, has a duty to award just and reasonable compensation due to the petitioner, irrespective of the said submission made by the counsel. Point No.2 answered accordingly.

34. Point No.3:- The petitioner was a first standard student at the time of the accident. Because of the injuries sustained in the accident, she could not continue her study. She could not enjoy the life of a child, adolescent and youth, like others. She will miss out the fun of childhood, the excitement of youth, the pleasures of a marital life and she cannot have children. She cannot enjoy the pleasures of life like other children of her age. She could not enjoy the beauty of nature. She could not even walk inside the room in which she has been practically confined in a small room, for no fault of her.

35. It is impossible to equate human suffering and personal deprivation with money. In the decision in **Kajal v. Jagdish Chand and Ors.**, AIR 2020 SC 776 in paragraph 12 the Apex court held:

“The assessment of damages in personal injury cases raises great difficulties. It is not easy to convert the physical and mental loss into monetary terms. There has to be a measure of calculated guesswork and conjecture. An assessment, as best as can, in the circumstances, should be made”.

36. The principles for grant of compensation have been enunciated in numerous cases. The celebrated and widely quoted among them is **Philips v. Western Railway Co.** In the decision in **Kajal** (supra) also, the above decision was quoted with approval by the Apex court in paragraph 8 as follows:



“In Philips v. Western Railway Co.((1874) 4 QBD 406), Field,J., while emphasizing that damages must be full and adequate, held thus:

You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always recollect that this is the only occasion on which compensation can be given. The plaintiff can never sue again for it. You have, therefore, now to give him compensation once and for all. He has done no wrong, he has suffered a wrong at the hands of the defendants and you must take care to give full fair compensation for that which he has suffered. Besides, the Tribunals should always remember that the measures of damages in all these cases should be such as to enable even a tortfeasor to say that he had amply atoned to his misadventure”.

37. Therefore, the compensation to be awarded to the petitioner should not be inadequate, but it must be sufficient enough to meet all exigencies likely to be faced by her, for the rest of her life, on account of the injuries sustained in the accident. The above objective is to be borne in mind while fixing the quantum of compensation to be awarded on each head and also while fixing her notional income.

38. In the decision in **Kajal** (supra), the victim was a 12 year old girl suffering from 100% disability and completely bedridden as in the present case. In the above circumstance, the Apex Court has fixed the notional income of the child at a sum equal to the minimum wages of a skilled worker prevailing during the relevant period in the State of Haryana. As per the decision of the Hon'ble Supreme Court in **Ramachandrappa**, the notional income of a coolie during the year 2006 will come to Rs.5500/-. Therefore, I hold that for the purpose of assessing the loss of disability, the notional income of the petitioner herein can be



fixed at Rs.6000/-, little above that of a coolie in the same year.

39. As per Ext.X1 disability certificate issued by the medical board, her neurological and orthopedic disability were assessed at 70% each. In paragraph 8 of the award, the Tribunal observed that her earning capacity has been reduced to 0% and that her disability in effect is 100%. In spite of that, while assessing the loss of disability, only 70% was taken. Since the condition of the petitioner is very pathetic and she has been completely bedridden with all four limbs function-less and she is unable to move from the bed without the help of anybody else, her earning capacity has been reduced to zero and as such her functional disability is to be taken as 100%. Further, since she was aged 7 at the time of accident, 40% of the income is to be added towards future prospects and the multiplier to be applied is 15. Therefore, the compensation for loss of disability will come to Rs.15,12,000/-.

40. The learned Standing Counsel would argue that since the functional disability of the petitioner was taken as 100%, towards pain and sufferings and loss of amenities in life considerable amount need not be given. Relying upon the decision in **Gurwinder Singh** (supra) he would argue that, in that case only Rs.300000/- was awarded on the head pain and suffering, Rs.600000/- was awarded towards attendant, transport and special diet and Rs.100000/- was awarded towards loss of marriage prospects. On the other hand, the learned counsel for the petitioner, relying upon the decisions in **Kajal** (supra), **Baby Sakshi Greola v. Manzoor Ahmad Simon and Another**, (SLP (C)



No.10996/2018), Benson George v. Reliance General Insurance Co.Ltd and Another, (2022) 13 SCC 142, and Ramshad P. v. Afsal and Others (MACA 1096/2024) would argue that in those cases considerable amounts were awarded by the Apex court on the heads ‘pain and suffering’, ‘attendant charge’, ‘loss of amenities of life’ and loss of marriage prospects.

41. In this case, towards pain and suffering and loss of amenities of life, the Tribunal has awarded only Rs.1,50,000/- each, and towards extra nourishment, only Rs.10,000/- was awarded. Towards loss of marriage prospects Rs.100000/- was awarded.(In the tabular form it is mistakenly shown as compensation for disfiguration)

42. In the decision in **Kajal** (supra) to a 12 year old child suffering from 100% permanent physical disability, involved in an accident in the year 2007, the Apex Court has awarded a sum of Rs.15,00,000/- towards compensation for pain and suffering and loss of amenities of life together. Further, the Apex Court has awarded the expense of two bystanders at the rate of Rs.5000/- each per month, for a period of 18 years.

43. In the decision in **Baby Sakshi Greola v. Manzoor Ahmad Simon and Another, (SLP (C) No.10996/2018)**, the victim was a 7 year old child who met with a road traffic accident in the year 2009. Due to the impact of the injuries sustained in the accident, the mental age of the child continued to remain that of a 2nd standard student, while her physical age continued to increase. Comparing the condition of the said child as that of **Kajal**, the Apex Court after holding that



during the rest of her life she will remain a small baby, awarded a sum of Rs.15,00,000/- towards pain and suffering, in addition to the sum of Rs.5,00,000/- towards loss of marriage prospects. In addition to the same, towards bystander expense the minimum wages of a skilled worker for a period of 18 years was also awarded. Towards future medical expense, the Apex Court awarded a further sum of Rs.5,00,000/-.

44. In the decision in **Jayanandan v. Varkey and Others (SLP (C) No.22423/2024)** relied upon by the learned counsel for the petitioner, the victim of a road traffic accident was a Diamond Cutter by profession and in the accident he lost the sight of one eye. Considering the fact that he was a Diamond Cutter by profession, the Apex Court has taken his functional disability at 100%. In the above decision on the aspect of pain and suffering, relying upon an earlier decision, the Apex Court observed in paragraph 8 as follows :-

“On the aspect of pain and suffering, this Court recently in Civil Appeal No.12993 of 2024 titled K.S.Muralidhar v. R.Subbulakshmi delineated the concept. Pain and suffering is not only on account of physical pain but also suffering on account of what has been lost as a result of the accident – desire of economic betterment, social betterment etc. Once a person is unable to partake in his profession of choice, for no fault of his all these desires are unceremoniously ground to a halt. Rs.50,000/- for a 39 year old is a case of gross undervaluing the suffering of such a person. Having regard to the above factors, the compensation under this head is enhanced to Rs.1.50,000/-.”

45. In the decision in **Benson George v. Reliance General Insurance Co.Ltd and Another, (2022) 13 SCC 142**, in the case of a 29 year old in coma stage involved in an accident in 2013, the Apex Court has awarded a compensation



of Rs.10,00,000/- each on the heads pain and suffering and loss of amenities. In the decision in **Ramshad P. v. Afsal and Others (MACA 1096/2024)** in the case of a 20 year old victim suffering from 100% disability a learned Single Judge of this Court also awarded a sum of Rs.10,00,000/- each towards pain and suffering and loss of amenities of life.

46. In **Kajal**, after the accident, due to the impact of the injury sustained in the accident, the mind of the victim became that of a 9 month old child. Though her physical body grows according to her age, she will continue to be having the mind of a 9 month old child. However, in the instant case, the petitioner has no such mental retardation. In other words, her mind also grows according to her age. Therefore, the petitioner herein will feel the pain and sufferings always, till the end of her life. Therefore, the pain and suffering of the petitioner herein cannot be compared with that of **Kajal** and it will be much more than that of **Kajal**.

47. As noted above, in **Kajal** (supra) the Apex Court has awarded a sum of Rs.15,00,000/- for pain and suffering and loss of amenities together, to a 12 year old child suffering from 100% permanent physical disability, involved in an accident in the year 2007. The condition of the petitioner herein is worse than that of **Kajal**. The petitioner herein has been forced to depend on others for all her daily necessities, including to attend the nature's call. She will remain bedridden for the rest of her life, may be for a further period of 50 years or more (as now she is only 25). Therefore, considering the entire facts I hold that, towards pain and suffering and loss of amenities of life together, a sum of Rs.15,00,000/- can be



awarded in this case also.

48. Since the petitioner has been completely bedridden and she requires the assistance of a bystander for anything and everything including to attend the nature's call, she requires reasonable compensation for bystander expense also. As noted above, the condition of the petitioner herein is worse than that of **Kajal** (supra) and as such, I hold that towards bystander expenses, the petitioner is also entitled to get the expense of two bystanders. In Kajal (supra), the expense of a bystander was taken as Rs.5000/- and by applying the multiplier 18, a sum of Rs.21,60,000/- was awarded towards bystander expenses. In this case, the petitioner has been accommodated in an orphanage and hence she had not spent any considerable amount towards bystander expenses so far. It is not because she does not require such an assistance, but because neither the guardian of the petitioner nor the orphanage 'Thanal' could afford it's expense.

49. As reported by the Secretary, DLSA in Ext.C1 report, the petitioner requires the assistance of a bystander, around the clock. Since the petitioner is now a lady of 25 and she will be completely bedridden for the rest of her life, she requires the service of a full time (or two part-time), dedicated, lady nursing assistant(s), for the rest of her life. Since the only close relative of the victim namely her sister is not in a position to look after or provide the petitioner such service, this court has an added duty to make some special provision in this proceeding itself, to ensure that the petitioner will get the required nursing assistance. Special provision also is to be made for effective utilisation of the



compensation awarded herein, for the welfare and beneficial enjoyment of the victim. Once the compensation awarded herein is deposited by the insurer, this court will pass necessary further directions in that respect. In the above circumstance, the bystander expenses to be awarded herein shall not be inadequate also. Even if a multiplier of 15 is applied, the bystander expense will come to Rs.18,00,000/- (5000 x 2 x 12 x 15). Therefore, considering the entire facts in this case, I hold that, towards bystander expense a sum of Rs.15,00,000/- will be reasonable in this case.

50. From Ext.C1 report filed by the Secretary, DLSA it is revealed that the petitioner requires physiotherapy, speech therapy and counselling. Since she is completely bedridden and unable to move from the bed, she will also require considerable amount towards the cost of diaper, gloves, cleaning materials etc. Therefore, towards the cost of physiotherapy, counselling, the cost of diaper, gloves, cleaning materials etc. a sum of Rs.5,00,000/- is awarded on the head 'future medical expenses'.

51. Considering the nature of injuries sustained by the petitioner and the percentage of disability suffered by her, the compensation awarded on the head extra nourishment is too meager and hence it is enhanced to Rs.1,00,000/-. For the very same reasons, the compensation awarded towards loss of marriage prospects is enhanced to Rs.2,00,000/-. Since Rs.100000/- shown in the tabular form against the head 'compensation for disfiguration' is a mistake, the same will be deducted. No change is required, in the amounts awarded on other heads, as the



compensation awarded on those heads appears to be just and reasonable.

52. Therefore, the petitioner/appellant is entitled to get a total compensation of Rs.53,88,750/-, as modified and recalculated above and given in the table below, for easy reference:

Head of Claim	Amount awarded by Tribunal (in Rs.)	Amount Awarded in Appeal (in Rs.)
Medical expenses	61719	61719
Future treatment/medical expense	Nil	500000
Bystander expenses bystander expenses in future	15400 300000	1500000
Transportation expenses	15000	15000
Extra nourishment and damage to clothing	10000	100000
Pain and suffering and loss of amenities	150000+150000	15,00,000
Loss of Disability	302400	15,12,000
Compensation for disfiguration	100000	Nil
Loss of marriage prospects		200000
Total	1154519 limited to/ rounded to 1104550	53,88,719 rounded to 5388750
Amount enhanced	4284200	

53. In the result, this Appeal is allowed in part, and Respondent No. 3 is directed to deposit a total sum of Rs.**53,88,750/-** (Rupees fifty three lakh eighty eight thousand seven hundred and fifty only), less the amount already deposited, if any, along with interest @ 8% per annum, from the date of the petition till deposit/realisation, with proportionate costs, within a period of two months from today.

54. On depositing the aforesaid amount, the Tribunal shall disburse 10%



of the entire amount, excluding court fee payable, if any, to the guardian of the petitioner, forthwith. The balance amount shall be deposited in a Nationalised bank in fixed deposit(s) for a long term so as to get maximum interest, in the name of the petitioner/victim represented by her sister Smt.Subisha as guardian. A lien shall be marked on the face of the receipt(s) that the amount shall be disbursed only on the orders of the Tribunal.

55. The Tribunal found that the vehicle involved in the accident did not have valid permit and fitness certificate and therefore, permitted the 3rd respondent to recover the amount from the 1st respondent. Though notice was served on the 1st respondent, he has not turned up and not produced the permit and fitness certificate of the vehicle. Therefore, the permission for pay and recovery granted to the 3rd respondent is retained.

Sd/- C.Pratheep Kumar, Judge