

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 1327 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Approved for Reporting	Yes	No

JIGISHABEN MAHESHBHAI PATEL

Versus

SIPAI MOHAMMADKHAN RASULKHAN & ORS.

Appearance:

ROBIN PRASAD(9344) for the Appellant(s) No. 1

MR KV GADHIA(319) for the Defendant(s) No. 4

MS. VRUNDA C SHAH(6702) for the Defendant(s) No. 3

RULE UNSERVED for the Defendant(s) No. 1,2

CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**Date : 26/11/2025****ORAL JUDGMENT**

1). Feeling aggrieved by and dissatisfied with the judgment and award dated 12.12.2019 passed by Motor Accident Claims Tribunal (Aux), Ahmedabad (hereinafter referred to as "the Tribunal" for short), in Motor Accident Claim Petition No.537/2011, the appellant – original claimant preferred present appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act" for short) for enhancement of compensation.

2). Heard Mr. Robin Prasad, learned counsel for the appellant, Ms. Vrunda Shah, learned counsel for respondent No.3 and Mr.K.V.Gadhia, learned counsel for respondent No.4. Rule unserved qua respondent Nos.1

and 2.

3) It is the case of the appellant that on 05.01.2011, the appellant was travelling in AMTS Bus bearing No.GJ-01-BV-8728 from Lal Darwaja to her home and at Malav Talav, when the appellant was going down from front side of the bus, the driver of the bus driven his bus in rash and negligent manner. Due to which, the appellant was fallen down from bus and front wheel of the bus ran over her left leg. As a result, the appellant got serious injuries and her left leg below knee was amputated. In this regard, FIR came to be filed at Vejalpur Police Station, Ahmedabad. Subsequently, the claim petition was filed by the appellant to get compensation of Rs.30,00,000/- from the opponents. After appreciating the evidence produced on record, the learned Tribunal awarded compensation of Rs.11,96,441/- along with cost and interest @ 9 % p.a.

4) Learned counsel for the appellant has submitted that the Tribunal has failed to properly appreciate the documents produced on record and has not correctly assessed the income of the victim, who has suffered severe bodily disablement. It is further submitted that the Tribunal has not awarded any compensation under the head of loss of marriage prospects, even though the victim, being a young lady, had to undergo amputation of her left leg. However, a meager amount of Rs. 25,000/- has been awarded under the head of pain, shock, and suffering. He has further contended that the evidence on record, including the certificates issued by the Orthopedic Surgeon, remained unchallenged. These documents clearly indicate that the

artificial leg requires replacement every 3 to 5 years. It is argued that the Tribunal ought to have appreciated the evidence of the victim's co-student, who was pursuing PTC with her, regarding her income. Therefore, considering the economic loss suffered due to her physical disability, interference of this Court may be called for for enhancement of compensation.

5) Learned counsel for respondent No. 3 has opposed the present appeal and submitted that the Tribunal has properly appreciated the evidence on record. It is contended that, at the time of accident, the appellant was a student of PTC course and, even after the accident, she was able to continue her studies. Therefore, there is no loss of future prospects, as she can still pursue a career as a teacher and earn accordingly. Hence, no adverse effect on her earning capacity or functional disability should be considered, considering nature of the work as she would be required to perform as a teacher. It is further submitted that the amputation of the leg is below the knee, and therefore, the Tribunal has rightly assessed the disability at 50%, which is just and proper.

6) Having heard learned counsel for the respective parties and upon perusal of the material placed on record, the factum of the accident is not in dispute. The issue of negligence is also undisputed, as the driver of the offending AMTS bus has been held solely responsible. Therefore, the present appeal is filed to the limited aspect of quantum. To substantiate the claim, the appellant has tendered her deposition at Exh. 28, the deposition

of Dr. S. G. Patel at Exh. 35, affidavits of two witnesses at Exhs. 87 and 93, the disability certificate at Exh. 36, injury certificate at Exh. 40, and medical bills at Exhs. 42 to 79. Insurance coverage is also not in dispute. Upon examining the documentary evidence, the Tribunal has noted that, as per the disability certificate, the appellant has suffered 45% partial permanent disablement due to the injuries sustained, resulting in amputation of her left leg below the knee. The Tribunal considered the disability at 50% for the purpose of awarding just compensation, observing that the case does not fall under permanent total disablement, as the appellant, being a teacher, could undertake teaching or other suitable work. At the time of the accident, the appellant was a PTC student and subsequently, continued and completed her studies. To prove her prospective income, the appellant examined her co-student, Aartiben, as a witness, attempting to establish the income she would have earned after completing the PTC course. However, the Tribunal did not consider this evidence and assessed her notional income at Rs. 5,000/- per month, observing that no documentary proof of income was produced on record.

7) As per the law laid down by the Hon'ble Supreme Court in the case of ***Govind Yadav Vs. National Insurance Co. Ltd., reported in 2012(1) TAC 1 (SC)***, that if no proof of income is produced on the record then Tribunal has to consider prevalent minimum wages in absence of ample evidence of monthly income of the applicant. In the present case, the accident occurred on 05.01.2011 and during that time, the appellant – injured was student of

PTC course, and as per the Government approved minimum wages was Rs.4,370/-. Therefore, the Tribunal has rightly assessed the income of the appellant at Rs.7,000/- p.m including future prospect considering disability at 40% and also multiplier of 18 as per the judgment of the Apex Court in the case of **Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation & Anr. [2009 (6) SCC 121]** which are just and proper. Therefore, the Tribunal has not committed any error in awarding Rs.7,56,000/- as future loss of income. So far medical expenses are concerned, the Tribunal has awarded Rs.1,90,441/-, which is also just and proper.

8) Considering the nature of injury and age of the victim and has sustained the partial permanent disability and other consequential losses of said injury, claimant is entitled for getting the compensation in view of the decision of the Hon'ble Supreme Court in the case of **Kajal vs. Jagdish Chand and Others** reported in **(2020) 4 SCC 413** wherein it has been held that the Tribunal shall award the compensation very conservatively keeping in mind the degree of deprivation and the loss caused by such deprivation which can be termed as "just compensation" as insured / injured claimant has to face the consequences throughout her life and that should not be any token damages. Even, in the case of **Master Ayush vs. Branch Manager, Reliance General Insurance Company Limited and Anr.** reported in **(2022) 7 SCC 738**, relying on the decision in the case of **Kajal (Supra)**, the Hon'ble Supreme Court by observing in paragraph No.7 as under:-

"7. It was also argued that in a judgment reported as Kajal v. Jagdish Chand², the injured was a 12 years old girl who had suffered an injury to the extent that her IQ got less than 20% as compared to a child of her age

and the medical board had assessed her social age to be only of a 9-months' old child. This Court had recognized that Schedule II of the Act could be used as a guide for the multiplier to be applied in each case. This Court in the aforesaid case held as under (SCC pp. 419, 421 & 426, paras 6, 12 & 27)

"6. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Act enjoins upon the courts to do. The court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by the victim. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, the compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. Such compensation is what is termed as just compensation. The compensation or damages assessed for personal injuries should be substantial to compensate the injured for the deprivation suffered by the injured throughout his/her life. They should not be just token damages.

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12. The assesment 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.

9) xxx

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27. One factor which must be kept in mind while assessing the compensation in a case like the present one is that the claim can be awarded only once. The claimant cannot come back to court for enhancement of award at a later stage praying that something extra has been spent. Therefore, the courts or the Tribunals assessing the compensation in a case of 100% disability, especially where there is mental disability also, should take a liberal view of the matter when awarding the compensation. While awarding this amount, we are not only taking the physical disability but also the mental disability and various other factors. This child will remain bedridden for life. Her mental age will be that of a nine-month-old child. Effectively, while her body grows, she will remain a small baby. We are dealing with a girl who will physically become a woman but will mentally remain a 9-month-old child. This girl will miss out playing with her friends. She cannot communicate; she cannot enjoy the pleasures of life; she cannot even be amused by watching cartoons or films; she will miss out the fun of childhood, the excitement of youth; the pleasures of a marital life; she cannot have children who she can love, let alone

grandchildren. She will have no pleasure. Her's is a vegetable existence. Therefore, we feel in the peculiar facts and circumstances of the case even after taking a very conservative view of the matter an amount payable for the pain and suffering of this child should be at least Rs 15,00,000."

10) Thus, the Hon'ble Supreme Court in the aforesaid case of minor had considered multiplier of 18. As the learned Tribunal has relied on the ratio laid down by the Hon'ble Supreme Court in the case of **Kajal (Supra)**, no error has been committed by the learned Tribunal in considering the injury to the minor in relying on the decision in the case of **Kajal (Supra)**.

11) Further, the compensation has to be awarded once and for all as victim is not at fault and it is the duty of the Tribunal to award just compensation. Considering overall facts and circumstances relating to treatment, mental agony, pain, disablement, loss of wages and expenditure in the hospital for nutritious diet and other expenditure incurred by the family members and other charges for attendant is also required to be considered. Considering the disablement and mental pain, shock and suffering *qua* loss of amenities, Tribunal has properly considered all the aspects and awarded just compensation on the head of non-pecuniary damages also. It is also pertinent to note that adopting a sensitive approach is crucial for the Tribunal. It plays a key and vital role in ensuring not only justice to the victim of the motor accident but also to determine just and fair compensation. The Tribunal is expected to have empathy and to prevent subsequent trauma by taking a sensitive approach to feeling the pain of the victim of the road accident because the victim of the road accident and their

family often deal with physical and emotional trauma and an empathetic approach can provide them a sense of support and understanding.

12) The Hon'ble Supreme Court in the case of **Sidram vs. Divisional Manager, United India Insurance Company Limited and Anr.** reported in **(2023) 3 SCC 439**, wherein the Hon'ble Supreme Court relying on its decision in the case of **Pappu Deo Yadav vs. Naresh Kumar** reported in **(2022) 13 SCC 790** has observed and held in paragraph 113 as under:

"113. Before we close this matter, it needs to be underlined, as observed in Pappu Deo Yadav (supra) that Courts should be mindful that a serious injury not only permanently imposes physical limitations and disabilities but too often inflicts deep mental and emotional scars upon the victim. The attendant trauma of the victim's having to live in a world entirely different from the one she or he is born into, as an invalid, and with degrees of dependence on others, robbed of complete personal choice or autonomy, should forever be in the judge's mind, whenever tasked to adjudge compensation claims. Severe limitations inflicted due to such injuries undermine the dignity (which is now recognized as an intrinsic component of the right to life under Article 21 of the individual, thus depriving the person of the essence of the right to a wholesome life which she or he had lived, hitherto. From the world of the able bodied, the victim is thrust into the world of the disabled, itself most discomfiting and unsettling. If courts nit-pick and award niggardly amounts oblivious of these circumstances, there is resultant affront to the injured victim."

13) So far pain, shock and suffering is concerned, the tribunal has awarded Rs.25,000/-, which is required to be enhanced to Rs.2,00,000/- as young lady has lost her left leg. So far attendance, special diet and transportation is concerned, the Tribunal has awarded meager amount of Rs.10,000/- which also needs to be enhanced to Rs.50,000/-. Similarly, loss of amenities and loss of enjoyment of life and future medical expenses are also required to be enhanced as the appellant has to replace her artificial leg at every 3 to 5 years continuously.

14) It is to be noted that at the time of accident, the appellant was young lady aged about 19 years, who lost her left leg in the accident, however, the Tribunal has erred in not awarded any compensation towards loss of matrimonial prospects. Considering the same, the claimant – victim is entitled to get Rs.3,00,000/- under the head of loss of matrimonial prospects

15) As discussed above, the appellant is entitled to get compensation computed as under:

Heads	Awarded by Tribunal	Reassessed by this Court
Pain, shock and sufferings	Rs.25,000/-	Rs.2,00,000/-
Special diet, attendant and transportation	Rs.10,000/-	Rs.50,000/-
Loss of amenities and loss of enjoyment of life	Rs.1,00,000/-	Rs.2,00,000/-
Future medical expenses	Rs.1,00,000/-	Rs.2,00,000/-
Loss of matrimonial prospects	Nil	Rs.3,00,000/-
Total compensation	Rs.2,35,000/-	Rs.9,50,000/-

16) Hence, present appeals are **partly allowed**. The judgment and award dated 12.12.2019 passed by Motor Accident Claims Tribunal (Aux), Ahmedabad in Motor Accident Claim Petition No.537/2011 is hereby modified to the aforesaid extent. The appellant would be entitled to get additional amount of **Rs.7,15,000/-** with proportionate costs and

interest as awarded by the learned Tribunal. The opponents shall deposit said additional amount before the Tribunal within a period of **four weeks** from the date of receipt of this order.

- 17) Record and proceedings be remitted back to the concerned Tribunal forthwith. The Tribunal is directed to recover or deduct the deficit court fees on enhanced amount and thereafter disburse the amount accordingly. Award to be drawn accordingly.

(HASMUKH D. SUTHAR,J)

SUCHIT