

(1981) 02 GUJ CK 0007
In the Gujarat High Court
Case No : First Appeal No. 1641 of 1979

A.S. Rajara alias Raja Vamshyam

APPELLANT

Vs

Joitaram Rawabhai Patel and Another

RESPONDENT

Date of Decision : 06-02-1981

Acts Referred:

Motor Vehicles Act, 1988 — Section 96(2)

Citation : (1981) 02 GUJ CK 0007

Hon'ble Judges : S.B. Majmudar, J;P.D. Desai, J

Bench : Division Bench

Advocate : Mohit Shah, for the Appellant; S.B. Vakil, for the Respondent

Judgement

S.B. Majmudar, J.—This appeal arises out of a motor accident which left the Appellant-claimant severely injured and practically deprived him of all the happiness for the rest of his life and made him a physical wreck. His motor accident claim petition came to be partly allowed by the Motor Accidents Claims Tribunal, Baroda. He had claimed a total compensation of Rs. 1,00,000/- which was a restricted claim. The Tribunal awarded him Rs. 60,900/- with proportionate costs and interest. He has come to this Court by way of the present appeal in search of enhanced damages.

2. At the outset, we may refer to a few relevant facts which have resulted in the present proceedings. On 7.8.1977, the Appellant-claimant while going on his cycle towards Chhani road on the out skirts of the city of Baroda met with a serious vehicular accident when a motor-track belonging to Respondent No. 2 and driven by Respondent No. 1 who has been deleted from the record of this appeal subsequently as he could not be served with the notice of this appeal, came from behind and dashed with and knocked down the Appellant-claimant and practically ran over him. The Appellant was knocked down and was severely injured as he was crushed by the front left wheel of the truck. The accident left him with severe injuries including rupture of urethra. We will have an occasion to refer in detail to the injuries suffered by the claimant in the later part of this

judgment. At present, it is sufficient to note that even though the claimant survived after the accident, his life became miserable and he was reduced to a very unhappy and miserable state of physical existence. At the time of the accident, the Appellant-claimant was aged 26 years and unmarried. He claimed a total compensation of Rs. 1,00,000/- in the motor accident claim petition referred to above. In the said claim petition he joined the driver of the truck and the owner, as original opponent Nos. 1 and 2 and the insurance company which had insured the truck as original opponent No. 3. In the present appeal, the owner of the truck-original opponent No. 2 and the insurance company, original opponent No. 3 are the only Respondents who have remained in the arena of contest. The Appellant-claimant seeks upward revision of damages awarded to him by the Claims Tribunal and as no cross appeal or cross objections are filed by the contesting opponents, we will be concerned in the present case with the award of proper damages to the Appellant and consequently, we will refer to, in our judgment, only that part of the controversy between the parties. The Claims Tribunal has held, on evidence, that the accident was caused solely on account of the rash and negligent driving of the offending truck by the driver and that finding has become final between the parties and hence, we will not deal with the question of negligence any further in the present appeal.

3. In order to appreciate the real nature of controversy between the parties centering round the question of award of proper damages to the injured claimant, it would be necessary for us to high-light the relevant facts which emerge on the record of this case.

(i) Bio-data of the Appellant

4. The Appellant-claimant was aged 26 years at the time when he met with the accident in the evening of 7.8.1977. As revealed by his oral evidence at Exh. 87, he was first hit against his right hand by the truck which came from behind. He fell on the left of the front wheel of the truck and his stomach was crushed by the front wheel of the track and he became unconscious. As deposed to by the Appellant-claimant, he had passed diploma course in automobile engineering. Before that, he had studied up to preuniversity. He was unmarried. At the time of the accident he was working with Mukund Iron and Steel Works from 1.6.1977 and was getting Rs. 300/- per month. His employer removed him from service due to his long absence from duty due to the accident in question.

(ii) Physical condition of the claimant after the accident and medical treatment undergone by the claimant

5. As revealed from the oral evidence of the claimant himself who was examined at Exh. 87 before the Tribunal, after he was run over by the offending truck, he became unconscious. He was admitted to S.S.G. Hospital, Baroda. He was operated upon and given 10 to 12 bottles of blood when he was admitted to S.S.G. Hospital, Baroda on the date of the accident, i.e. 7.8.1977. He was clinically examined by Dr. Govind Narayan Shukla, who was working as Associate

Professor in Surgery and was attached to S.S.G. Hospital and Medical College, Baroda. Dr. Shukla has been examined at Exh 77. He found the following injuries on the claimant and for that, he issued certificate of injuries at Exh 63. The said certificate revealed the injuries suffered by the claimant on account of the accident. They were noted as under:

- (1) Abraded contusion on right side of abdomen with friction burns.
- (2) Abraded contusion of 12? ? 6? on : anterior part of right thigh and in inguinal region.
- (3) C.L.W. of 3" ? 1" at anterior aspect of right thigh at upper third just near injury No. 2.
- (4) Abrasion of 1" ? 1" size above right eye brow at fore-head.
- (5) C.L.W. of 1" ? 1" size at right hand on dorsal aspect just near the thumb.
- (6) Multiple abrasions on dorsum of right hand.
- (7) Contusion and heamatoma on lateral aspect of right thigh near hip joint and pelvis and inability was more on both lower extremities.

The certificate at Exh. 63 further reveals that exploratory and leparatomy was done on 7.8.1977. A retroperitimal heamatoma was found along with public right side and rupture of urethra; Railroad procedure was done by the doctor.

6. Dr. Shukla in his oral evidence at Exh. 77 stated that he performed the operations on the claimant as mentioned in the certificate, Exh. 63. Those operations were performed for two-fold purposes. Firstly to restore the continuity of the urethra if possible and secondly to prevent damage to exclude injury to any other organ-viscera in the abdomen. The doctor performed two operations. By the first operation, he could restore the continuity of the urethra and in the second operation, he did skin-grafting. He used the railroad method to reconstruct the urethra. The catheter was kept in the urethra for about 3 weeks, The catheter in the bladder was kept for about 8 days. There, was total rupture of urethra. It appears that in the first instance, the claimant was hospitalised for 133 days in S.S.G. hospital, immediately after the accident, that is, from 7.8.1977 to 15.12.1977.

7. The claimant's evidence further reveals that after his discharge from the hospital, he went to Madras and he was admitted there at Government General Hospital for IS days. From the case papers of Government hospital Madras which are produced at Exh. 59, it appears that initially the claimant took treatment as outdoor patient at the outdoor patients" department of the Madras General Hospital from 13.1.1978 but from 17.1.1978, he was admitted as indoor patient in Dr. . Chinnaswamy's Urology unit at the Madras Hospital and he seems to have stayed as indoor patient for 15 days thereafter.

8. The claimant's deposition at Exh. 87 further shows that after his aforesaid

initial hospitalisation at Madras, he returned to Baroda and instituted the present motor accident claim petition on 6.2.1978 and thereafter he went back to Madras. He was again hospitalised at the Madras Government Hospital from 3.5.1978, to 6.5.78 i.e. for four days. The relevant case papers issued by the Government hospital in this connection are produced at Exh. 60 and 61 on the record of this case. From these case papers it appears that on 2.6.1978, the claimant was examined once again at Madras Government Hospital and was advised treatment.

9. The claimant's oral evidence further shows that thereafter he returned to Baroda and then in October 1978, he had to take further treatment at S.S.G. Hospital Baroda from 5.10.1978 to 8.10.1978. The case papers pertaining to the said period of treatment of the claimant at S.S.G. hospital at Baroda are at Exh. 62. Exh. 42 shows that the claimant got treatment at the S.S.G. hospital from 5.10.1978 to 8.10.1978. The claimant has deposed that his sexual parts, urethra and other parts of the body, were injured. He developed hernia. He was not able to pass urine in the natural manner. There was continuous dripping of urine. He was using condom. During the day he had to take out the condom 8 to 10 times and to wear it again. His clothes became wet at night. He had to use one condom per day. He had to spend Rs. 50/- per month on washing of clothes and price of condoms. He further deposed before the Tribunal that he was unmarried and he could not enjoy sexual life. He could not get the erection. He could not do any hard work and he could not sit on a chair to work for a long time. He could not sit on the ground nor could he pass stool while standing. The deposition further reveals that his brother looked after him in the S.S.G. hospital. His brother was at Mathura and he came from there to Baroda to attend on the claimant and the brother-in-law of the claimant's brother and his sister came from Madras to look after him. His brother stayed in Baroda for two weeks on the first occasion during the time the claimant was hospitalised in Baroda initially immediately after the accident. The claimant further stated in his evidence that he cannot get job now because he cannot concentrate OH work. The condom sometimes bursts suddenly and he cannot put on the pants. He has to wear the lunging the cross-examination of the claimant, he stated that when he was admitted in the S.S.G. hospital, arrangement for passing urine with a catheter in the bladder and a hole in the abdomen, was made. When he left the hospital, the abdomen tube had been removed and he was passing urine through the penis. He joined the hospital at Madras with the complaint of dripping of urine and for retention of urine at the second time. He was admitted second time at Baroda with the complaint of dripping of urine. He was advised at the time of first discharge from S.S.G. hospital at Baroda and at Madras to use condoms. In further cross-examination, he stated that he had narrated to the doctor at the time of second admission in Baroda hospital about not being in a position to sit, etc. He complained to the doctor at Baroda about the non-erection. He of course stated in his further cross-examination that he had no occasion to attempt sexual intercourse. He further stated in answer to the question in cross-examination

that his employer did not refuse to take him back, but he himself had felt that he would not be able to do any work. He cannot do the supervising work in automobile engineering. He cannot sit at a stretch for One or two

hours. He had not taken any treatment for hernia. He had not attempted to get a job because he believed that he cannot work.

10. Dr. Govind Narayan Shukla was examined by the claimant in the Tribunal. In his evidence, he stated that he had examined the claimant again on 8.10.1978, that is, at the time when the claimant was hospitalised for the second time in S.S.G. hospital at Baroda. At that time, the doctor noticed that continuity of the urethra was maintained but there was no control on the act of urination and secondly the claimant also, complained of impotency. Thirdly, the patient was having difficulty in walking and squatting. The natural passage for Urine had just been restored but it was not working satisfactorily due to damage to soft tissues. The doctor expected no improvement in future. On the contrary, there was apprehension of deterioration because of infection. The doctor further stated that hernia had occurred because of muscular weakness as a result of loss of a part of the Muscle as a result of the accident Dr Shukla further deposed that, the complaint of impotency was likely to be true, but due to this injury, the life span of the claimant was not significantly reduced.

11. Dr. Shukla in his further examination-in-chief stated that the claimant was admitted at the S.S.G. Hospital on 3.1.1979. He was admitted in another unit. He was transferred to his unit on the next day when he complained of difficulty in passing urine and pain in his lower abdomen. The claimant was treated for the complaint and was relieved of the symptoms on the same day. In his cross-examination on behalf of the opponents, Dr. Shukla stated that it was correct that this was a case of fracture of pelvic bone and rupture of urethra with avulsion of the skin of abdominal wall. His first operation included, as a part of it, supra-pubic cystotomy which means, making a hole in the urinary bladder and draining the bladder outside. At that time, he passed a tube through the urethra into the bladder with the help of instruments to restore deposed. The claimant suffered difficulties actual stage. Thus, 1978. November examination-in-chief examined first Shukla Dr. Tribunal. before started already petition claim accident motor trial Baroda, hospital time third hospitalized when 1979, January noted tissues. soft injury because but dripping, walking, sitting difficulty done. Dilatation urine. pass inability retention, complained time, At 6.1.1979. 3.1.1979 again once stated hospital, hospitalisation period Regarding foolproof. test matter subjective purely course doctor impotency. addition admission, second admission. during throughout treatment Hospital S.S.G. re-admitted trouble same alternative. an condom use advised He discharged. dripping continuously removed. abdomen through tube urination act over control working passage discharged further establish method, claimant. adopted method rail-road explained cross-examination wall. abdominal taken bladder inside rile placed Later, urethra. continuity which may> 12. In order to high-light the physical

condition of the claimant after the accident and after he underwent medical treatment and the aforesaid operations as deposed to by Dr. Shukla, the claimant has produced a photograph showing his physical condition. The said photograph is at Ext. 25. The bill issued by the photographer which is produced at Exh. 26 before the Tribunal shows that the photograph of the physical condition of the claimant was taken on 8.10.1978. A mere look at the photograph Exh. 26 shows the grievous nature of the injuries suffered by the claimant and which had lingered on even in October 1978 about one year and two months after the accident.

13. In the background of the aforesaid evidence which has been brought on the record of this case, we have to consider the question regarding assessment of proper damages which should be awarded to the injured claimant in the present case. The injured claimant originally claimed a total compensation of Rs. 60,000/- when he filed his claim petition on 6.2.1978 before the Claims Tribunal at Baroda. But subsequently, by application, Exh. 65, the claim was revised upward with the permission of the Tribunal and the claim was so revised upto Rs. 1,00,000/-. The details of the revised claim read as under:

- (a) Mental shock and suffering Rs. 15,000.00
 - (b) Loss of earning in present and in future Rs. 30,000.00
 - (c) Medical expenses Rs. 8,000.00
 - (d) Loss of enjoyment of sex due to cut of urine passage Rs. 47,000.00
- Total Rs. 1,00,000.00

It is necessary to note at this stage that original opponents 1 and 2 in the claim petition viz., the driver and the owner of the offending truck did not appear before the Tribunal to contest the proceedings and the proceedings went ex-parte against them. The contest was offered only by the insurance company that is original opponent No. 3, present Respondent No. 3.

14. The insurance company by its written statement Exh. 22 contended that there was no rashness and negligence on the part of the driver of the truck and it denied that the claimant had suffered any permanent injury and that he was entitled to any large compensation. By additional written statement Exh. 76 to the amended claim, the insurance company contended that it was not true that the claimant was not able to work or that he had become impotent or that he was entitled to claim compensation of Rs. 1,00,000/-.

15. As stated earlier, the Claims Tribunal came to the conclusion that the accident in question was caused on account of the rash and negligent driving of the offending truck by its driver. On the quantum of compensation, the Claims Tribunal awarded various amounts under different heads as under:

For pain and suffering and loss of enjoyment and amenities of life Rs. 25,000.00

Loss of income upto January 1978 Rs. 1,500.00

Loss of income upto January 1977 Rs. 2,400.00

Future pecuniary loss Rs. 27,00,000

Out of pocket expenses Total Rs. Rs. 5,000.00 60,900.00

The present appeal of the claimant seeks enhanced damages to the tune of Rs. 39,100/- so as to make up the total claim of Rs. 1,00,000/-.

16. We may now proceed to deal with the main contentions raised on behalf of the Appellant-claimant by his learned advocate Mr. Shah. It was submitted that the Claims Tribunal had not properly appreciated the extent of the severe injuries suffered by the claimant and the miserable state of health in which he was left thereafter and hence claim of Rs. 25,000/- for pain, shock and suffering was grossly inadequate. It was further contended that the award of Rs. 27,000/- for future economic loss was equally grossly inadequate. In this connection, it was further submitted that the Claims Tribunal had totally ignored the aspect of positive economic loss which had to be borne by the claimant on account of the accident for the rest of his life. It was submitted by Mr. Shah on behalf of the claimant that on proper assessment of injuries, the claimant was entitled to a much higher compensation as compared to the restricted claim of Rs. 1,00,000/- and that the restricted claim was in any case required to be fully granted.

17. As already stated above, the driver of the truck and the insured-owner of the truck have not contested these proceedings from the very inception before the Tribunal. The only contesting party was the insurance company which was original opponent No. 3 which is Respondent No. 3 before us. Strictly speaking, the insurance company cannot have full audience before us and would be limited to defences u/s 96(2) of the Motor Vehicles Act. However, we have taken the assistance of the learned advocate of the insurance company Mr. SB. Vakil on the relevant aspects of the case.

(iii) Claim for damages for pain, shock and suffering and loss of amenities and enjoyment of life.

18. In order to assess proper damages payable to the injured claimant under this head, it is necessary to keep in view the settled legal position. In the case of Babu Mansa Vs. The Ahmedabad Municipal Corporation and Others, a Division Bench of this Court consisting of my learned brother and M.K. Shah, J., had to consider the bracket of damages payable for pain and suffering and loss of amenities and enjoyment of life in case of a young injured boy aged 15 who had suffered several physical handicaps. In that case, the injured boy had suffered multiple injuries in the course of the accident. His right leg was fractured. A nail was inserted into his right leg. Even after the period of one year and 8 months from the date of the accident after effects of the injuries on the right leg had subsisted. The injured was limping on account of shortening of his leg by half centimeter. There was wasting of the thigh and there was also fixed flexion

deformity of hip. Even after such a long period, the injured was able to walk only with the support of a stick. He was not in a position to sit cross legged and could squat only with support. There was also a fracture of the arm and it also left some defect. There was some injury on the right eye-brow and consequential removal of a piece of bone from near the eye-brow. He was unable to open his eye fully. In the light of the aforesaid injuries, this Court, after considering relevant law on the subject, awarded Rs. 15,000/- by way of pain and suffering and loss of amenities and enjoyment of life.

19. In case of *Amul Ramachandra Gandhi v. Abhasbhat Kasambhai Diwan* 1979 A.C.J. 460 (Gujarat) the same Division Bench of this Court had to consider this very question in the light of the injuries suffered by a young boy aged 12 years whose right leg was amputated from above the ankle. It was found in the case of *Amul* that the bones, muscles and tissues of the right foot were crushed. Operation was performed on the same day and the right foot of the Appellant *Amul* was amputated from near the ankle. As a result of the amputation, he was required to use crutches. He had got an artificial leg prepared at Poona which he used alongwith special shoes while going to the school. It was noticed by this Court that as a result of the amputation of the right leg above ankle, the young boy with whom the court was concerned was required to use crutches. He got prepared an artificial leg which he used alongwith special shoes. He had to give up cycling, because of the injuries suffered by him. He could not walk long distance at a time. He had to give up many pleasures and amenities of life. He had to seek support from outside agency even in regard to his day to day pursuits of life. In the light of the sufferings of the boy, this Court observed in the aforesaid decision that when our own court had awarded in the year 1971 a sum of Rs. 17,500/- for the loss of limb in the case of a young girl aged about 11 and also in the case of an adult aged about 39, the court was of the opinion that an award in the sum of Rs. 25,000/- under this head would be just and proper in the case before them and it was held that this was the bracket of damages into which this kind of injury would currently fall. It is necessary to note that claimant *Amul* in the aforesaid decision had suffered amputation of one leg at a portion above the ankle.

20. In the case of *Mahomed Hanif Dallu v. Lunkaran Ganpatram Sharma* 1980 A.C.J. 333 (Gujarat) decided by a Division Bench of this Court consisting of B.K. Mehta, J. and myself, we had again to consider the question of award of damages under the head of pain, shock and suffering caused to a young injured claimant who had both of his legs amputated on account of the accidental injuries. In that judgment, we noted the fact that in case of amputation of one leg, this Court in *Amul's* case 1979 A.C.J. 460 (Gujarat) had awarded Rs. 25,000/- to the injured claimant by way of pain, shock and suffering on account of loss of one leg above ankle. In *Mahomed's* case 1980 A.C.J. 333 (Gujarat) the injured victim had both his legs amputated above the knee joint. Keeping in view the decision of this Court in *Amul's* case 1979 A.C.J. 460 (Gujarat) and in *Mahomed's* case 1980 A.C.J. 333 (Gujarat), we awarded total damages of Rs.

35,000/- under the head of pain, shock and suffering.

21. We may now notice a different set of cases in which this Court, considering the gravity of the injuries suffered by the claimants, in the background of prolonged hospitalisation, thought fit to award different amounts of damages under the head of pain, shock and suffering caused to the concerned claimants. When they had not suffered any loss of limbs.

22. In the case of Bhaskarbai Khandubhai Desa Vs. Remanial Nathubhai Patel and Others, decided by a Division Bench of this Court consisting of my learned brother sitting with M.K. Shah, J. the court had to consider the extent of pain, shock and suffering suffered by the victim who was a young boy aged about 12 years who got knocked down by a motor truck which came from behind. As a result of the accident, the victim in that case, was sandwiched between the vehicle and the milestone which stood by the side of the road and the result was that his legs were crushed. The victim was taken to the Civil Hospital, Surat for treatment. He was hospitalised from 10.10.1974 to 23.10.1974. He was then removed to V.S. Hospital at Ahmedabad where he was admitted on 24.10.1974. He was confined to the hospital upto 12.3.1975. He was once again admitted in the V.S. Hospital, Ahmedabad on 15.4.1975 and discharged on 10.10.1975. There was a further period of confinement in the same hospital from 27.11.1975 to 13.1.1976. On 21.2.1976, he was again admitted in the same hospital and he was in the hospital on 6.3.1976 on which date Dr. MM. Desai, an Orthopedic Surgeon under whose treatment the claimant was all throughout the period of hospitalisation at Ahmedabad, gave evidence at the trial. In the background of the injuries suffered by the claimant on both of his legs and the prolonged period of hospitalisation and the agony which the claimant suffered all throughout his life after the accident, this, court came to the conclusion that an award of Rs. 22,500/- would represent bracket of damages in which this kind of injury involving two vital limbs would currently fall.

23. We may now turn to two later judgments of this Court to which my learned brother was a party and wherein a Division Bench of this Court had to consider the question of award of proper damages by way of pain, shock and suffering and inconvenience in life suffered by the victims who had suffered from entirely different types of injuries which fall in distinct categories. In Ahmedabad Municipal Corporation v. Niranjana Ambalal atel 1981 A.C.J. 53 (Gujarat), decided by my learned brother sitting with R.C. Mankad, J. on March 18, 19 and 20, 1980, the victims of the accident had suffered different types of injuries on account of the vehicular accident in which they were involved. The two injured claimants in the aforesaid case were young men who were travelling in a rickshaw at the relevant time when the said rickshaw collided with a municipal bus. The accident left severe injuries on both the victims. So far as claimant Niranjana was concerned) he was aged 21 at the time of the accident. The injury which he had suffered was a fracture of the right femur. The injury had left a permanent handicap. Even at the date of the trial, he had a limping gait and

difficulty in squatting and sitting cross-legged. He could not walk without the aid of a stick. Even with the aid of a stick, he could walk slowly and for a very short distance. The pain in the leg persisted. There was tenderness in the region of the right greater trochanter. A nail had to be inserted at the site of the fracture. Although there was slight variation in the degree of disability suffered by the injured person as compared to injured Babu Mansa whose injuries have been considered earlier by us while we dealt with the case of Babu Mansa Vs. The Ahmedabad Municipal Corporation and Others, , this Court in Niranjana's case 1981 A.C.J. 53 (Gujarat) observed that the disability was still readily identifiable and the severity of the injuries were comparable and therefore, the damages awardable to him would fall in the same bracket as in Babu Mansa Vs. The Ahmedabad Municipal Corporation and Others, . While coming to that conclusion, the court observed that it would be justified in awarding a sum of Rs. 15,000/- to injured Niranjana although his injuries were slightly different as compared to those suffered by Babu Mansa and in that connection, the court kept in view the consumer price index numbers for industrial workers all India general index which disclosed farther fall in the purchasing power of rupee between the date of the decision in Babu Mansa Vs. The Ahmedabad Municipal Corporation and Others, and the decision in Niranjana's case 1978 A.C.J. 53 (Gujarat). In that connection, it was observed that fall in the value of money itself would justify an award of Rs. 15,000/- under the head for the injury suffered by Niranjana even assuming that there was a slight difference between the severity of injuries in the two cases. It was observed that indeed, this was the bracket of damages in which this kind of injury will currently fall in similar cases, meaning thereby at the time when the court was called upon to assess the damages awardable to such injured claimant as in Niranjana's case 1981 A.C.J. 53 (Gujarat). This clearly shows that even though a given injury may fall in more or less the same bracket, the passage of time which elapsed between the earlier award of damages for such injuries and the time when the court is called upon to assess such damages subsequently, will have a direct impact on the evaluation of proper damages under such heads of damages, especially in the background of a further fall in the purchasing power of money.

24. In the aforesaid decision, the court had also to consider the question of awarding proper damages under the head of pain, shock and suffering for victim Bharat who was a co-passenger with Niranjana in the rickshaw which met with the accident. So far as victim Bharat was concerned, he had suffered graver injuries and they had left a more severe impact on him. While dealing with the question, the court noted that victim Bharat had lost vision of one eye and had also suffered brain damage on account of the unfortunate accident. In such type of injuries, the pain, shock and suffering caused to the concerned victim would naturally be on higher side. In the background of the aforesaid severe injuries suffered by victim Bharat, my learned brother speaking for the Division Bench observed as under:

It requires to be emphasised at the outset that injuries resulting in loss of eye/

eyes or total or partial loss of eyesight stand in a category by themselves. Injuries which result in loss or partial loss of sense or faculty are not comparable with injuries involving loss of limb. It is true that when a man loses an eye, in normal circumstances, once he accustoms himself to mono" vision, he does not suffer any great inconvenience. But one of the factors (and a most important factor) which must be taken into account in assessing damages is that if by chance he loses the remaining eye, he becomes stone-blind and is prevented from earning his living or greatly hindered in doing so and loses much of the pleasure of life.

In the aforesaid decision, an earlier English judgment of Queen's Bench in *Quinn v. J.W. Green (Painters) Ltd.* (1966) 1 Q.B. 509 was noted wherein for loss of one eye, proper compensation under the head of pain and suffering was found to be awardable between ? 2,000 and ? 3,000. In this connection, it was observed by this Court that the aforesaid indication regarding the bracket of damages current in 1965 cannot obviously reflect the later trend of awards in England for the loss of sight in one eye-Emerging pattern in the comparable awards all spread over time in England showed a rising trend. In that connection, it was noted that in England, damages are awarded on a very high and liberal scale in cases of loss of sense or faculty such as loss of one eye or vision in one eye and for total blindness resulting from accident. It was further observed that conversion from one currency into another may not be strictly relevant in the context of the point under consideration, having regard to the varying conditions in two countries. It might still be mentioned, however, that in terms of the rupee currency, an award in the sum of ? 5,000 for loss of vision in one eye would mean Rs. 90,000/-, taking the exchange ratio of ? 1 = Rs. 18 which is the amount around which the exchange rate usually fluctuates. Taking an over-all view of the severity of the impact caused to victim Bharat by accidental injuries suffered by him, this Court held that award of damages of Rs. 37,500/- under the head of pain, shock and suffering awardable to victim Bharat would be justified.

25. The aforesaid decision of this Court in First Appeal No. 822 of 1974 and group pertained to different types of injuries suffered by injured victims wherein one victim Bharat had suffered loss of vision in one eye.

26. this Court was again concerned with the consideration of the question about awarding of proper damages under the head of pain, shock" and suffering to the victim of a vehicular accident who had suffered multiple injuries including loss of vision in one eye and other severe injuries which included disfigurement of the face, in first appeal No. 619 of 1978 decided by my learned brother sitting with R.C. Mankad, J. on June 26, 1980. Injured victim Ashish who was a young boy aged 7 at the time of the accident, was knocked down by a fast driven motor-cycle which came from behind with excessive speed. The accident left serious injuries on the victim. He lost vision in one eye. In addition thereto, there was some disfigurement of the face on account of the eye-ball of the right eye bulging out of the socket and turning opaque white. It was also found that the

effect of hemiplegia was evident even upto the date of hearing of the appeal before this Court. The Tribunal in that case had awarded Rs. 10,600/- under the head of pain, shock and suffering and Rs. 6,000/- for personal injuries due to loss of right eye. In all, therefore, award of Rs. 16,000/- was made under that head. My learned brother speaking for the Division Bench noted that the victim had two periods of hospitalisation in two different hospitals and the total period of hospitalization was about 3? months. He was unconscious for the first few days and semi-conscious for a few more days thereafter. He suffered intense pain during the period of hospitalization. He underwent three operations. One operation was performed to relieve him of breathing difficulty, whereas the other two were performed in connection with the brain and eye injuries. It was, therefore, found that it was a case of injuries suffered by the claimant which left in their train tragic consequences lasting for the lifetime of the injured. The brain injury had resulted in spastic hemiplegia. There was consequential weakness and loss of coordination of the upper and lower left limbs. It was also found that the gait of the victim was not absolutely normal. The permanent disability assessed by Dr. Vaidya, Orthopaedic Surgeon, who examined the claimant, was fixed at 40% for the left upper limb and 20% for the left lower limb. It was noted that pain, shock and suffering and loss of amenities and enjoyment of life on account of restricted movements, clumsiness, inconvenience, etc. with all these disabilities and limit can well be appreciated, especially in the case of a young boy aged 12. It was noted that this was not the only tragic after-effect of the accident. The brain injury which led to abscess formation in the right eye had resulted in loss of vision and it had brought about disfigurement. These were the permanent and irreversible consequences. The victim's academic career also appeared to have been affected, for, he failed in the examination that he took in the next year after the accident. There was also a complaint about loss of memory. The loss of sight of the eye, which is a tragedy for anyone, had an accentuated effect on the life and career of a young boy. The chances of matrimony were bound to be affected, if not altogether lost. Thus, taking an over all view of the nature of injuries suffered by claimant Ashish, this Court in the aforesaid decision awarded a global amount of Rs. 55,000/- to the injured claimant under the head of pain, shock and suffering and loss of amenities and enjoyment of life resulting from multiple injuries.

27. A resume of the aforesaid decisions of this Court shows that for different types of injuries suffered by the concerned claimants, their claims for compensation under the head of pain, shock and suffering will fall in different brackets. For personal injuries which left permanent pernicious effects on the victim for the rest of the life, damages awarded under the head of pain, shock and suffering would usually be of substantial amount. As observed in *Amul's case* 1979 A.C.J. 460 (Gujarat), not only such awards would be of substantial amount but they were liable to be revised upwards in view of the fall in the value of money. It is in the background of the aforesaid decisions of this Court that the question which has been posed for our consideration has to be resolved. It must

be stated in the fore-front that the peculiar nature of injuries suffered by the victim in the present case does not fall within any of the brackets of injuries with which this Court was concerned in the aforesaid decisions. The nature of injuries suffered by him represents a class by itself and the question of award of proper damages on the head of pain, shock and suffering that such injuries may leave on the victim has arisen really for the first time before us for consideration. No Indian decision on this question was brought to our notice. We, therefore, have to turn our gaze westward across the seas and try to find out as to how English courts under similar circumstances had dealt with the problem. We may reproduce with advantage at this stage different types of awards which the English courts had passed from time to time over years in cases of victims who had suffered similar types of injuries which the victim in the present case had the misfortune to suffer.

Sr.	No.	Year of assessment	Amount of assessment	Age of concerned victim	Essential features of injuries suffered by concerned claimant	Remarks
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1.	1952	?	2250/-	Yrs. 41	In the case of Atkinson v. Ministry of Supply, Court of Appeal, July 22, 1952), the injured victim aged 41 suffered accidental injuries resulting in traumatic stricture of urethra, became unable to urinate normally for some time, became impotent for life. He required periodical treatment for dilating the urethra. General damages awarded by lower court at ? 750/- were increased by the Court of Appeal to ? 2250/-. Vide Munkman on Damages for Personal Injuries and Death 6th Edn. Butter-worths, 1980, p. 189.	
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2.	1968	12500		young boy	In the case of Anon v. Davidson Sunday Times, August 12, 1968 Master Diamond, a Jewish boy got his penis injured during ritual circumcision. He was incapable of sexual intercourse on account of injuries even though he had sexual urges. Vide Kemp and Kemp on the Quantum of Damages, Vol. II by Sweet and Maxwell, 4th Edn. p. 7-552.	
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3.	1970	9000		19 years	In Ravenhill v. A. Helloway and Sons (Croydon) (February 26, 1970. Brudon, J.) A male was run over by a lorry. He had suffered this injury when he was a school boy aged 10 or 11. As a result of the injury, he suffered fractures of pelvis and left hip. He also suffered damages to urethra causing, stricture requiring dilation. There was damage to nerves and blood vessels in pelvic area. He was in hospital for 2 months. He was discharged on crutches. Fractures had healed well but could not run as well and had lost some agility and was liable to back-ache, though latter had been a risk owing to pre-existing pituitary gland condition. He suffered some degree of urinal incontinence. He required periodical Operations to dilate urethra which involved risk of kidney infection. Further operation right mean that dilations might diminish in frequency. There was loss of sexual potency, but there was possibility that he might; recover it and had been a risk that, would have become impotent apart from accident, so that not a case of total impotence. Ability to enjoy life and, earning	
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capacity impaired. -do-p. 7-553.

4. 1972 ? 8500 34 The Court of Appeal in England in the case of *Scoins v. Tucker and White* 1972 C.A. No. 96: March 23, 1972 considered the question whether the award of damages to the tune of ?8500 for pain, shock and suffering and loss of amenities and enjoyment of life of the injured victim was required to be reduced. The victim suffered a crush injury of his lower limbs and pelvis with a fracture dislocation of the pelvis accompanied by ruptures of the bladder and a rupture of urethra. X-ray films showed that there was dislocation of the right hemi-pelvis with fractures of the body of the pubis and a wide disruption of the pubic symphysis. The bladder was badly ruptured in two places, in one place there was a wound which could be measured by the insertion of three or four fingers, in another there was a wound about the width of one finger. Rupture of the urethra was more or less in one place complete; it took a long time to repair. There was also found to be very considerable soft tissue damage along the right leg and a certain amount of damage to both knees. These injuries were all accompanied by some damage to right Achilles tendon which was later repaired by operative treatment-It was also found that unfortunately as a result of his injuries, the injured had become impotent. In that connection, it was observed by Davies, L.J. in the aforesaid judgment in the Court of Appeal. "Whether or not he would want to have more children, he has been deprived of the opportunity of enjoying the society of his wife in that regard." It was further observed: There is this very severe injury to the pelvis and the hip. There is shortening of the right leg by an inch to an inch and a half and he limps-Finally, there is this matter of impotence* It does seem to me that this is in many respects a most serious injury, much more serious really Vide Kemp A Kemp on the Quantum of Damages, Vol. 11, by Sweet and Maxwell, 4th Edn. p.8-20 5.

than the loss of a limb, because if the limb is successfully and properly amputated then, all being well, despite the handicap under which the- patient labours he very likely will be free from pain. That is, I think, one of the most serious features of this case". Having noted the above severe injuries suffered by the victim, it was observed that the award of ?8500 as damages for pain, shock and suffering was not a penny too much. Indeed it was on the low side as a total of the damage for the injuries which the victim had suffered. The other learned Judges Phillimore and Roskill, L.JJ. agreed with Davies, L.J. (Emphasis supplied).

5. 1973 ?7500 26 In *Horqn v. John Laing and Sons Limited*. The Court of Appeal in England had to consider this very question. Davies, L.J. observed that this was an extremely difficult case. The victim was a young man of 26 years at the relevant time in the bloom of youth, when damage was caused crushing his pelvis. Few months before accident, he had married to a lady aged 28. During the short period between the marriage and the accident, the family lived happily together. The injuries suffered by the victim on account of the accident for which he was hospitalised for 8 weeks and did undergo treatment, resulted in very painful after-effect to the victim. For the first three weeks, he had catheter into

his bladder. There was damage to his posterior urethra which caused the greatest trouble and probably led to his impotence. He had to have dilation under a general anesthetic for that condition. As a result of the accident, his social activities were affected. He had no trouble at all with walking or anything of that kind. The trouble was this impotence, which had had a disastrous effect on the marriage as one would expect. In that connection, it was observed that a young man of 26 at the time of the accident will never be able to have sexual intercourse, according to the doctors. He will never be able to have a child of his own, of course. His marriage had broken and the break-down of the marriage was directly due to the accident that had befallen the injured victim. His marriage was likely to be dissolved and he had no prospect of marrying and getting a wife again unless he were to find a woman who would be prepared to accept him in his present condition. Under the circumstances, it was observed that it was inevitable that his mental state must be gravely affected. It was found that the victim was unable to get erection, but he had sexual desire. That must be most frustrating Under these circumstances, ? 7500 were held to be proper general damages under the head of pain, shock and suffering which can be awarded to the victim. Vide Kemp and Kemp on the Quantum of Damages, Vol-II by Sweet and Maxwell, 4th Edn. p. 7-701.

6. 1975 9000 37 In the case of Fishburn v. C.J.R. Products Ltd., Court of Appeal in England had to consider the case of a married man aged 37 and having 7 children. As a result of the accident, he suffered from time to time an infection which created serious swelling of the epididymis, the posterior part of the testicles. That swelling was painful and temporarily disabling. It was notoriously and extremely difficult condition to eradicate. In addition, as a result of the accident, the victim suffered from back-ache, he had difficulty in relation to the frequency of passing urine, he had problems in relation to sexual intercourse and difficulty in climbing. On medical examination in April 1974, about a month before the trial the victim still complained of aching discomfort in his testicles and pain on intercourse. The trial court had awarded ? 9,000/- by way of general damages for pain and suffering. The Court of Appeal refused to interfere and held that it was not excessive. Vide Kemp A Kemp on Quantum of Damages, Vol. II by Sweet and Maxwell, 4th Edn. p. 7-821.

7. 1977 11000 Not noticed In the case of Cuasto v. Robinson (1977) Times 23rd November the man had suffered 50% loss of sex function. Vide Munkman on Damages for Personal Injuries and Death 6th Edn. Butter-worths, p. 189.

The aforesaid table of various awards passed and/or confirmed by the Court of Appeal in England from time to time show a rising trend of damages awardable to the concerned claimants on account of loss of sex functions and impotence which would bring about consequential inconvenience in life and paint shock and suffering.

28. We have also a case noted in Kemp and Kemp wherein in 1959, award of ? 3,000 was made in the case of Giblin v. Sir Robert McAlpine and Sons July 27,

1959 by Glyn-Jones, J., when a male aged 45 suffered from fracture of pelvis and damage to urethra which was severe. The victim had to undergo long and painful treatment. He was 11 weeks in hospital and unable to return to work for 13 months. Because of the nature of injury and painful treatment, damages were higher than usual. The aforesaid case has been noted in Kemp and Kemp, Vol. II, Sweet and Maxwell, 1975, p. 971.

29. A resume of the aforesaid awards of English courts leaves no room for doubt that accidental injuries which leave serious effects on the victims who lose partially or fully their sex functions are considered as forming a class by themselves and for which a higher rate of damages by way of pain, shock and suffering has to be awarded, than in the case of mere injury or loss of a limb. It can also be observed that from 1952 onwards all throughout over a period of years, the trend in the awards of damages shows an upward rise though in each case, assessment of damages would depend upon the age factor and the impact of the injuries sustained by the concerned victim. The aforesaid analysis shows that the courts in England have raised awards in such cases under the head of non-pecuniary loss by almost five times between 1952 and 1977.

30. It is also seen from the aforesaid details of various awards of English courts pertaining to injuries which form a class by themselves that in case of impotence suffered by a victim of the accident, various amounts ranging from ₹7,500 to ₹11,000 were awarded. In case of severe injury to urethra itself, award of ₹3,000 was held to be proper by way of damages for pain, shock and suffering undergone by the concerned victims. Thus, awards of English Courts in such cases where severe injuries were left on the victim which visited him with impotence as well as injuries to urethra and pelvis, reflect an over-all assessment of damages in the range of ₹12,000 to ₹15,000 upto 1977. As we have already noted above while discussing the case of injured victim Bharat in first appeal No. 822 of 1974 1981 A.C.J. 53 (Gujarat), conversion from one currency to another may not be strictly relevant in the context of the point under consideration having regard to the varying conditions in two countries. Still, however, it may broadly indicate a rising trend in awarding damages in such cases which can be well visualised even while considering the question of granting proper damages to any injured victim who had suffered similar injuries, as in the present case. As the exchange rate of ₹1=Rs. 18/- can be seen to be almost a settled exchange rate, it can well be visualised that the amount of damages awarded by the English courts in such cases which ranged from ₹12,000 to ₹150,00, when converted into Indian currency, would represent a range of Rs. 2,16,000/- (₹12000 × 18) to Rs. 2,70,000/- (₹15000 × 18), though we must again emphasise that they may not be strictly relevant while considering the question of damages in the background of Indian conditions and the purchasing power of Indian rupee. But it appears clear to us that the damages awardable in such cases where the injuries suffered by the victim fall in this special class, have got to be on a substantially higher side as compared to the damages awardable in case of injuries to or loss of limbs. We must also point out that in cases like the present,

where the victim has suffered multiple injuries of very severe nature and who has been reduced to a miserable state of life, assessment of damages under the present head has to be made on an over-all estimate of the scale of pain, suffering and loss of amenities and enjoyment of life on account of the multiple injuries. In other words, an integrated view of the totality of the after effects of the manifold injuries must be taken so as to assess and award a lump-sum compensation for the pain and suffering, past, present and future and for the lost pleasures and enjoyment of life. It would not be proper to individually assess damages under this head qua each injury and then to aggregate the same and make a cumulative award under this head. There is a great risk of duplication in segregating and separately assessing compensation for the pain and suffering and loss of amenities and enjoyment flowing out of each injury. Only a total or overall view can insulate against overlapping. It would be permissible, indeed necessary, in some cases, however, to view each injury and to assess the consequential deprivation and then to estimate the totality of suffering, pain and lost pleasures and comforts of life to arrive at a just compensation (vide in the case of injured Ashish, in First Appeal No. 619 of 1978).

31. In the background of the aforesaid legal position, we have to consider the question about awarding proper damages to the Appellant-claimant. To recapitulate, the Appellant, on account of the injuries caused to him, had suffered severe pain as his abdomen was crushed under the wheel of the truck. He had abraded contusion on the right side of abdomen with friction burns, as well as on the anterior part of the right thigh. He had two contused lacerated wounds on the right thigh and right hand and abrasion over the right eyebrow and multiple abrasion on the right hand. As the certificate of injuries, Exh. 63 shows, the injuries were of very severe nature. As deposed to by Dr. Shukla, the urethra of the claimant was totally ruptured. He had twice been operated at the S.S.G. Hospital at Baroda when he was first admitted as indoor patient after the accident. Skin grafting had also to be done and rail-road method had to be resorted to, to reconstruct his urethra. Catheter was kept in the bladder for 8 days. The patient had difficulty in walking and he was suffering from continuous dripping of urine. His soft tissues were damaged and no improvement could be expected in his condition. On the contrary, deterioration in his condition was apprehended. Hernia had also developed as after-effect of the accidental injuries. The evidence to which we have made a detailed reference earlier shows that thrice the claimant had to be hospitalised in S.S.G. Hospital at Baroda and the last hospitalisation was just at the time when deposition of the claimant before the Tribunal was recorded in January 1979 itself. He was twice hospitalised at Madras. As deposed to by Dr. Shukla, even in January 1979, at the time of the trial and a few days prior to recording of the evidence of the claimant, he had examined the claimant who had complained of retention and inability to pass urine and dilation had to be done even at that time and the patient had suffered from difficulty in sitting and walking not because of the dripping but due to injury to soft tissues. This shows the extent of suffering undergone by the claimant. As

the claimant had deposed before the Tribunal, during his hospitalisation at the S.S.G. Hospital at Baroda for the first time, he was given 10 to 12 bottles of blood; that he was removed to the hospital in unconscious state, that after the accident, he was not able to pass urine in natural manner and continued to suffer from dripping urine and he had to use condoms. During day time, he had to take out condom 8 to 10 times and to wear it again. His clothes used to get wet during night time. Condom some times burst suddenly. He cannot put on pants and had to wear lungi. The inconvenience, hardship and shock suffered by the claimant on account of the aforesaid inconveniences and hardships can be well imagined.

32. Added to all these difficulties of pain and suffering was the most severe injury visited upon the claimant viz. loss of sexual power. The claimant has in terms deposed before the Tribunal at Exh. 87 that he is not able to pass urine in natural manner and that he does not get erection and he cannot enjoy sex life. The only cross-examination offered to the aforesaid evidence of the witness was to the effect that he had no occasion to attempt sexual intercourse. It goes without saying that it may be so as he was unmarried. But that does not mean that what he says on oath regarding physical state of his condition so far as this aspect of the matter was concerned must be dubbed as untrue. It does not stand the test of probability that the injured claimant who was a young unmarried man would make a damning admission against his own interest which would brand him as impotent for the rest of his life only for the sake of a few thousand rupees of compensation. We must observe at this stage that even the Tribunal has held that the case of the claimant that he was rendered impotent may be true. But the only difficulty which the Tribunal felt was that though the medical evidence does not negative the plea of the claimant that he had become impotent and that may be true, there was no conclusive evidence on this point. With respect, it is difficult to appreciate what conclusive evidence can be there in such a case, save and except the unshaken testimony on oath by the claimant who has suffered such physical handicap and which testimony has well stood the test of probability. It is necessary to recall at this stage the evidence of Dr. Shukla who stated on oath that when the patient was examined by him for the second time in October 1978, he complained of impotence; that he expected no improvement in future in the physical condition of the patient and the complaint of the Appellant of his impotence was likely to be true though it would not significantly reduce the span of his life. This was much worse for the claimant as his suffering and hardship would continue for the remaining long span of life and he would continue to lead a miserable existence for the rest of his life. The accident had reduced him to a miserable state with no prospect of a married life. He would have to live a socially isolated life with no chance of progeny. It is pertinent to note that if the grievance about impotence was a pure after-thought on the part of the claimant, he would never have complained about the same to the doctor in October 1978, who would have in all probabilities, on clinical examination, verified the truth of the said complaint. The aforesaid conduct of the claimant in

making a complaint about impotence before the doctor in October, 1978 clearly shows that he had felt this genuine handicap and he wanted some relief from the doctor on that account. As deposed to by Dr. Shukla, the complaint was likely to be true and no improvement may be expected in future in the physical state of the claimant. We therefore, find that the claimant has clearly established that the unfortunate accident had reduced him to a state of impotency which would linger on till the last breath of his life. The pain, shock and suffering and mental and physical agony which the claimant will suffer on account of such an injury can be well appreciated and visualised. No amount of money can afford any real compensation for such type of miserable state of health in which the claimant has been left on account of this unfortunate accident. Apart from impotency, he has suffered multiple injuries on vital parts of the body which had required for him prolonged hospitalisation more than once at Baroda as well as at Madras. These grievous injuries suffered by the claimant have reduced his life to a shadow of its original self. It is easy to visualise the extent of suffering of a young unmarried man like the claimant who, because of the accident, is now destined to live a solitary forlorn and sordid life, as his future marriage prospects are totally ruined. We can also well realise the social inhibition and stigma which may be suffered by the claimant who will have to drag on the rest of his solitary life being widely known as an impotent person. No amount of monetary compensation can alleviate the mental anguish and physical torture which the claimant is doomed to suffer for the rest of his life on account of the injuries inflicted on him by the tortfeasor. He has been practically relegated to suffer solitary confinement with a shattered and battered body with most of the future pleasures of life snuffed out. The claimant is left with a totally defunct life which is worse than death and which resembles an empty-egg-shell with its contents taken out. Considering the totality of the impact of all these injuries and their after-effects, we deem it fit to award him by way of global assessment, an amount of Rs. 75,000/- as damages under the head of pain, shock and suffering and loss of amenities and enjoyment of life, instead of Rs. 25,000/- as awarded by the Tribunal. To say the least, it would be the most conservative and modest amount which can currently be awarded to the claimant, for the type of injuries suffered by him.

33. This takes us to the second head of damages, viz. economic loss. As already stated by us, the Tribunal has awarded to the claimant Rs. 27,000/- by way of future pecuniary loss. Mr. Shah, learned advocate for the claimant made various grievances regarding assessment of the Tribunal on this head. He submitted that because of the unfortunate physical condition in which the claimant was left on account of the accident, it was impossible for him to carry on any effective avocation in life and he was left a totally miserable unemployed creature. In that connection, Mr. Shah invited our attention to the evidence of Dr. Shukla, Exh. 77 who has in terms stated that no improvement in future can be expected and on the contrary deterioration in the condition of the patient was apprehended.

34. Mr. Shah also invited our attention to the deposition of the Appellant at Exh.

87 wherein he had stated that prior to the accident, he was earning Rs. 300/- per month from Mukund Iron and Steel Works, Baroda and his employer relieved him due to his long absence on account of the accident. The claimant had further stated in his evidence that he was not able to pass urine in natural manner there was continuous dripping of urine and he had to use condom which some times burst suddenly. He cannot put on pants and he had to wear lungi. Mr. Shah also invited our attention to the evidence of Dr. Shukla who had stated that even in January, 1979 when he examined him, the claimant had difficulty in sitting and walking because of injuries of soft tissues. Under these circumstances, the evidence of the claimant that he was totally unemployed and could not work deserves to be accepted according to Mr. Shah. Now, in this connection, we must note that in cross-examination of the claimant, it has been brought out that the claimant's employer had not refused him work, but he did not rejoin the service, because he was not able to work. He could not sit at a stretch for one or two hours and that he had not attempted to get a job because he believed that he could not work. Looking to the nature of injuries which the claimant had suffered and after-effects which were left by them on him and to which we have made a detailed reference in the earlier part of this judgment, no doubt is left in our mind that the claimant had suffered such hardship, inconvenience and difficulties in life and was in such a physical state of health that it would be well-nigh impossible for him to pursue any useful avocation in life and his life had become totally miserable. For the claimant who had continuous dripping of urine and who had to use condom which was likely to burst at any time and who cannot put on pants, it would be too much to expect that he would be able to carry on any effective job in any concern. We, therefore, accept the evidence of the claimant when he stated that on account of his physical condition, he was not able to work at all upto the date of the trial. The aforesaid is the state of record upto the stage of the trial and his physical condition upto the state of trial is well borne out from the evidence of Dr. Shukla. We may have to keep in view the fact that as the injuries suffered by him were not likely to improve in future as deposed to by Dr. Shukla and were likely to deteriorate on the other hand, it can well be visualised that such a claimant would not be able to do any effective work during the rest of his life.

35. It is, therefore, apparent that the claimant has suffered an actual loss of atleast Rs. 300/- per month on account of the injuries suffered by him in the accident.

36. Even apart from that, it is clear that the injured-claimant was aged 26 at the time of the accident and at the time of the trial, he was about 28 years of age. The span of his future working life, therefore, would have been atleast 30 years more had he not met with the accident. He had obtained diploma of automobile engineering and had studied upto pre-university. Thus, he was a technical hand and even though he may not have very high academic qualification, he would have certainly carried out his work as automobile engineer during the long span of rest of his life if he had been left with capacity to work and earn which

unfortunately was lost by him on account of the accident. Before the accident, he had taken up his job from 1.6.1977. Thus, he had put in only two months of service before his earning capacity was nipped in the bud by the accident. It is, therefore, not unreasonable to presume that if he had not met with the accident, he; would have gone on to earn by way of monthly emolument not only Rs. 300/- which he was actually receiving immediately before the accident, but he would have reasonably reached the capacity to earn at least Rs. 750/- per month at the fag end of his entire working career which was likely to stretch over 30 more years. However, this prospective rise in earnings from Rs. 300/- per month to Rs. 750/- per month over an entire period of 30 years would bring in its wake many imponderables. On one side is the possibility that he would have reached a much more higher capacity to earn being a technical and experienced hand who on gaining more experience and expertise in the line of automobile engineering would have reached a position where he would have dictated his terms. On the other hand is the possibility that he may have been thrown out of employment for one reason or the other beyond his control like sudden grave illness or accidental death or diverse other imponderables. However, it will not be unreasonable to hold that his potential earnings even on a most conservative estimate could have ranged from Rs. 300/- per month to Rs. 750/- per month during the entire span of his future career if he had been able to work with full efficiency and if he had not met with the accident in question. Even on that basis, on an average, even keeping in view many imponderables like his losing availability of avenues of employment or his getting ill or invalid for any reason or his giving up job, we can safely estimate on an average the monthly emoluments of Rs. 450/- which the claimant would stand to lose for a long period of 30 years of his future working life on account of the accidental injuries caused to him. We have already noted above that the claimant had lost Rs. 300/- per month which was an actual pecuniary loss which had accrued to the claimant on account of the accidental injuries. To that may be added at least Rs. 150/- per month which would be future economic loss per month on the basis that the claimant could have otherwise and but for the accident have gone on earning at least Rs. 450/- per month on an average during his entire span of future earning life. Thus, Rs. 300/- per month represents actual future economic loss while Rs. 150/- per month represents substantial loss of his future earning capacity. Accordingly, we can arrive at datum figure of Rs. 450/- per month which was the economic loss which the claimant suffered per month for the rest of his life on account of the accident.

37. We may observe at this stage that while assessing damages for future pecuniary loss, two aspects of the matter have to be kept in view. Pecuniary loss is itself divisible into two categories--one negative and another positive. In the first category falls the deprivation of earnings or other items which would have been received but for the accident and have now been taken away. In the second category is comprised the new positive burden of expenses required to be incurred as a result of the accident. For the assessment under the first sub-head,

an estimate of the probable future earnings had there been no accident and the actual earning power after the accident has to be made and the difference between the two is the loss of earning capacity which will have to be justly compensated. Several factors such as reduced eligibility for employment or loss of chances of favourable employment and loss of career will have to be considered. However, it is not easy to make such an estimate in the case of a young man about whose prospective earning and probable loss one has only to make an estimate often a very rough estimate based purely on guess work. As already noted before, there are several uncertainties and imponderables involved (vide Amul's case 1979 A.C.J. 460 (Gujarat)). Having considered all these aspects of the matter, we have arrived at the figure of Rs. 450/- per month by way of future pecuniary loss which the claimant can be said to have suffered on account of the accidental injuries.

38. The other aspect of the loss is the positive aspect viz, the new positive burden of expenses required to be incurred as a result of the accident, the costs of medical expenses, if any, which the injured person may be required to incur in future and his need of nursing and constant attendance and extra nourishment, if any, have to be taken into account (vide Amul's case 1979 A.C.J. 460 (Gujarat)). Even though the Tribunal has taken a note of the decision of this Court in *Bharat Premjibhai Vs. Municipal Corporation, Ahmedabad and Another*, while assessing the damages on the head of pecuniary loss, the positive aspect of the matter has been lost sight by the Tribunal. Mr. Shah, learned advocate for the Appellant was, therefore justified in making a grievance about it. We have, therefore, to proceed to assess damages on this subhead of positive pecuniary loss. On this aspect, we have the sworn testimony of injured claimant at Exh. 87 who has deposed in para 4 of his examination-in-chief that he developed hernia after the accident and he was not able to pass urine in natural manner. There was continuous dripping of urine. He had to use condom. During the day, he had to take out the condom 8 to 10 times and to wear it again. His clothes became wet during night. So far as this part of his evidence is concerned, there is no cross-examination whatsoever. Under these circumstances, it must be held that the claimant had effectively established his case of the positive economic burden which he had to suffer for all time to come after the accident on account of the injuries suffered by him. It is also pertinent to note that after the accident, the claimant had to suffer prolonged hospitalisation thrice at S.S.G. hospital at Baroda and twice at Government hospital at Madras. In fact, even during the trial and a few days prior to recording of his deposition before the Tribunal, the claimant had to be hospitalised from 3.1.1979 to 6.1.1979. Thus his continuous complaint regarding retention of urine and dripping of urine at different times continued and he had to rush to the hospital time and again for getting treatment. If even at the stage of his evidence before the Tribunal, he was in such physical stage of health that he was required to rush to the hospital time and again for treatment and as Dr. Shukla Exh. 77 has deposed that he expected no improvement in future so far as the difficulties suffered by the claimant on account of the accident were

concerned, it is not unreasonable to presume that the claimant will have to undergo future medical expenses from time to time. Dr. Shukla had noted that hernia had developed on account of muscular weakness and deterioration was likely to occur because of infection. It is, therefore, easy to visualise that the claimant will be required to incur substantial medical expenses even in future. Having taken into consideration all these aspects, it would be quite a modest and reasonable estimate on the part of the claimant when he contended that he had to spend at least Rs. 50/- per month in future. Even keeping aside future medical expenses which the claimant will be incurring as shown by us above, we find that the estimate regarding future expenses at the rate of Rs. 50/- per month cannot be said to be in any way, an over-estimate or exaggeration. On the contrary, it appears to be quite a modest one. Recurring expenses of purchasing condoms and laundry charges on account of wetting of clothes at night can reasonably be in the vicinity of Rs. 50/- per month. This estimate will not reflect future medical expenses, but as the claimant has not led any positive evidence, to show as to what actual medical expenses he will have to incur in future, we do not touch upon that matter any further. In these circumstances, we find that the estimate of Rs. 50/- per month by way of pecuniary expenses which the claimant will have to undergo on account of accidental injuries can be said to be a justifiable estimate on the record of this case. Thus Rs. 50/- per month can safely be taken as positive future economic loss which the claimant will have to suffer till the rest of his life on account of the accident. We have already estimated on the sub-head of negative future economic loss an amount of Rs. 450/-. To this will be added Rs. 50/- by way of positive future economic loss. Thus, we come to a figure of Rs. 500/- per month. That is the datum figure which will show the extent of pecuniary loss which the claimant will suffer month by month during the rest of his life on account of the accidental injuries. The annual figure accordingly works out to Rs. 6,000/- which be available for the purpose of capitalisation. As the claimant was a young man aged 26 when he met with the accident, we can adopt multiplier of 15 for the purpose of capitalising datum figure of Rs. 6,000/- per year. Accordingly, we come to the figure of Rs. 90,000/-. This amount will represent the damages award-able to the claimant under the head of pecuniary loss. The Tribunal, as we have already stated above, assessed the damages under this head at Rs. 27,100/-. This estimate was based on the reasoning that future pecuniary loss of the claimant can be assessed at Rs. 150/- per month or Rs. 1,800/- per year. We have already demonstrated above that the evidence in the present case shows that the aforesaid estimate of the Tribunal is a gross underestimate and the proper datum figure should be worked out to at least Rs. 6,000/- per year. Accordingly, the damages award-able to the claimant on the head of future pecuniary loss will have to be worked out at Rs 90,000/- instead of Rs. 27,000/- as assessed by the Tribunal.

39. So far as actual loss of income is concerned, the Tribunal has assessed Rs. 1,500/- being the loss of income upto January, 1978 and Rs. 2,400/- being loss of income upto January, 1979. Mr. Shah for the Appellant could not point out

from the record of the case anything which required upward revision of the above estimate on the head of actual loss of income. Similarly, the Tribunal has awarded Rs. 5,000/- by way of out of pocket expenses. Nothing has been pointed out to us from the record of this case which required upward revision of this amount. Accordingly, we maintain the assessment of damages on the head of actual loss of income and the out of pocket expenses as made by the Tribunal.

40. The aforesaid discussion shows that the Appellant claimant will be entitled to damages on various heads as under:

For pain, shock, suffering and loss Rs.

of amenities and enjoyment of life 75,000.00

For future pecuniary loss 90,000.00

Loss of income upto January 1978 1,500.00

Loss of income upto January 1979 2,400.00

Out of pocket expenses 5,000.00

1,73,900.00

The Tribunal has already awarded Rs. 60,900/- to the claimant. Deducting this amount from the total damages which we have assessed as above, a net figure of Rs. 1,13,000/- emerges which would have been additionally payable to the claimant. But he has restricted his claim in the present appeal to only Rs. 39,100/-. In his original claim petition before the Tribunal, he had claimed Rs. 1,00,000/- and hence, he cannot get more than that additional amount as claimed by him in the present appeal. Accordingly, the Appellant-claimant will be entitled to an additional amount of damages to the tune of Rs. 39,100/- with 6% interest per annum from the date of the application till payment and with full costs thereon throughout. Accordingly, the first appeal will have to be fully allowed with costs. Before parting with this judgment, we may direct the Respondent-insurance company to deposit in the Tribunal the additionally awarded amount of damages payable to the Appellant together with interest and costs-within a period of eight weeks from today. Out of the amount so deposited, the Tribunal shall invest an amount of Rs. 35,000/- in fixed deposit in any nationalised bank in the name of the Appellant in such a manner that half of the amount, roughly Rs. 18,000/-, shall be so deposited for a period of 63 months and Rs. 17,000/- shall be so invested for a period of 126 months. Deposits in the nationalised bank shall be on condition that the Appellant claimant will not be entitled to withdraw the amounts before their due dates nor will it be open to him to raise any loan against the aforesaid deposits without the permission of the Tribunal and till the deposits mature, the Appellant-claimant will be entitled to receive interest accruing monthly or quarterly. The balance of the amount including costs and interest shall be paid to the Appellant. Orders accordingly.