
(1993) 03 GUJ CK 0017
In the Gujarat High Court

Asmathnarayan

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 10-03-1993

Acts Referred:

Citation : (1994) 2 ACC 582

Hon'ble Judges : V.H. Bhairavia, J;J.N. Bhatt, J

Bench : Division Bench

Judgement

J.N. Bhatt, J.—As both these appeals raise identical and common questions arising out of common judgment and award under the Motor Vehicles Act, 1939 ("the Act" for short), they are being disposed of jointly, by this common judgment.

2. In first Appeal No. 1311 of 1991, the appellants, who are the original opponents, have questioned the legality and validity of the award of Rs. 9,94,040, whereas the appellant in First Appeal No. 1542 of 1991 has invoked the powers of this Court for enhancement of the amount of compensation for the personal injuries, arising out of a road accident. Thus, the appellants in both the appeals have challenged the award and judgment passed in Motor Accident Claims Petition No. 912 of 1986, decided by the Motor Accident Claims Tribunal (Aux.), Ahmedabad ("the Tribunal" for short), on 25.6.1991, whereby, the original claimant/appellant in First Appeal No. 1542 of 1991 is awarded an amount of Rs. 9,94,040 with running interest at the rate of 12% per annum from the date of the application till realisation, with proportionate costs. The parties are hereinafter referred to as they were arraigned before the Tribunal.

3. A resume of the material facts giving rise to the present appeal may be narrated, at this juncture.

4. The accident in question occurred, at about 5 p.m., on 13.7.1986. The claimant, inter alia, contended that on the day of the accident, he was proceeding from his residence to Gandhinagar, on scooter, bearing No. GUI 2095,

and one Mrs. P. Vijayalaxmiben was sitting on the pillion of his scooter. One Mr. Adinarayan Reddy and Mr. Jayantibhai K. Patel were also proceeding towards Gandhinagar side on their scooter in company of the claimant. They desired to go to Gandhinagar from Ahmedabad in search of a rented premises as claimant intended to start a multifunctional Television Set factory, at Gandhinagar. According to the contention of the claimant, he was driving his scooter with moderate speed and was proceeding on the correct side of the road before the accident. However, "according to his further contention, when his scooter reached near Indroda " Circle, at Gandhinagar, at that time, a convoy of military vehicles came from the opposite direction with higher speed. Out of the said convoy, one jeep bearing No. RCL 83 F 2118 of the opponents suddenly came with great speed on the right hand side of the road and in the process of overtaking other vehicles going ahead of it, dashed with the scooter of the claimant, on its front side, with the result, the claimant was thrown off at a distance of 10 ft. from his scooter and so also the pillion rider, culminating into serious and severe injuries to the claimant. The scooter was also badly damaged. Thus, according to the contention of the claimant, the accident occurred on account of the rash and negligent driving on the part of the driver of the jeep of the opponents.

5. The claimant by filing the above petition claimed Rs. 25,00,000 by way of compensation for personal injuries sustained by him on account of the aforesaid vehicular accident, against the opponents, who are the owners of the offending vehicle, with interest and cost.

6. The opponents appeared and resisted the claim petition by filing composite written statement, at Ex. 8, wherein, they, inter alia, contended that the driver of the jeep was not rash and negligent and responsible for the accident. According to their contention, on 13.7.1986, a convoy of Kumaon Regiment under the command of one Major K.M. Kuttappa, had left for internal security duties at about 5 p.m. The jeep involved in the accident was bearing No. RCL 83-F, 2118 and it was in charge of one driver Sepoy Pushkarsing. When the said jeep reached at the distance of 30 to 40 mts. from Indroda Circle, near Gandhinagar, at that time, the scooter driven by the claimant dashed with the jerrican of the jeep. They also contended that the claimant Mr. Sharma was driving the scooter in a rash and negligent manner and there were two persons on the pillion, one lady and one child. They further contended that the speed of the jeep was about 30 Kms. per an hour and the driver of the jeep was over-taking one auto-richshaw going towards Ahmedabad side and at that time the scooter driven by the claimant from the opposite direction came with full speed, dashed with the jerrican kept on the right side of the jeep. It is contended that the jeep did not dash with the scooter but the scooter dashed with the jeep. They also denied the liability to pay the amount of compensation claimed by the claimant.

The parties relied on the following oral evidence:

____ Sr. Name of witness Ex. No. No. _____

____ 1. Ashwat Narayan Shrinivasaiya
Sharma 15 2. Dr. Nandkishore Ramanlal Parikh 196 3. H.U. Iyanger 208 4.
Jayantilal Kanjibhai 207 5. Pushkarsingh Chandrasinh 234 6. Viren Harivadan 211
7. Maheshabhai Prabhashanker Joshi 212 _____

____ The parties also relied on voluminous documentary evidence to which reference may be made at an appropriate stage as and when required hereinafter.

7. Upon appreciation and assessment of the evidence, the Tribunal was pleased to hold that the claimant sustained injuries as a result of the rash and negligent driving of the said military jeep by the original opponent No. 2. The Tribunal also assessed the disablement percentage to the extent of 30% and held that the claimant is entitled to a total amount of Rs. 9,94,040 by way of compensation for personal injuries with interest at the rate of 12% per annum from the date of the application till realisation.

8. Learned Counsel Mr. D.K. Trivedi, while appearing for Union of India has raised following two contentions:

(1) that there is no evidence to prove that the driver of the jeep was rash and negligent and responsible for the accident, and

(2) alternatively, the amount of compensation awarded by the Tribunal is excessive and exorbitant.

The aforesaid two contentions are seriously countenanced and controverted by the learned Counsel Mr. Parikh while appearing for the original claimant and, has also, seriously, contended that the amount of compensation awarded to the claimant is inadequate in the circumstances of the present case. He has also contended that the amount of interest awarded by the Tribunal at the rate of 12% per annum from the/fate of the application till realisation is required to be enhanced to the extent of 15% per annum.

9. At this stage, following admitted facts in connection with the accident may, first of all, be noted:

1. The road where the accident occurred is North-South, i.e., Gandhinagar to Ahmedabad. Gandhinagar is thus situated on the North and Ahmedabad is situated on the South of the said road. It is on National Highway No. 8-C. The Military convoy under the command of Major Kuttappa was proceeding from North to South at the relevant time, meaning thereby, from Gandhinagar to Ahmedabad side on the said highway. It was about 5.30 p.m. on 13.7.1986.

2. The said jeep was in charge of driver Sepoy Pushkarsingh.

3. Vijay Chetak scooter was driven by the claimant in the opposite direction i.e., from South to North at the relevant time.

4. There was a collision between the jeep and the scooter.

5. The said jeep was the last vehicle in the convoy of the military vehicles.
6. The venue of the accident is about 30 to 40 mts. away from the Indroda Circle on that highway.
7. All the vehicles in the row of the convoy had passed but the last vehicle, as aforesaid, the jeep dashed with the scooter resulting into injuries to the claimant and the pillion rider.

It can very well be seen from the aforesaid admitted facts that the area of dispute in so far as the question of rash and negligent driving is concerned, has shrunk down to a very narrow dimension. The factum of the accident and the resultant injuries to the claimant are no longer in controversy. The controversy revolves round the manner and mode in which the accident took place. Both side has tried to throw blame on the other side.

10. The Tribunal, on appreciation of the evidence and after putting into scale the rival versions of the parties, reached to the conclusion that the sole responsibility for the accident was on the part of the driver of the jeep.

11. In order to appreciate the main issue with regard to the rash and negligent driving, it would be expedient to refer to the relevant and material principles governing the amount of compensation based on the tortious liability. There is no dispute about the fact that the entire action for compensation under the Act is founded upon the tort. Therefore, the claimant is obliged to show that the injuries sustained by him are referable to an action of adversory, which is tortious.

12. The question, therefore, would arise as to whether the driver of the jeep/ original opponent No. 2 was, solely, respbnsible for the accident in question or the claimant himself was, fully, responsible or there was any element of contribution for the emergence of the unfortunate road accident, on the part of the claimant.

13. Negligence is required to be established by the claimant so as to succeed in a petition under the Act for compensation. What is negligence? Negligence means, failure to exercise the required degree of care and caution expected of a prudent driver. Negligence is the omission to do something which a reasonable man, guided upon the considerations, which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. Negligence is not always a question of direct evidence; it is an inference to be drawn from proved facts. Negligence is not an absolute term, but is a relative one; it is rather a comparative term. What may be negligence in one case may not be so in another. Where the is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which could be reasonably foreseen to be likely to cause physical injury to persons. The degree of care required, of course, depends upon the facts in each case. What is

negligence depends upon determination of various factors. There are three basic elements of tort (1) an act or omission On the part of the defendant; (2) intention or negligence or the breach of a strict duty on the part of the defendant; and (3) damage, resulting to plaintiff (claimant) from the wrongful act of the, defendant, which is not too remote. In every case, it will be the duty of the plaintiff (claimant) to connect the wrongful act with the damages accruing and show that the defendant was negligent. Needless to mention that the rashness or negligence does not depend only on the speed of the vehicle. Though the speed is one of the elements, that itself is not the decisive factor. The driver is required to drive the vehicle with such a speed and in such a way so that he could in an event of emergency or unforeseen contingency, control his vehicle and avoid the dashing or the accident. So what is emphasised is not the speed of the vehicle but the degree of the care and caution to be applied for better judgment so that in a given situation, the driver of the vehicle can control the vehicle and avert unfortunate road accident. At times, accidents may arise beyond the control of the driver, who is in-charge of the steering for variety of reasons and it is technically known as inevitable accident. Inevitable accident has to be proved by the party which propounds it. It means that the accident which was not possible to be averted even while exercising best judgment and even after applying great care and caution. But it must be shown to the satisfaction of the Tribunal that there was no element of negligence on the part of the driver and the owner of the vehicle in keeping the vehicle road-worthy. It is settled proposition of law that an inevitable accident must be established by the person who asserts it. It may also be mentioned that strict principles with regard to its proof are not insisted upon in a petition under M.V. Act and, therefore, the doctrine, of "res-ipsa-loquitur" has been evolved. It may happen that the claimants or the victims of the unfortunate road accidents or their legal representatives or the dependents are unable to prove the element of rashness and negligence on the part of the driver of the offending vehicle for many reasons can also succeed if the circumstances emerging from the accident show other than direct-rashness or negligence on the part of the driver of the offending vehicle. Therefore, in such a situation, in absence of any other evidence the Tribunal can also apply the doctrine of "res-ipsa-loquitur" and can decide the merits of the compensation. The doctrine of "res-ipsa-loquitur " means "the things speak for themselves". Even in absence of any direct evidence with regard to the unfortunate road accident, the Tribunal, with the application of the doctrine of "res-ipsa-loquitur", can fix the liability of the driver of the offending vehicle. History, purpose and philosophy behind this doctrine being obvious, need not be gone into in greater details at this stage.

14. As stated, hereinbefore, the lack of required degree of care and caution of a prudent driver would be nothing but negligence. Once the rashness or negligence or both having been established, the question would arise as to what just and reasonable amount of compensation should be awarded. Firstly, the claimant is obliged to prove the issue of negligence so as to succeed in a claim petition for

compensation for personal injuries. The Tribunal, upon the appreciation of the evidence on record, reached to the conclusion that the claimant sustained serious injuries as a result of rash and negligent driving of the said motor-jeep by the opponent No. 2. Learned Counsel for the original opponents has, vehemently, contended that looking to the manner and mode and location of the venue of the accident, the entire responsibility ought to be fastened on the shoulder of the claimant himself. In the alternative, he contended that the claimant was contributory negligent.

15. It may be recalled that both the vehicles were proceeding at the relevant time on the day of the accident in the opposite direction. The offending jeep was proceeding from North to South and the scooter of the claimant was proceeding from South to North. Unfortunately, though there were markings dividing the roads there was no divider on the road, as such. The Tribunal has considered all these points. It has considered the evidence of the claimant and also the evidence of the driver of the jeep-Pushkarsingh. The claimant is examined, at Ex. 15 and the driver of the jeep-Pushkarsingh is examined at Ex. 234. After considering all the facts and circumstances and in the light of the evidence on record, the Tribunal found the driver of the jeep, fully, accountable for the unfortunate road accident in question.

16. The question posed before us at this stage is, as to whether the views and the ultimate conclusion of the Tribunal on this point are justified or require modification?

17. It seems to us from the evidence on record of the present case that from South to North, three scooters (if not a convey of scooters) were proceeding on the road and at the same time, a convoy of military vehicles was proceeding from Gandhinagar to Ahmedabad side, that is, North to South, at the relevant time. Panchnama of the venue of the accident is produced, as Ex. 32. The First Information Report in connection with the accident is produced, at Ex. 31. The venue of the accident is about 30 to 40 mts. away from Indroda Circle, on National Highway No. 8-C. The case of the claimant from the inception is that the motor jeep coming from the opposite direction, in an attempt to over-take an auto-rickshaw came more on the wrong side and in that process dashed against his scooter. There is no dispute about the fact that there was a military convoy proceeding from Gandhinagar to Ahmedabad side. There were about 10 to 12 vehicles in a row in the said military convoy which was proceeding towards Ahmedabad side in connection with their duties for helping the civil authorities to control and curbing the communal violence.

18. The claimant was going on the scooter with a pillion rider from the opposite direction and when he reached about 30 to 40 mt. away from Indroda Circle, at that time, the on-coming offending jeep, while, in an attempt to over-take an auto-rickshaw going ahead of it, came more on the wrong side and dashed against the front portion of the scooter. The evidence of the claimant on this score is required to be scrutinised and analysed so as to ascertain as to where

the blame lay.

19. The contention that the driver of heavy vehicle owes more care and duty towards the pedestrians and also the two wheelers cannot, easily, be brushed aside. A person driving a motor vehicle on a Highway must drive the vehicle with reasonable care, strictly observing the traffic regulations and the rules of the road so as not to imperil the safety of other persons, whether they are pedestrians, cyclists or scooterists or others, who have a similar right to use the highway on which he drives the vehicle. Therefore, a person driving a motor vehicle, the jeep car in the instant case, ought to have kept a look out in all directions of the road, on the sides and on the stretch of the road in front of him, more so while overtaking a vehicle going ahead of it. He should always be conscious of the motto "expect the unexpected" and should be apprehensive of a vehicle from the opposite direction. The care expected of a quick running vehicle must commensurate with the situation and condition of the road, he is expected to exercise more care and duty when he is driving a heavy vehicle like jeep car and especially when he is negotiating in the process of over-taking another vehicle going ahead of him. Thus, the care expected of such a driver becomes greater and larger. It is, rightly, contended that the driver of heavy vehicle is bound to take greater care in the management of his vehicle than the other. It is not the speed only which must be adjusted to the circumstances of the case but also the manner and mode in which the vehicle was driver in the impugned situation has also to be taken into account.

20. In an action for negligence, no doubt, the onus lies on the claimant to show that the driver of the offending vehicle was responsible for the accident in question. However, there may be certain circumstances or exceptional cases, wherein, the claimant may not be able to know what precisely led to the unfortunate road mishap. This hardship to the claimant can be avoided by the application of the doctrine of "res-ipsa-loquitur", which is not a principle of law, but a rule of evidence. This doctrine is founded upon the theory that there are certain happenings which do not occur, normally, unless there is negligence. Therefore, in the case of such happenings, the claimant is entitled to rely, as evidence of negligence, upon the mere happening of such accident. Once this doctrine is invoked in a given set of facts, it becomes necessary for the opponents to show that he was not negligent. The true ambit of the doctrine "res-ipsa-loquitur" has been elucidated in *Colvilles Ltd. v. Devine* (1969) 2 All E.R. 53 and *Ludgate v. Lovett* (1969) 2 All E.R. 1257. It may be mentioned that the test, in ascertaining whether the doctrine applies, is also very well laid down in the well known passage in the judgment of Erie, C.J., in *Scott v. London and St. Katherine Docks Co.* (1861-73) All E.R. Rep. 246, which reads as under:

There must be reasonable evidence of negligence. But where the thing is shown to be under the management of the defendant, or his servants, and the accident is such as, in the ordinary course of things, does not happen if those, who have the management, use proper care, it affords reasonable evidence, in the absence

of explanation by the defendants, that the accident arose from want of care.

The doctrine of "res-ipsa-loquitur" can be, successfully, invoked where the facts proved before the Court admit an incident or accident which, ordinarily, does not happen in the usual affairs or management of the vehicle driven. The vehicle has to be driven on the path and in the course of normal driving there is no question of its leaving the path and striking against an oncoming vehicle. The facts and circumstances emerging from the record of the present case, undoubtedly, go to show that the manner and mode and the management with which the offending jeep car was driven at the relevant time was not only negligent but was rash, too. The conclusion of the Tribunal with regard to the happenings of the unfortunate road accident is qualified and is required to be affirmed. The question of contributory negligence on the part of the scooterist also does not find place in the set of proved circumstances emerging from the record of the present case. It would be interesting to refer to the contention of the opponents in para 6 of the written statement, at Ex. 8. It is clearly admitted by the opponents that the driver of the jeep was in the process of over-taking a vehicle going ahead. The contention that the scooter was driven by the claimant in a rash and negligent manner or that he was also contributory responsible for the happening of the unfortunate road accident is not substantiated. The plea raised by the opponents that the scooter was driven at the relevant time in violation of the traffic rules, i.e., by allowing two persons to sit on the pillion, is also not established. Apart from that, assuming that the oncoming vehicle was coming in violation of traffic rules does not in any way dilute or mitigate the degree or caution expected of a prudent driver and more so when he was driving a vehicle like military jeep car.

21. It will be also interesting to note that the defence of the opponents was that the claimant drove his scooter in a rash and negligent manner and came from the opposite direction and hit with the jerrican (petrol tank) on the right side of the jeep. This plea is raised in paragraph 6 of the written statement, at Ex. 8, and also in the evidence. However, it would be appropriate to refer to the pursis filed, at Ex. 250, on 18.9.1990 in this regard on behalf of the opponents. It is contended, inter alia, in the said pursis that on inspection it was found that the jerrican is fitted on the left side of the jeep and it was further stated that it was always fitted on the left side of the vehicles and in the instant case also the jerrican was fitted on the left side of the jeep. This is an inconsistency and this inconsistency has not been explained. It cannot be disputed that admissions in the pleadings are conclusive unless amended. This proposition of law cannot be disputed. Once it was pleaded that the oncoming scooter driven by the claimant came with a speed and dashed on the right side of the vehicle i.e., jerrican, and on the other hand in the said pursis it is admitted that the jerrican is always fitted on the left side of the vehicle and it was as such fitted on the left side of the offending jeep car. Considering the facts and circumstances emerging from the record of the present case it becomes crystal clear that the Tribunal is, fully, justified in finding the opponent No. 2 driver of the offending jeep car-exclusively

responsible for the happening of the unfortunate road accident and this Court is in full agreement with the said finding of the Tribunal. With the result, the contention raised on behalf of the opponents that either the scooterist himself was, fully, responsible or in the alternative he was contributory negligent, is unsustainable. In our opinion, the driver of the offending jeep car failed to exercise due care and caution expected of a prudent driver and he was, fully, responsible for the happening of the road accident in question. Therefore, the finding of the Tribunal on this score is required to be confirmed. It may be mentioned that the contributory negligence is not to be inferred not merely because the scooterist either had no licence or because more persons than the permissible were sitting on the scooter or the two wheeler. The Madhya Pradesh High Court in Sanjay Kumar v. Shokatali 1986 ACJ 957, has held that contributory negligence is not to be inferred merely because the motor cyclist had no licence or because two more persons were sitting on the motor cycle. Even a competent driver may be without licence. In that case the claimant was not having driving licence and it was held that merely because the claimant had no driving licence the jeep driver would not be exonerated. We are in full agreement with this proposition.

22. Next it leads us into the field of the question of quantification of damages. Negligence, thus, having been established, the question of quantification of damages is required to be examined. The Tribunal has awarded a total amount of Rs. 9,94,040 by way of compensation under both the heads, with running interest at the rate of 12% per annum from the date of the application till the date of realisation, the break-up of which is as under:

The Amount The Head Rs. 9,36,000 - for future loss of income Rs. 3,000 - for gratuitous service of attendants Rs. 1,440 - for expenditure of attendants Rs. 20,000 - for medical treatment, etc. Rs. 30,000 - for pain, shock and sufferings. Rs. 3,600 - for damage caused to scooter _____ Rs. 9,94,040 - Total

Both the parties have challenged the quantification of damages, as aforesaid. According to the claimant's contention, the Tribunal has taken a very conservative view and has awarded inadequate amount of compensation against the overall claim of Rs. 25,00,000 whereas, the original opponents Union of India have also assailed the said amount of compensation by contending that it is very excessive and exorbitant.

23. In order to appreciate the merits of the rival versions it would be necessary to refer to the relevant legal settings and the facts emerging from the record.

24. When one person causes harm of any kind to another person, whether it is personal injury or damage to property or financial loss the normal remedy which the law gives is a right to recover damages. Damages are simply a sum of money given as compensation for loss or harm of any kind. The law on the nature of damages has been stated from time to time in somewhat varying terms

by eminent judges. In *Admiralty Comrs v. SS Valeria* (1922) 2 AC 242, at page 248, Viscount Dunedin observed as under:

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

The main anxiety of the Tribunal or Court concerned should be to see that the victims of the road accident or the dependents of the deceased victims, should be placed, as far as possible, in the same pecuniary position as they would have been, had there been no accident. Thus, the amount of compensation to be awarded under the Act is not exemplary or punitive but it is compensatory. The loss which is occasioned or entailed on account of any road accident has to be compensated, as far as possible, in terms of money. This is the fundamental underlying purport with which the amount of compensation is awarded. No doubt, what we assess is the loss occasioned in terms of money and not the value of life or limb, which is otherwise invaluable. Once the human anatomy is shattered or a limb is damaged, on account of road accident, the endeavour of the Tribunal or the Court concerned is to restore, as far as possible, the loss occasioned in terms of money to the victim of the unfortunate road mishap. The amount of compensation is an "award", not a "reward". It should not be taken as a wind-fall or bonanza out of calamity arising in such a situation but should be taken as a measure to recompensate the victims. Damages, no doubt, must be full and adequate. It is, rightly, said that we think of the traditional picture of Justice, holding a pair of scales. Into one scale goes the harm or loss sustained; into the other goes the compensation; and the aim of the law is to make the two balance. It must be noted that damages are awarded in such road accident cases for the purpose of compensation and the rule that compensation is measured by the cost of repair, or restoring the original position—restitution in integrum—is a derivative or secondary rule, which applies only if and so far as the original position can be restored. The law must endeavour to give a fair equivalent in money, so far as money can be equivalent, and in that way "make good" the damage. It is rightly observed by John Munkman in "Damages for personal injuries and death" 9th edition, at page 3, as under:

(i) Damages must be full and adequate. The main principles of the law on compensation for injuries were worked out in the 19th century, when railway accidents were becoming common, and all actions were tried by jury. So the law was set out in directions to the jury, which were clear and simple. Although these cases have an antiquated air, it is still useful to refer to them.

The necessity that damages should be "full" and "adequate" was stressed by the Court of Queen's Bench in *Fair v. London and North Western Ry Co.* (1869) 21 LT 326. In this case the plaintiff was a Clergyman aged 27, earning 250 pounds a year and with good prospects. He was involved in a railway accident and sustained a spinal injury which resulted in paralysis of the lower limbs and

impairment of the senses. The jury awarded to him 5,000 pounds general damages. 5,000 pounds would represent a very large sum in 1869, more than 100,000 pounds to-day. Nevertheless the Court declined to order a new trial on the ground that the damages were excessive.

No doubt, therefore, we are required to take into consideration all the facts and circumstances. Once the damages are assessed it is a process of once for all. Therefore, it must be remembered that the compensation is given not only for the loss and injury which has already occurred, but also for loss and injury which may develop at a future date. Therefore, the Court is required to take into consideration all the facts and facets so as to give compensation as aforesaid in terms of money as the compensation for the resultant harm and injury.

25. At times there may be difficulty in making assessment of the amount of compensation on count of variety of reasons. There are many losses which cannot easily be expressed in monetary terms. However, that by itself should not deter or preclude the Court or concerned Tribunal from making award of damages. Once the negligence is established, the damages must be assessed and awarded. The items of loss for which the damages are given must be considered and must be quantified in terms of money. The assessment of compensation in a given case like the one on hand of personal injuries should be considered in the following heads:

A. Pecuniary loss:

1. expenses caused by the injuries;
2. loss of earning or profits-
 - (a) from the date of accident till the date of trial.
 - (b) prospective loss.
 - (c) incidental expenses

B. Non-pecuniary loss:

1. pain and sufferings;
2. loss of the amenities of life;
3. loss of expectation of life.

Pecuniary loss may also be categorised as negative pecuniary loss and positive pecuniary loss. In the first category would fall deprivation of earnings or other items which would have been received but, for the accident, 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.

26. In a case of personal injuries, the assessment of the damages must consider also the restriction of future earning capacity. The loss of chance of better

employment or prospects should also be examined and assessed. In order to quantify the damages and to award the just and reasonable amount of compensation, the effect on the bodily integrity assumes greater role. It must be remembered that it is incumbent upon the Court to consider as to whether any deprivation, impairment or loss is occasioned on account of the injuries arising out of the use of the vehicle and, if yes, whether it is temporary or permanent and further, if permanent, whether it is total-or partial. The impairment of the body as a whole must be considered and its resultant impact on the earnings or earning capacity so as to award just and reasonable amount of compensation.

27. According to the case of the claimant, he has sustained permanent partial disablement to the extent of 50% in the right lower limb and 10% in the right upper limb. However, the case of the claimant is that on account of the injuries he has sustained permanent partial disablement to the extent of 50% of the body and that should be considered for the purpose of resultant harm and assessment of compensation should be based on that permanent partial disablement extent. The contention of the other side is that the assessment of permanent partial disablement percentage made by the Tribunal at 30% of the overall disablement of the body should be considered while making the assessment. The Tribunal, considering the facts and circumstances and the extent of disablement of 30% of the body of the claimant, as a whole, and reached to the conclusion-that the claimant would have earned an average amount of Rs. 20,000/- per month had there been no accident. The figure of Rs. 20,000/- assessed as an average monthly income of the claimant by the Tribunal is affected to the extent of 30% which is the permanent partial disablement of the body as assessed by the Tribunal and, therefore, the Tribunal reached to the conclusion that the claimant is likely to suffer loss of Rs. 6,000/- per month and, therefore, the Tribunal considered $\text{Rs. } 6,000 \times 12 = \text{Rs. } 72,000/-$ by way of annual loss to the claimant on account of permanent partial disablement. The claimant was 43 years old at the relevant time and, therefore, the Tribunal adopted 13 years" purchase factor. The claimant, therefore, is awarded an amount of $\text{Rs. } 72,000 \times 13 = \text{Rs. } 9,36,000/-$ under the head of loss of prospective earnings. Thus, the Tribunal has firstly awarded an amount of Rs. 9,36,000 to the claimant for future loss of income as can be seen from the aforesaid break-up of the amount awarded by the Tribunal.

28. The assessment under this head is, seriously, questioned and criticised by the learned Counsel for the original opponents. No doubt, this criticism is countenanced by the learned Counsel for the claimant.

29. Dr. Nandkishor Parikh, an Orthopedic Surgeon of Ahmedabad, is examined and he has stated in his evidence, at Ex. 196, that the claimant has sustained permanent partial disablement in the right lower limb to the extent of 50% and 10% in the right thumb. Considering the evidence of Dr. Parikh and the views of Dr. Henry H. Kessler in the book "Disability-Determination and Evaluation" the Tribunal reached to the conclusion that the permanent partial disability

percentage of the body as a whole would be 30%. During the pendency of the appeal, at the instance of the opponents, the claimant came to be examined by the Government Medical Board. The Medical Board has certified that the claimant has sustained permanent partial disablement to the extent of 50% and that he requires surgery in right hip. No doubt, the case of the claimant that the disablement or resultant harm was likely to worsen in course of time or on advancement of the age is not fortified by the certificate of the Medical Board. Nonetheless, it is obvious that the claimant has sustained permanent partial disablement to the extent of 50%. However, that is not all. The assessment of damages in a case of personal injuries must be made on the basis as to what is the resultant impact and effect on the earnings or the capacity to earn. It is not entirely right to always make the future loss of income co-extensive with the extent of permanent disability. It is not an algebraic or mathematical formula which can be applied anywhere regardless of the avocation or profession or business of the injured claimant. It is a problem which has to be approached from the point of view as to what is the resultant effect on the actual earnings or on the earning capacity. Thereafter it is required to be quantified in terms of money for just and reasonable amount of compensation. On the basis of the evidence as to the permanent disablement, whether complete or partial, the assessment has to be made as to what effects and disability would have on the entire functioning of the body and how it would consequently affect the earnings or the capacity to earn. In other words, the effect of the earning capacity ought to be judged in the light of the importance of the loss of permanently impaired limb in the vocation or profession or employment career of the injured person. Merely because the claimant has sustained permanent partial disablement to the extent of 50% "ipso facto" would not mean that he has suffered monetary loss to the extent of 50% of his earnings or that he has sustained effect to that extent on the capacity to earn. It is possible that even few percentage of disablement in the vital organ like hands or legs would substantially affect the earnings or earning capacity in a case of a labourer. Suppose a carpenter who has sustained serious permanent partial disablement in the hand would, undoubtedly, affect substantially in his earning capacity. Likewise, even the artists or surgeons who have sustained permanent partial disablement in the upper limb would, obviously, suffer more percentage of loss in so far as earnings are concerned or capacity to earn is concerned. So may not be a case so far as a professional or a businessman doing only or mainly table work is concerned. So what is emphasised is the resultant impact of permanent partial disablement on the earnings or capacity to earn. There cannot be a strict jacket formula like algebraic or mathematical to apply unconcerned with the profession or employment to which the claimant belongs. It appears from the impugned judgment and award that the Tribunal, unfortunately, with due respect has not approached this issue in the correct perspective.

30. No doubt, reliance is made on the observations and views of Dr. Henry H. Kessler by the Tribunal for assessing the bodily impairment. However, after the

permanent partial disablement extent is ascertained, the measure of damages, as Tribunal considered, is the extent of physical disability and not the extent on the effect of the earning capacity of the claimant. The disability has been defined as "inability to meet certain standards of physical efficiency, social, occupational and economic competence. Traditionally, the responsibility of evaluating disability has fallen on the physician and medical assessment plays a dominant, and often the only role in the final judicial decision concerning disability claims. The medical evaluation is less subject to error than is the social evaluation because the form of the findings is definite, objective and often even measureable. Gross error occurs only when the standards of evaluation are insufficiently grounded in anatomical and physiological reality. This is one aspect of the matter. The disability percentage assessed by the medical board "ipso-facto" does not mean the loss to that extent in the earnings or in the capacity to earn. It has to be judged in the light of the vocation, profession or business of the claimant in a given case. The nature of work or business has to be considered and the extent of disablement cannot be indifferent to the nature of work. Otherwise, it would result into a wrong assessment of damages. In addition to the medical opinion, however, physical impairment produces distinct personal, social and economic consequences, and the concerned court ought to take into account this aspect. Wages, earning capacity, working capacity and special occupational skills are lost or diminished in part and it has to be considered in the set of proved facts of the case. The fitness to perform the routine activities of living also deteriorates. Obviously, these are not specific medical effects but they compound the medical situation to produce disability. Although the physician is able to estimate the nature and degree of a medical impairment, nothing in his training and little in his experience have prepared him for the task of evaluating the psychological, social and more so economic consequences. With little or no knowledge of the ability of handicapped persons to engage in gainful employment, and with no means of estimating adaptability to employment, the judgment about the disability is likely to be arbitrary and inaccurate. In fact, the physician is trained to observe defects and to measure variations from the normal but no system of pathological evaluation includes estimation of the capacity to work and other associated non-medical factors. The Tribunal has straightaway accepted the medical opinion regarding the disablement as the loss of earnings. In our opinion, with due respect, the Tribunal has fallen in serious error. After the assessment of medical disablement, the resultant non-medical effect on the earning capacity is not properly appreciated by the Tribunal. The functional or medical impairment has to be seen and applied to the profession or vocation or employment of the claimant so as to ascertain the resultant effect and impairment on the earnings or capacity to earn. For example, in the *Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another*, , the Supreme Court assessed the amount of compensation under the head of future pecuniary loss to the extent of 50% of the earnings though the disablement percentage was 30%, as it was a case of surgeon. Similarly, in *Pratap Narain Singh Deo Vs. Srinivas Sabata and Another*, , the Apex Court assessed 100% loss

in the earning capacity though the medical percentage or the permanent partial disablement was assessed less even in the case of amputation of left arm at the elbow of a carpenter who was doing some ornamental work in a cinema hall. What we try to emphasis is that the physical impairment does not necessarily co-relate or go co-extensive with that of the percentage of earning capacity. The above cases would exemplify that, for the assessment of future loss of income, the proper consideration ought to be the nature and extent of disablement of the limb and its likely resultant effect on the earning capacity in a chosen vocation, employment or profession of the injured-claimant. Therefore, in our opinion, it is not right to treat this problem as an algebraic or mathematical formula and to make assessment of future economic loss on the basis of the percentage of permanent partial disablement co-extensive regardless of other relevant considerations.

31. At this stage, it would be interesting to refer to the relevant material evidence of the injured claimant. The claimant Mr. Sharma is examined, at Ex. 15, Relying on the evidence of the claimant, the Tribunal has assessed the monthly income of the claimant at Rs. 20,000/- and has reached to the conclusion that the claimant is likely to suffer pecuniary loss under the head of prospective economic loss to the same extent, that is, 30%. The disablement percentage of the body as a whole is assessed by the Tribunal at 30% and the effect on the earnings of the claimant is also assessed at 30% and the amount of Rs. 6,000/- is determined as the monthly loss arising out of permanent partial disablement sustained by the claimant. Thus, the annual loss is assessed by the Tribunal at Rs. 72,000/- (Rs. 6,000 x 12) and the future economic loss is quantified by applying 13 multipliers. In this connection, it may be recalled that the assessment of the likely monthly income of Rs. 20,000/- by the Tribunal for the purpose of calculating the future loss of income is, in our view, not based on any reliable and acceptable evidence. The views and the ultimate conclusion of the Tribunal in this regard in paras 15 to 18 of impugned award are not proper and justified. It cannot be contended that the assessment of the Tribunal is based on inference on the proved set of facts. It cannot be said to be a reasonable or permissible inference; but it is a wild conjecture.

32. It may be noted, at this stage, that the claimant is technically sound and expert person, having very good academic background. According to the evidence of the claimant, he intended to start in G.I.D.C. Electronics Zone, a factory of his own, for the purpose of manufacturing Television sets : five-in-one T.V. sets. Thus, he intended to start a new type of elections device which comprised five equipments in one instalment, i.e.:

1. Digital watch Timer
2. Radio
3. Sterio Tape Recorder
4. Video Cassette Recorder

5. Television

According to the case of the claimant, he intended to start the manufacturing of the said product. He had also moved the Government and had obtained plot and loan from the Gujarat State Financial Corporation ("GSFC" for short). He contended that he could have started the said factory with manufacturing capacity of 10,000 T.V. sets per annum in full swing had there been no accident. In other words, but for this accident, according to the contention of the claimant, he could not accomplish his cherished dream.

33. We may, at this stage, refer to the academic qualification and background of the claimant, which is not in dispute. According to the evidence on record, the claimant is a technically qualified person having degree in B.Sc. M.E., M.I.E. and is also a Chartered Engineer. He intended to start the aforesaid multifunctional T.V. set project, at Gandhinagar, for which he had acquired plot in electronic zone. In fact, the claimant was proceeding from Ahmedabad to Gandhinagar on the fateful day, on scooter, for the purpose of searching out a rented premises for his residence. According to the case of the claimant, he had to reduce the capacity of the aforesaid project to the extent of 30% on account of 30% permanent partial disablement. Reliance is placed on the documentary evidence produced by the claimant.

34. Having dispassionately examined the documentary evidence and the testimonial collections relied on by the claimant, we have not been able to persuade ourselves to agree with the conclusion of the Tribunal that the claimant is likely to suffer economic loss to the extent of Rs. 6,000 per month on account of permanent partial disablement to the extent of 30% as assessed by the Tribunal. The conclusion of the Tribunal on this score, in our opinion, is not substantiated by reliable and credit-worthy evidence on record. No doubt, the area of assessment under the head of future pecuniary loss is very difficult and delicate. It has got to be assessed in the light of the relevant principles and in the background of the facts of a given case. It is rightly observed in "Kemp & Kemp", on the quantum of damages (Law and Practice) Special Edition) at page 6001, as under:

The target is more difficult to hit in the case of damages for future pecuniary loss since so many important factors are uncertain. Indeed, as Lord Scarman remarked in *Lim* "s case (1890) AC 174, "there is really only one certainty : the future will prove the award to be either too high or too low." This defect is inherent in our present system, as described by the Lord Scarman in the same case in the following passage:

The award, which covers past, present, and future injury and loss, must, under our law, be of a lump sum assessed at the conclusion of the legal process. The award is final: it is not susceptible of review as the future unfolds, substituting fact for estimate. Knowledge of the future being denied to mankind, so much of the award as is to be attributed to future loss and suffering in many cases the

major part of the award-will almost surely be wrong.

A lump sum must be awarded once and for all to compensate the plaintiff (Claimant) for his future pecuniary loss. The Court must award "the present value of prospective loss.

However, we have observed while perusing the impugned judgment and award of the Tribunal that it has failed to appreciate many relevant aspects, including the consideration of the present value of prospective economic loss and the Court is awarding the amount of compensation (which otherwise would have been obtained by the claimant in many years) at a stretch by way of lump sum amount. Therefore, it is incumbent upon the Court to properly slice it down after ascertaining the present value of the future economic loss. So what is required to be awarded is the present value of the prospective loss. Lord Reid in *British Transport Commission v. Gourley* (1956) AC 185, at 212, has rightly observed that lump sum must be awarded once and for all to compensate the claimant for his pecuniary loss. The Court must award the present value of the prospective loss. It would be also appropriate to mention what was observed in *Todorovic v. Walter* 37 A.L.R. 530, by the Australian High Court while considering this aspect. It was observed that, this task as assessing a lump sum "which fairly represents the present value of the future stream of the plaintiffs net losses." So what is required to be considered is the present value of the net loss sustained or likely to be sustained by the claimant, unfortunately, the Tribunal has lost sight of this vital aspect at this high-light the case are required not considered by the Tribunal while awarding compensation under the head of future economic loss:

1. To give present value, a reasonable deduction or reduction is required as lump sum amount is given at a stretch under the head of prospective economic loss;
2. The tax element is also required to be considered as observed in the *Gourley's* case (supra);
3. The resultant impairment on the earning capacity of the claimant;
4. That the amount of interest is awarded also on the prospective loss of income;
5. That the amount of compensation is not exemplary or punitive but is compensatory.

It is an admitted fact that, while assessing the loss of Rs. 6,000/- per month, the Tribunal has not considered the present value and has not made reasonable deduction on that count. Since this award is once for all and it is given at a stretch, it is necessary to consider the present value of the prospective economic loss, which is not done by the Tribunal. Since there is no dispute on this point, we do not divulge on any further inquiry.

35. In so far as the tax element is concerned, as propounded in *Gourley's* case (supra), the Tribunal has, undoubtedly, not specifically mentioned that this aspect was considered. In *Gourley's* case, it was observed that, if the Court

awards damages to compensate the claimant or plaintiff for loss of income and that income would have been subject to tax if it had been received by the claimant or plaintiff, the Court will take the claimant's liability to tax into account when assessing the amount to be awarded. This is known as the rule of "Gourley's case (supra). It was also a case of personal injuries. The plaintiff is Gourley's case was also an eminent civil engineer who had been seriously injured in a railway accident. The plaintiff was able to resume his duties but there was reduction in the rate of his earnings. It was to be decided as to whether in assessing damages to be awarded to the plaintiff for his loss of past and prospective earnings the Court should take into account the income tax and surtax which the plaintiff should have paid on this earnings. Peare J. bound by the earlier decision of the Court, in appeal ignored the element of tax and awarded the plaintiff ₹37,720 in respect of loss of earnings. However, on request of the defence, Peare, J. had made an alteration assessing the damages upon the basis that tax should be taken into account and the assessment came to ₹6,695 and, accordingly, assessed ₹6,695 as the correct figure of loss of earnings. The following observations of Earl Jowitt would be appropriate to be mentioned at this juncture:

It would, I think, be unfortunate if, as the result of our decision, the fixation of damages in a running-down case were to involve an elaborate assessment of tax liability. It will, no doubt, become necessary for the Tribunal assessing damages to form an estimate of what the tax would have been if the money had been earned, but such estimate will be none the worse if it is formed on broad lines, even though it may be described as "rough and ready." It is impossible to assess with mathematical accuracy what reduction should be made by reason of the tax position, just as it is impossible to assess with mathematical accuracy the amount of damages which should be awarded for the injury itself and for the pain and suffering endured.

It is agreed by the learned Counsel for the original opponents that no tax is payable on the amount of damages under the existing provisions of the Income Tax Act, 1961, Thus, where the claimant has been totally or partially permanently incapacitated, only one amount has to be assessed i.e., the amount which he would have earned. Applying the rule in Gourley's case (supra), that amount has to be assessed net deducting tax (including surtax). No doubt, the liability of income tax is assessed for a year. Had the Tribunal considered this element of tax, there is no doubt that the amount awarded under the head of prospective economic loss would have been substantially reduced. Since in this case there appears to be no dispute about the material aspect of tax element, we do not propose to go into the rates of tax, minimisation of tax and other incidental aspects in this matter. Had the Court considered the aforesaid factors and facets while making the assessment under the head of prospective economic loss, the amount of compensation under that head even, ipso facto, would have been substantially reduced. The main reason for taking the tax "incident" into account is that the claimant is entitled to compensation only for what he has lost

and if the person who pays tax at the higher rate is compensated on that basis. The damage obviously would be in proportion of the loss sustained by the claimant on account of the injuries arising out of the vehicular accident. It is rightly observed by John Munkman in "Damages for personal injuries and death", 8th edition, at page 109 "to ignore the tax element would be to act in - a manner which is out of touch of reality, so Eari Jowitt said, citing the words of Lord Sorn in an earlier case. The House of Lords also said that tax could not be dismissed as irrelevant merely because it was "Res-inter-alios acta-a matter between the tax payer and the Inland Revenue and could not be regarded as too remote, and the expenditure which although not actually a charge on earning is imposed by law as a necessary consequence of their receipt is relevant to the ascertainment of the loss suffered by the party injured.

36. It is the case of the claimant in the petition itself that before he started the multifunctional T.V. project he was getting monthly salary of Rs. 4000+Rs. 1200 by way of house allowance, as an Engineer Consultant, in India, by Birla Brothers Private Limited, for one of its project, at Nigeria, in Africa. It is also his case that in para 1 of the petition that he had desired to start his own T.V. factory. Not only that the claimant had applied for loan to the GSFC and the loan was sanctioned for the purpose of the said project and the loan was also withdrawn. There is no dispute about this fact. It will be at this stage appropriate to mention the details of income of last three years mentioned by the claimant in this application form, at Ex. 75, dated 10.7.1987. They are as follows:

S. No.	Year	Income	Income tax paid
1.	1984-85	Rs. 10,000	Not paid
2.	1985-86	Rs. 16,000.	Rs. 600
3.	1986-87	Rs. 10,000	Rs. 400

It can be seen from the above table of particulars of income furnished by the claimant that his average annual income of the last three years prior to the date of the application for compensation came to be Rs. 12,000. That means, the gross earnings or income of the claimant prior to the application at the relevant time came to be Rs. 12,000 per annum. Of course, this is not a decisive factor itself, as according to the claimant, he intended to start a manufacturing factory of multifunctional T.V. set as aforesaid. But at the same time it cannot be said to be an irrelevant factor. According to the said application of loan, the claimant estimated a profit in the first year at Rs. 2,85,235. Had the claimant started the project as desired after obtaining and enjoying the loan of Rs. 7,15,000 and had the fortune smiled on the claimant and everything had gone as scheduled and desired, it was estimated that the claimant would have earned net profit of Rs. 2,85,235. He was having licence to manufacture 10,000 multi-functional T.V. sets and after the accident he had applied for loan for the purpose of manufacturing 3000 sets. It is not in dispute that a model was also demonstrated after the accident but, unfortunately, the said multifunctional colour T.V. project could not

be accomplished. The learned Counsel for the claimant has, rightly, stated that the failure to accomplish the project as desired was not solely and exclusively referable to the injuries sustained by the claimant but it was partly due to the said injuries that the project could not be accomplished. Nothing has been placed on record till the date of trial to the hearing of this matter before us by way of subsequent developments which would prompt us to accept the contention that even the said project embraced the failure, partly, on account of the resultant disablement sustained by the claimant in the accident. No doubt, we are conscious of the fact that the bodily impairment and the resultant disablement sustained by the claimant ought to have affected to certain extent the said project for want of his personal supervision during which he was undergoing treatment and convalescence. However, in order to succeed in the claim for an amount of Rs. 25,00,000, the claimant must bring evidence on record to show that he has as such sustained pecuniary loss which is referable to and connected with the disablement sustained by him on account of the accident in question.

37. Having regard to the testimonial collections and the documentary evidence on record, we are of the opinion that the assessment of prospective monthly income at the rate of Rs. 20,000 per month by the Tribunal is unsupportable and unacceptable. Therefore, the challenge made by the original opponents against the award of Rs. 9,36,000 under the head of prospective economic loss is required to be partly accepted.

38. As observed hereinabove, the amount of compensation should be compensatory and not exemplary or punitive. Ordinarily, the assessment of future income has to be founded upon on the past income and earnings and considering the potentials of the injured claimant. As observed hereinbefore, the claimant himself had stated in as early as in July, 1987, in the application form for loan to GSFC, at Ex. 75, that prior to that application, for last three years, his average monthly income at the relevant time was around Rs. 1,000. To us, it seems that the Tribunal has lost sight of this aspect while making the assessment of the monthly income of Rs. 20,000. It may be recalled that we have no doubt in our mind about the proficiency and the expertise acquired by the claimant in his field. What we are discussing is the statement of fact and the evidence on record. There is no evidence to substantiate the findings that the claimant has been or is likely to be put to a loss of Rs. 6,000 per month on account of the disablement and we cannot uphold the finding which is based on estimation and incomplete evidence.

39. Therefore, the question would arise as to what reasonable amount of compensation under his head of prospective loss of income could be awarded to the claimant. No doubt, what would have been the exact and precise earnings or income of the claimant had he not met with an accident will be a matter of anybody's guess. It is hardly obtainable. However, this factor should not hamper or come in the way of making the assessment of compensation under this head. It is rightly said that perfect amount of compensation in such a case is hardly

obtainable. However, we have to make an attempt to award as far as possible the amount of compensation payable to the claimant on account of the injuries arising out of the accident in question. It was really very unfortunate that a promising and proficient man like the claimant met with such an unfortunate road accident and has sustained permanent partial disablement. Ordinarily, the assessment of compensation under the head of future economic loss in a case of an earning member could be based on the average earnings of the claimant and his future potentials. In this case, unfortunately, the claimant obtained a very good job at Nairobi in Kenya but on the ground of continued ill-health of the claimant there, he left the job. He was offered an employment by "Sun Oil Company" by virtue of letter dated 19.6.1983, at Ex. 94, on the post of Research and Development Manager which was accepted by him and he resigned on the aforesaid ground by writing a letter dated 20.2.1984 which was received by the employer as per Ex. 57, on 27.2.1984. The basic salary of the claimant was K.S. 15,000 (Kenyan Shillings) per month which was also required to be reviewed by the employer from time to time at the direction of the employer over and above other perks as mentioned in the letter of appointment, at Ex. 94. The claimant has also relied on the income tax notice of assessment produced, at Ex. 100. According to the said document, the claimant was getting 1, 18, 347 K.S. It is stated by the learned Counsel for the claimant that the exchange rate of 1 K.S. at the relevant time was Rs. 0.78 ps. Reliance is also placed by the claimant on the assignment received by the claimant from Birla Brothers Private Limited. It is produced at Ex. 60. The claimant was given assignment in Nigeria Engineering Works. The said assignment was for a spell of three months. According to Ex. 61 and 62, two letters of the said employer-Birla Brothers Private Limited, the claimant was paid Rs. 5,000/- in India over and above the remuneration for the assignment in Nigeria.

40. Having regard to the overall picture emerged from evidence, the Tribunal, in our opinion, has wrongly arrived at the conclusion that the claimant would have earned Rs. 20,000/- per month, in the impugned judgment and award, observing that the assessment of the said amount will be appropriate for the purpose of calculating future loss of income. It was also observed that the claimant was earning Rs. 15,000/- per month and his capacity to earn was more and he would have earned a lump sum of Rs. 40,000/- per month. In our opinion, the Tribunal has committed serious error in fixing the amount of Rs. 20,000/- per month as observed hereinbefore. The exact amount on account of the resultant disablement cannot be obtainable but indubitably the amount of Rs. 6,000/- assessed by the Tribunal by way of loss per month is excessive and exorbitant.

41. We are sorry, to say and we cannot resist ourselves from the temptation of mentioning that the matter is not properly handled before the Tribunal by both sides. Be as-it may, considering the overall picture emerging from the present case and the expertise and proficiency of the claimant in his field and the permanent partial disablement sustained by the claimant, even while taking a liberal view in the matter, after considering the aforesaid five factors, the

claimant is not, likely to suffer economic loss per month more than Rs. 4,000/- in any case. Therefore, the claimant is likely to suffer annual loss of Rs. 400 x 12=Rs. 48,000/-. We are unable to accept the contention of the learned Counsel for the claimant that the claimant is likely to suffer loss of more than Rs. 6,000/- per month as assessed by the Tribunal, and it will not be less than Rs. 10,000/- per month. We are also unable to accept the contention that the multiplier of 20 should be adopted in the present case. It is not in dispute that the claimant was 43 when the unfortunate road accident took place. Considering the facts and circumstances and the age of the claimant and the life span prevalent in India at this stage, 13 years' purchase factor can safely be adopted. We, therefore, uphold the view of the Trial Court in accepting multiplier of 13. Therefore, in our opinion, the claimant, at the best, would be entitled to an amount of Rs. 48,000 x 13=Rs. 6,24,000 under the head of prospective economic loss.

42. In so far as the amounts of Rs. 3,000 under the head of gratuitous services rendered by the attendants and the amount of Rs. 1440 towards the expenditure on the attendants and the amount of damages to the scooter of Rs. 3,600 are not contested or challenged in both these appeals. Therefore, the question of adequacy or otherwise of the amount of compensation under the aforesaid three heads does not arise for our consideration.

43. However, learned Counsel for the claimant has vehemently contended that the amount of Rs. 20,000/- awarded under the head of medical expenses is grossly inadequate and requires upward revision. In that, it is contended that the claimant is required to undergo surgical operation and is likely to undergo further operations in future. Reliance is placed on the medical evidence-on record. There is no dispute about the facts emerging from the evidence of Dr. Nandkishore Parikh and also from the certificate of the Medical Board that the claimant had to undergo one more surgical operation. However, the contention on behalf of the claimant is that the claimant has already spent an amount of Rs. 39,246 for medical expenses, but the Tribunal has only awarded Rs. 20,000/- under this head. Having given anxious thought to the facts and circumstances and the medical evidence on record, the claimant should be awarded an additional amount of Rs. 10,000/- under the head of medical expenses. Therefore, the claimant is awarded an additional amount of Rs. 10,000/- under this head. With this result, the claimant is found entitled to, in aggregate, a sum of Rs. 30,000 under the head of medical expenses.

44. In so far as the amount of compensation under the head of pain, shock and sufferings is concerned, the Tribunal has awarded Rs. 30,000/- and this amount appears to be just and reasonable under this head and we do not find any material justifying Interference with this amount of compensation.

45. Learned Counsel for the claimant has contended that the Tribunal has erred in awarding interest only at the rate of 12% per annum. Having regard to the principles and the following two unreported decisions of this Court, this submission appears to be justified.

(1) First Appeal No. 1316 of 1981, decided on 28.9.1992 (Coram: H. Bhairavia & J.N. Bhatt, JJ.) and

(2) (First Appeal No. 579 of 1984, decided on 22.10.1992 (Coram: V.H. Bhairavia & J.N. Bhatt, JJ.)

Therefore, we are of the opinion that the claimant should be awarded interest at the rate of 15% per annum instead of 12% per annum awarded by the Tribunal from the date of application till payment.

46. Having regard to the entire conspectus of the testimonial collections and the documentary evidence emerging from the record of the present case, in our opinion, the claimant is found entitled to, in aggregate, an amount of Rs. 6,92,040 instead of Rs. 9,94,9040 with interest at the rate of 15% per annum from the date of the application till the date of realisation, the break up of which is as follows:

The amount The head Rs. 6,24,000 For future loss of income Rs. 3,000 For gratuitous service of attendants Rs. 1,440 For expenditure of attendants Rs. 30,000 For medical treatment, etc. Rs. 30,000 For pain, shock and sufferings Rs. 3,600 For damage caused to scooter _____ Rs. 6,92,040 _____

Learned Counsel for the claimant has contended that considering the status and position and the expertise and proficiency of the claimant, usual directions for deposits in securities are not required to be given in the present case, which is not disputed by the learned Counsel for the opponents. Therefore, the directions of the Tribunal in this regard in the impugned judgment and award are required to be modified and are, accordingly, has modified.

47. In view of the aforesaid facts and circumstances, and the discussion, First Appeal No. 1311 of 1991 is, partly, allowed to the aforesaid extent and First Appeal No. 1542 of 1991 is allowed to the extent of enhancement of rate of interest. Considering the facts and circumstances of the case, the parties are left to bear their own costs of these appeals. The impugned judgment and award shall stand modified accordingly,

48. Pursuant to the undertaking filed on behalf of the opponents at the stage of admission of these appeals, the opponents have deposited an amount of Rs. 5,00,000. The opponents are, therefore, directed to deposited the remaining amount of the award with interest along with the proportionate costs of the Trial Court within a period of four weeks from today.