(2013) 07 MP CK 0087

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 528 of 2005

Daulatram APPELLANT

Vs

Rameshwar Sharma and Others RESPONDENT

Date of Decision : 24-07-2013

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, 147(1), 147(1)(b), 149, 163A

Citation : (2013) 07 MP CK 0087

Hon'ble Judges : G.D. Saxena, J

Bench : Single Bench

Advocate : R.P. Gupta, for the Appellant; Rishab Gupta, Advocate for Respondent No. 2 and Shri B.K. Agrawal, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

G.D. Saxena, J.—Feeling dissatisfied with the Award dated 31st January 2005 in a Claim Case No. 46/2003 passed by the Additional First Member of the Motor Accident Claims Tribunal, Gwalior, the appellant has preferred this appeal u/s 173 of the Motor Vehicles Act, seeking enhancement of the amount of compensation. Admitted facts of the case are at that on 30th November 2002, at about 6 p.m., appellant-injured Daulatram alongwith others was traveling in a tractor trolley bearing registration No. MP08/D/9868 for attending their work. It is not in dispute that the said tractor was being driven by Rameshwar Sharma (Respondent No. 1) and owned by Ramdayal Sharma (Respondent No. 2). It is alleged that due to rash and negligent driving, the trolley attached with a tractor turned turtle in between village Dohara and Charai at A-B road, consequently, appellant Daulatram got seriously injured and his left leg below knee was badly damaged and thus he became permanently disabled. On F.I.R. of the accident, the crime was registered against driver and charge-sheet was filed before the criminal court. At the time of accident, the offending tractor-trolley was under cover of the "Private Agriculture Use" with the Insurance Company. It was also admitted fact that on the date of incident, the driver of the offending vehicle was having the valid driving licence. The injured was admitted in J.A. Hospital, Gwalior where surgical operation was conducted and on his left leg a plaster was applied for a considerable period. The appellant also received treatment through private practicing physicians. The tribunal after considering the evidence adduced by the claimant as well as Insurance Company and after hearing the parties passed an award in favour of the claimant for Rs. 2,98,000/- (Rs. Two Lac Ninety Eight Thousand Only) in all heads against the owner and driver, however, exonerated the Insurance company for violation of the terms and conditions of the policy and so directed the Insurance Company to recover the interim compensation amount, if paid to the claimant, from the owner of the offending vehicle.

2. The submissions put forth on behalf of the appellant are that the learned tribunal without evaluating the evidence on record awarded the compensation. It is submitted that the learned tribunal clearly admitted that the injured/claimant due to fatal injury in right leg and pus formation, suffered 50% permanent disability on account of amputation of his right leg but no consideration was made in this respect while awarding compensation. It is further pointed out by the counsel that the tribunal awarded meagre compensation under the head of medical treatment, future treatment including surgical operations, pain and suffering, special diet, loss of earning in future etc. It is submitted that at the relevant time, the claimant/injured was working as masonry for construction of platform in front of the house of respondent-owner of the vehicle and the vehicle involved in accident was driven in accordance with the issued policy and as per terms of insurance. Thus, the Insurance Company has to indemnify and satisfy the awarded amount on behalf of the owner, the insured of the offending vehicle. Hence by filing the present appeal, it is prayed that by considering all necessary heads the amount of compensation may be enhanced in favour of the claimant/ appellant.

3. Respondent No. 2, owner of the offending vehicle did not prefer any appeal but by way of filing cross objection under Order 41 Rule 22 C.P.C., he prayed that the award under appeal may be set aside. The alternate submission is that since the tractor involved was insured with the Insurance Company (Respondent No. 3), the Insurance Company may be directed to satisfy and pay the entire compensation to the claimant by setting aside the finding under which the Insurance Company has been exonerated.

4. Respondent No. 3 Insurance Company, on the other hand, submitted that the offending vehicle was insured under farmers package and at the time of accident the trolley was used for transporting the passengers and was not driven as per terms of the insurance policy. Consequently, the learned tribunal rightly exonerated the company from liability of satisfying the awarded amount passed in favour of the claimant. It is therefore prayed that the finding of exoneration for satisfaction of the awarded amount and direction issued against the owner of the vehicle for satisfaction of the award to the claimant may be upheld.

5. Heard the learned counsel for the parties and perused the materials.

6. In view of the submissions made by the learned counsel on either side, now two questions that arise for consideration are:-

(i) Whether, in case of injuries sustained by the unauthorised passenger while traveling in the vehicle, can a direction be given to the Insurance Company to pay the amount to the victim?

(ii) Whether the award passed by the learned tribunal is on lower side and needs some enhancement?

7. Before discussing the issue with regard to the doctrine of ''pay and recover'', it could be appropriate to extract the relevant provisions of the Motor Vehicles Act.

S. 147. Requirements of policies and limits of liability:- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)--

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person including, owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.

"149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.-(1) If, after a certificate of insurance has been issued under sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy) or under the provisions of section 163-A is obtained against any person insured by the policy then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgment. (2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely;-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organized racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false is some material particular.

(4) Where a certificate of insurance has been issued under sub-section (3) of Section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of Section 147, be of no effect: Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this subsection shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

8. In National Insurance Co. Ltd. Vs. V. Chinnamma and Others, , the Hon. Apex Court has observed as follows:-

There is nothing on records to show that the owner of the tractor had produced any insurance cover in respect of the trolley. It is furthermore not disputed that the tractor was insured only for the purpose of carrying out agricultural works.

The representative of the Insurance Company Mr. Hari Singh Meena on cross-examination merely accepted the suggestion that cutting the earth and levelling the field with earth would be an agricultural work but respondent No. 1 himself categorically stated in his claim petition before the Tribunal stating that the earth had been dug and was being carried in the trolley to the brick-kiln. Evidently the earth was meant to be used only for the purpose of manufacturing bricks. Digging of earth for the purpose of manufacture of brick-kiln indisputably cannot amount to carrying out of the agricultural work. On above facts Apex court considered the above facts and observed as follows:-

16. Furthermore, a tractor is not even a goods carriage. The "goods carriage" has been defined in Section 2(14) to mean "any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods" whereas "tractor" has been defined in Section 2(44) to mean "a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller". The "trailer" has been defined in Section 2(46) to mean "any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle."

"17. A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purpose, unless registered otherwise. It may be, as has been contended by Mrs. K. Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of the "goods carriage" as contained in Section 2(14) of the Motor Vehicles Act, the case would be covered by the decisions of this Court in Asha Rani (supra) and other decisions following the same, as the accident had taken place on 24.11.1991, i.e., much prior to coming into force of 1994 amendment.

9. In Oriental Insurance Co. Ltd. Vs. Brij Mohan and Others,), it is observed as follows:-

10. Furthermore, respondent was not the owner of the tractor. He was also not the driver thereof. He was merely a passenger traveling on the trolley attached to the tractor. His claim petition, therefore, could not have been allowed in view of the decision of this Court in New India Assurance Co. Ltd. Vs. Asha Rani and Others, wherein the earlier decision of this Court in New India Assurance

Company Vs. Shri Satpal Singh and Others, was overruled. In Asha Rani (supra) it was, inter alia, held:-

25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen Compensation Act. It does not speak of any passenger in a "goods carriage".

26. In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger traveling in a goods vehicle, the insurers would not be liable therefor.

27. Furthermore, sub-clause (i) of clause (b) of sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

10. In National Insurance Co. Ltd. v. Baljit Kaur (AIR 2004 SC 1340), the Hon. Apex Court observed as follows:-

20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in S. 147 with respect to persons other than the owner of the goods or his authorised representative remains the same. Although the owner of the goods or his authorised representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the Legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people.

21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decisions of this Court in Satpal Singh (supra). The said decision has been overruled only in Asha Rani (supra). We, therefore, are of the opinion that the interest of justice will be sub-served if the appellant herein is directed to satisfy

the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing Court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of S. 168 of the Motor Vehicles Act, 1988 in terms whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding.

11. In National Insurance Co. Ltd. Vs. Prembai Patel and Others, it is observed as follows:-

The insurance policy being in the nature of a contract, it is permissible for an owner to take such a policy whereunder the entire liability in respect of the death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) may be fastened upon the insurance company and insurance company may become liable to satisfy the entire award. However, for this purpose the owner must take a policy of that particular kind for which he may be required to pay additional premium and the policy must clearly show that the liability of the insurance company in case of death of or bodily injury to the aforesaid kind of employees is not restricted to that provided under the Workmen''s Act and is either more or unlimited depending upon the quantum of premium paid and the terms of the policy.

It is thus clear that in case the owner of the vehicle wants the liability of the insurance company in respect of death of or bodily injury to any such employee as is described in clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) should not be restricted to that under the Workmen''s Act but should be more or unlimited, he must take such a policy by making payment of extra premium and the policy should also contain a clause to that effect. However, where the policy mentions "a policy for Act Liability" or "Act Liability", the liability of the insurance company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen''s Act.

12. In the case of Bhav Singh Vs. Smt. Savirani and Others, Full bench of this court observes as follows:-

10. Sub Section (5) of Section 147 of the Act, however provides that notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance u/s 147 of the Act shall be liable to indemnify a person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or classes of

persons. Thus if the policy of insurance covers any liability in addition to the liability u/s 147(1) of the Act, the insurer will be liable to indemnify the insured in case of any liability not because of the provisions of sub section (1) of section 147 but because of the terms and conditions of contract of insurance between the insurer and the insured. Therefore, if the contract of insurance provides for a liability to a passenger or to an employee other than the liabilities provided under sub section (1) of the Section 147 of the Act, the insurer would be liable to indemnify the insured against such liability.

13. Recently, in S.M. Sharmila Vs. National Insurance Company Ltd. and Others, the Hon. Apex Court considered were the appellant, the owner of vehicle and her workman were traveling in the offending vehicle. The workman claimed compensation contending that accident arose out of and in course of employment. So, liability was fixed on respondent insurance company. In appeal High Court concluded that vehicle involved in accident was not insured with the insurer on the date of accident and fixed the liability on the owner of the vehicle, which was held to be justified.

14. A reading of the above judgments would show that only in a case, where the Insurance Company is successful in its defence u/s 149, it may yet be required to pay the amount to the claimant and thereafter, it may recover from the owner of the vehicle. When the insurance company is not statutorily required to cover the liability in respect of a passenger in a vehicle u/s 147 unless such passengers is the owner or agent of the owner of the goods accompanying such goods absolutely there is no need for the Insurance Company to pay compensation since there is no contractual liability under the statute to pay the amount to the gratuitous passenger traveling in the goods carriage vehicle. Under such circumstances, in the opinion of this court, a direction could not be given to the Insurance Company to pay to the claimants and recover from the owner of the vehicle.

15. Now coming back to the case at hand, it appears that the offending vehicle, i.e., tractor was insured vide insurance policy Ex. D-1 (Cover note) under "Kissan Package Policy" but no premium for passengers, agricultural workers or causal workers for agriculture in trolley attached with the tractor insured was paid by the owner of the offending vehicle. Looking to the pleadings and evidence on record it appears that Daulatram, an injured (AW-1) used to earn per day Rs. 150/- by doing masonry work. His wife, parents, sisters and children are dependents on his income. On a fateful day, he went for his work in the trolley attached with a tractor from his village. The tractor was being driven by Rameshwar very rashly with a high speed resulting it turned turtle. In an accident, he got severe injuries in right leg, head and other parts of the body. After accident, the injured was shifted to J.A. Hospital where he was admitted for more than three months and three major operations for bony injuries on right leg were done but the injuries could not be healed up and the pus formation started. Ultimately, an operation for amputation of right leg was suggested and

accordingly done. It is stated that after operation of his leg, he can not walk without calipers. He stated that he spent roughly Rs. 70,000-80,000 in his treatment. After accident he could not perform his work. Shivdayal (AW-3) well supported the accident on the part of the driver of the offending vehicle. Ram Prakash Jatav (AW-4) who used to work with injured-claimant in his statement corroborated the averments of the claimant and stated about the earning from the work by the claimant just before the accident.

16. Thus, it appears from the facts and the evidence on record of the learned tribunal that on the day of incident the injured was traveling in a trolley attached with the insured tractor causing accident which was driven by Rameshwar Sharma (Respondent No. 1) and owned by Ramdayal Sharma (Respondent No. 2). The tractor involved in accident was insured for agricultural purpose under "Private Agriculture purpose" and was not insured for carrying the causal agriculture labourers or his employees engaged in agriculture. No premium for carrying the passengers or workers or agricultural labourers was paid to the Insurance Company. Hence, there was no statutory liability u/s 147 of the Act upon the Insurance Company to indemnify the insured for payment of compensation to the claimants, heirs of deceased traveling in trolley attached with the tractor. In that view of the matter, learned tribunal rightly decided that the Insurance Company/respondent No. 3 was not responsible for indemnifying the liability of payment of awarded amount to injured/claimant. Hence, this court is not inclined to accept the submission made by the learned counsel for the appellant that since there was an award in favour of the appellant-claimant, the Insurance Company is bound to satisfy the said award.

17. Second submission of the learned counsel for the appellant-injured is that learned tribunal passed the award on lower side and it did not determine other relevant factors such as loss of medical expenses, pain and suffering, loss of income during treatment and future loss of income, looking to the permanent disability vis-a-vis other like permissible heads and passed an award on lower side. It is therefore requested that by considering all heads, the amount of compensation may be enhanced in favour of the claimant/appellant.

18. In his evidence before the Claims Tribunal, injured-claimant Daulatram (AW-1) deposed that he used to earn per day Rs. 150/- by doing masonry work and his wife parents, sisters and children are dependents on his income at the time of accident, he was going to attend construction work of platform at the house of Ramdayal, owner of the vehicle involved in accident. Ram Prakash Jatav (AW-4) co-worker in his statement stated about the income of injured just before the accident. As proved by un-rebutted evidence of Dr. Shambhu Narayan Tripathi (AW-5) and Dr. R.K. Singh Dhakar (AW-6) who examined and treated the injured for considerable period and opined that despite of surgery of the affected right leg, the injury caused could not be healed up and due to the injuries caused in accident the injured became 50% permanently disabled.

19. In Mohan Soni Vs. Ram Avtar Tomar and Others, , at page 270: the Hon.

Apex Court has observed as follows:-

8. On hearing the counsel for the parties and on going through the materials on record, we are of the view that both the Tribunal and the High Court were in error in pegging down the disability of the appellant to 50% with reference to Schedule I of the Workmen''s Compensation Act, 1923. In the context of loss of future earning, any physical disability resulting from an accident has to be judged with reference to the nature of work being performed by the person suffering the disability. This is the basic premise and once that is grasped, it clearly follows that the same injury or loss may affect two different persons in different ways. Take the case of a marginal farmer who does his cultivation work himself and ploughs his land with his own two hands; or the puller of a cycle-rickshaw, one of the main means of transport in hundreds of small towns all over the country. The loss of one of the legs either to the marginal farmer or the cycle-rickshaw-puller would be the end of the road insofar as their earning capacity is concerned. But in case of a person engaged in some kind of desk work in an office, the loss of a leg may not have the same effect. The loss of a leg (or for that matter the loss of any limb) to anyone is bound to have very traumatic effects on one''s personal, family or social life but the loss of one of the legs to a person working in the office would not interfere with his work/earning capacity in the same degree as in the case of a marginal farmer or a cycle-rickshaw-puller.

9. The question of loss of earning capacity resulting from amputation of one of the legs in the case of a tanker driver was considered by this Court in K. Janardhan v. United India Insurance Co. Ltd. In that case, a tanker driver suffered serious injuries in a motor accident and as a result, his right leg was amputated up to the knee joint. He made a claim under the Workmen''s Compensation Act, 1923. The Commissioner for Workmen''s Compensation held that the disability suffered by him as a result of the loss of the leg was 100% and awarded compensation to him on that basis. In appeal, the High Court, like in the present case, referred to the Schedule to the Workmen''s Compensation Act, 1923 and held that the loss of a leg on amputation amounted to reduction in the earning capacity by 60% and, accordingly, reduced the compensation awarded to the tanker driver.

11. In a more recent decision in Raj Kumar v. Ajay Kumar this Court considered in great detail the correlation between the physical disability suffered in an accident and the loss of earning capacity resulting from it. In paras 10, 11 and 13 of the judgment in Raj Kumar this Court made the following observations: (SCC pp. 349-50)

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the

percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and Yadava Kumar v. National Insurance Co. Ltd.)

20. In Ram Kiran Goyal (D) thr. L.Rs. Vs. Sub Divisional Engineer and Others, , at page 431 the Hon. Apex Court has held as under:-

9. In a recent decision in Raj Kumar v. Ajay Kumar this Court has considered in detail the different heads under which compensation might be payable to a victim of motor accidents. In para 6 of the decision, the various elements of compensation are enumerated as under: (SCC p.348)

6. ... Pecuniary damages (Special damages)

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

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

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

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

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

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

10. To us it appears that the claimant was not properly compensated under Heads (i) and (iii). As noted above, the appellant remained in hospital for 3 months for his treatment. He lost all his teeth and even after coming out of the hospital he had to use crutches for walking and even standing. A sum of Rs. 15,000 for treatment of such injuries appears to us to be wholly inadequate in the year 1987. Moreover, the nature of the injuries suffered by the claimant was such that he never fully got over the same and continued to be under medical treatment till the end of his life. Materials have been brought before this Court to show that he was obliged to undergo medical treatment all his life and with age the extent of his disability, resulting from the accident, also continued to progress.

11. In the facts and circumstances of the case, we feel that an additional sum of Rs. 1,10,000 must be paid to the appellants to adequately and properly compensate them under the Heads (i) "expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food and miscellaneous expenditure" and (ii) "future medical expenses". We order accordingly. The additional amount shall carry simple interest @ 7% per annum from the date of application.

21. As is evident, in the present case, the learned tribunal awarded compensation under the heads (i) "expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food and miscellaneous expenditure" and (ii) "future medical expenses" in the total sum of Rs. 28,000/- and Rs. 2,70,000/- for permanent disability, thus total amounting to Rs. 2,98,000/-. Considering the evidence on record and the principles as laid down in Mohan Soni''s case (supra) and Ram Kiran Goyal''s case (supra) as proved by un-rebutted evidence because on the date of incident, the injured was skilled labour and used to earn his daily income as mentioned above, therefore, looking to the nature of injury and period of treatment compensation for permanent disability for Rs. 2,70,000/- as awarded by the tribunal is hereby affirmed. However, compensation awarded in other heads is enhanced to Rs. 2,00,000/-. Now, the appellant would be entitled to receive total compensation amount in the sum of Rs. 4,70,000/- (Rs. Four Lac Seven thousand only) alongwith interest @ 7% annum on enhanced compensation amount from the date of submission of the appeal payable by respondent No. 1 & 2, the owner and driver of the vehicle within three months from the date of this order. Consequently, the appeal is partly allowed on the quantum of compensation.

