
(1979) 03 GUJ CK 0005
In the Gujarat High Court
Case No : F.A. No. 154 of 1974

Mahomed Hanif Dallu

APPELLANT

Vs

Lunkaran Ganpatram Sharma and Another

RESPONDENT

Date of Decision : 19-03-1979

Acts Referred:

Workmens Compensation Act, 1923 — Section 21, 4

Citation : (1979) 03 GUJ CK 0005

Hon'ble Judges : S.B. Majmudar, J;B.K. Mehta, J

Bench : Division Bench

Advocate : R.N. Oza, for the Appellant; S.B. Vakil, for the Respondent

Final Decision : Allowed

Judgement

S.B. Majmudar, J.—(His Lordship after stating the facts of the case further observed:) Paras 1 to 5 of the judgment not approved for reporting:

... ..

6. Mr. R N. Oza, the learned Advocate appearing for the Appellant-claimant has addressed us in support of his appeal for enhanced compensation. Mr. Oza submitted that on the count of proper damages the Appellant was entitled to compensation on four sub-heads:

- (1) Prospective loss of future income;
- (2) Compensation for pain, shock and suffering undergone by the claimant;
- (3) Compensation for loss of marriage prospects; and
- (4) Adequate compensation which would take care of increased cost of living with which the Appellant will have to undergo for the rest of his life.

Mr. Oza submitted that the Claims Tribunal has really not applied the correct test for computing the proper compensation. In view of the serious injuries sustained by the Appellant both of his legs had been amputated and he is rendered a

cripple for the rest of his life. Mr. Oza submitted that the proper compensation should be awarded to the claimant on all the aforesaid heads. Mr. S.B. Vakil, the learned Advocate appearing for the Respondent No. 2, insurance company, on the contrary supported the Award of the Claims Tribunal and submitted that it was within the permissible brackets.

7. Now, in order to appreciate the controversy raised between the parties, it would be necessary to keep in view the type of controversy which has arisen before us. The claimant himself is an injured person. He claims compensation on account of the bodily injury received by him which has resulted in amputation of both of his legs. In such cases the proper principles for awarding compensation have now been well settled by this Court. We may refer to the relevant decision on the point, in the light of which the present controversy between the parties will have to be resolved by us. In the case of *Ranjitsingh Gopalsingh and Ors. v. Meenaxiben Rajmal Mehta* 13 G.L.R. 662, Division Bench of Court observed that it is a settled principle that in disablement cases the compensation awards are always higher than even in cases of death because the compensation has to be given to a living victim, both for his personal loss and for the economic loss. The principles laid down in such cases can be summarised in three propositions as under:

- (1) Bodily injury is to be treated as a deprivation which entitles a Plaintiff to damages, and that the amount of damages varies according to the gravity of the injury;
- (2) deprivation may bring with it three consequences loss of earnings or earning capacity, expenses of having to pay others for what otherwise he would do for himself and loss of enjoyment of life or a diminution in full pleasures of living;
- (3) in considering the deprivation, the court should have regard to the gravity and degree of the deprivation, that is to say, whether--one or more limbs has been lost, the duration of the deprivation, and the degree of awareness of the deprivation.

It has been further observed in the aforesaid case that both in England and in this country the settled pattern of awards in personal injury cases is not to award merely token damages but to grant substantial amounts on both the head of personal loss as well as economic loss. Of course, in order to avoid any overlapping a global estimate had to be made of the all told loss. Therefore even though theoretically there can be no real compensation for loss of the right arm, the court would have to arrive at a fair social evaluation on the basis of these recognized standards by determining the loss of the injured Appellant both on the ground of the economic loss and that her bodily integrity had been affected by this deformity with which she has to go in the society and which she has to endure for the whole life time. It may be stated that the case with which the Division Bench was dealing was the case of a personal injury to a girl who had suffered serious bodily injury on account of the accident. In the light of those

facts the Division Bench further observed in the aforesaid decision that besides the loss of limb and the consequent pain and suffering and mental shock, she had been seriously handicapped not only in the marriage market but in her personal and social life. An injury which handicaps her in the marriage market represents a real pecuniary loss. Therefore, besides economic loss as such in case of such female and especially where she has lost right arm, it is such a handicapping injury as to be specially evaluated for this real material loss. As regards the economic loss, this child had to give up her education now. She could not write in her examination and had to appear for the oral examination. Even as a simple house-wife her prospects were almost ruined by this tragic accident as she had lost her right arm. It was observed by this Court that the compensation award should attempt to make some kind of restitution to her. The court must evaluate first the economic loss which had resulted to her after the loss of her right arm by losing the career and on that basis the net loss of Rs. 80/- per month was evaluated so far as the claimant in that case was concerned and on the basis of the annual figure of Rs 950/- this figure was capitalise by applying the multiple of 15 years which was a commonly accepted multiple in these days for such healthy persons and an amount of Rs. 17,500/ was given by way of personal loss on account of pain and suffering.

7-A. There are three other decisions of this Court pertaining to personal injury cases and which are more recent in point of time. The first judgment is in the case of Babu Mansa Vs. The Ahmedabad Municipal Corporation and Others, , where a Division Bench consisting of P.D. Desai and M.K. Shah, JJ. had an occasion to consider the question regarding the award of proper compensation in personal injury cases. In the aforesaid judgment, the claimant was a young boy of 15 years at the time of the accident and his disability was assessed at 25% and he was left with permanent scars, on his legs. The Court laid-down the principles in the aforesaid case for awarding compensation for future economic loss to such disabled claimants. It was observed that the entire evidence discussed in the aforesaid judgment in the case of Babu Mansa Vs. The Ahmedabad Municipal Corporation and Others, made it clear that the Appellant's injuries were of a serious nature and that particularly injury on his right leg had left a permanent scar as a result of which he was severely handicapped in his day-to-day pursuit of life. A person in his position of life, who has to undertake manual work to earn livelihood, would suffer a severe handicap on account of such a deformity. If he cannot walk with ease and without support, if he cannot sit cross legged, if he can squat with support only and if he is unable to bend his leg, it is difficult to appreciate as to how he would be able to efficiently carry on his work of excavation of sand which was his avocation of life at the time when he met with the accident in that case. The Court further observed in the aforesaid decision that on evidence it was found that the claimant in that case has 25% disability. On that basis the Appellant in that case was found to have suffered a loss of Rs. 60/- per month and accordingly a figure of Rs. 720/- was arrived at. The Tribunal in that case had adopted the same method which was

found to be just and proper for computing the economic loss to the disabled claimant in the aforesaid decision. So far as the compensation on the head of pain and suffering was concerned, the Court referred to the earlier judgment in *Ranjitsingh Gopalsingh and Ors.* 13 G.L.R. 662 and stated that the fall in the value of money in our country was the main factor to be kept in view while assessing the damages on the count of pain and suffering. It was observed that the need for periodical reassessment of damages at certain key points was a felt need and the requirement of adjusting awards to changing conditions was realised. Consequently, it was found that the award of Rs. 3,000/- by way of pain and suffering given by the Tribunal in that case was quite inadequate. It was observed that the court in the aforesaid case was concerned with a young boy of 15 years who had met with an accident which had restricted his activity leading to diminution in the enjoyment of his life. Besides this, having regard to the injury on his right leg the claimant in that case leading a life of social discomfiture and he would be a burden to his family. It was further found that due to fall in the money value as has been held in the case of *Ranjitsingh Gopalsingh v. Meenaxiben* 13 G.L.R. 662, an upward revision of the amount of compensation on the head of pain and suffering was necessary and an amount of Rs. 15,000/- was found in *Balm Mansa's* case by this Court to be a just and proper amount of compensation which could be awarded for the loss of amenities and enjoyment of life.

7-B. Thereafter, there is another decision of this Court in the case of *Bharat Premjibhai Vs. Municipal Corporation, Ahmedabad and Another*, It was delivered by the same Bench which delivered the judgment in *Babu Mansa Vs. The Ahmedabad Municipal Corporation and Others*, . In *Bharat Premjibhai Vs. Municipal Corporation, Ahmedabad and Another*, the injured was a boy of 15 years who had suffered multiple lacerated wounds and it was found that in spite of intensive and proper treatment received by him the aftereffects of the accident had persisted. The claimant in that case had received two contused lacerated wounds over the head and a contused lacerated wound on the sole of the right foot. The internal injury on the right foot consisted of a crack fracture. Because of the injured foot the prospects of future economic progress of the claimant were retarded. While considering the principles to be applied for broadly evaluating the compensation amounts payable in cases of such disability, reliance was placed by this Court in the aforesaid decision on the observations in *Munkman on Damages for Personal Injuries and Death*, 5th Edition at page 48 to the effect that one of the heads of pecuniary loss is the deprivation of earnings or other items which would have been received but for the accident and have now been taken away and the other is the new positive burden of expenses incurred as a result of the accident. In principle, the measure of damages for pecuniary loss is the exact amount of money which has been lost, or spent, in consequence of the injury. It was further held that it was easy enough to apply this rule in the case of earnings which have actually been lost or expenses which have actually been incurred, upto the date of the trial. The exact or approximate

amount can be proved, and if proved, would be awarded as special damages. It was further observed that in McGregor on Damages, Thirteenth Edition at page 739 in para 1098, the Plaintiff was held entitled to damages for the loss of his earning capacity resulting from the injury and that this generally forms the principal head of damage in a personal injury action wherein both, earnings already lost by the time of the trial and prospective loss of earnings are included. While the rules of procedure require that the past loss be pleaded as special damages and the prospective loss as general damages, there would appear to be no substantive difference between the two, the dividing line depending purely on the accident of the time when the case came up for hearing. On the aspect of future economic loss, it was observed in the aforesaid case that the disability was found to be 25% and on that basis monthly loss was held at the rate of Rs. 45/- and thus the annual loss worked out at Rs. 540/- and applying 15 years multiplier, the Tribunal in that case worked out the figure of Rs. 8,100/-. This Court disagreeing with the method of computation of future loss as arrived at by the Tribunal observed that the datum figure had not been properly and justly computed in that case and the Tribunal had misdirected itself in being guided by the table under the Workmen's Compensation Act, 1923 in assessing damages for the prospective loss of earning. It was observed that the Workmen's Compensation tables are often referred to for judging the actual extent of the loss but they were not strictly relevant. In personal injury cases instituted under the Motor Vehicles, Act, 1939, the Tribunal had to assess damages in the light of the evidence and guided by its own expertise and experience and awards in similar cases but uninhibited by any statutory formula.

8. In the aforesaid decision it has been further observed that in estimating the future loss of income the primary consideration must be the nature and extent of the disablement of the limb--permanent or temporary total or partial and its likely resultant effect on the earning capacity in the chosen avocation, profession or employment of the injured person. It is therefore, not right to treat this problem as an abstract mathematical exercise and to make the future loss of income co-extensive with the percentage of permanent disability regardless of the other relevant consideration. While computing the economic loss the Court in the aforesaid judgment adopted 15 years multiplier for capitalising the net annual income of the injured victim. So far as the damage on the aspect of pain and suffering were concerned, the court observed that Rs. 15,000/- would serve the purpose and would be a just compensation for the pain and suffering and loss of amenities and enjoyment of life which the victim suffered on account of the injury received by him.

9. In another judgment delivered by the Division Bench consisting of P. D. Desai & M. K. Shah, JJ. in the case of Amul Ramachandra Gandhi v. Abhasbhai Kasambhai Diwan and Ors. 1979 A.C.J. 460. In the aforesaid judgment the injured victim was a young boy of 12 years old who sustained injury on his right foot when it was crushed under the front left wheel of the vehicle. The right foot of the victim had to be amputated from above his ankle. It was found that the

victim had suffered 25% disability. On these facts, the Division Bench proceeded to assess the damages payable to the victim. So far the damages for pecuniary loss were concerned, the Division Bench observed that the compensation under the head of pecuniary loss is divisible into two categories? one negative and another positive. In the first category falls the deprivation of earnings or other items which would have been received but for the accident and have now been taken away. In the second category is comprised the new positive burden of expenses required to be incurred as a result of the accident. For the assessment under the first sub-head, an estimate of the probable future earnings had there been no accident and the actual earning power after the accident has to be made and the difference between the two is the loss of earning capacity which will have to be justly compensated. Several factors such as reduced eligibility for employment or loss of chances of favourable employment and loss of career will have to be considered. However, it is not easy to make such an estimate in the case of a young boy about whose prospective earning and probable loss one has only to make an estimate often a very rough estimate based purely on guess work. There are several uncertainties and imponderables involved. Under the other sub-head, namely, the new prospective burden of expenses to be incurred as a result of the accident, the costs of medical expenses if any, which the injured person might be required to incur in future and his need of nursing and constant attendance and extra nourishment, if any, had to be taken into account. On facts, this Court found in the aforesaid decision that the total future income of the victim had been assessed at Rs. 300/- per month by the Tribunal and on the basis of 25 per cent permanent disability the prospective pecuniary loss was taken at Rs. 75/- per month and the net figure was arrived at Rs. 900/-per year by the Tribunal and by applying a multiplier of 15 years a net figure of Rs. 13,500/- was found payable to the victim on the head of loss of prospective income. Disagreeing with the Tribunal, this Court observed that the Tribunal had erred in principle in ignoring altogether the second sub-head of loss and in not awarding any compensation to the Appellant in that behalf. Besides, the assessment of the Tribunal in respect of the loss of earning capacity was based on a gross underestimate. It was further observed by this Court that the best method to adopt would be to make a global assessment under both the sub-heads and to award compensation for pecuniary loss taking into account all the relevant factors enumerated in the earlier part of that judgment. The victim's eligibility for employment assuming that in his future life he would have sought employment, was bound to be reduced because of the injury suffered by him. It was also held that in any case, any person not suffering such disability would be preferred and therefore, there was a loss of chance of favourable employment. Even assuming that the Appellant would not have sought employment but taken to some profession, there is no manner of doubt that even if there be no total loss of career, there will be considerable handicap in pursuing the same career. It was further observed by the Division Bench that the artificial limb of the Appellant will have to be replaced from time to time as the Appellant grows in age and physical changes occur and the surgical boot would also for the same

reason needed to be replaced. But that was not all. The Appellant in that case would constantly need some attendance. He may have to periodically incur expenditure on new crutches. It was further observed by the Division Bench that there was no question that some expenditure even on medicines and nourishment will be needed by the Appellant. Considering all these aspects the Division Bench estimated the pecuniary loss of the Appellant in that case at Rs. 250/- per month and on that basis calculated the annual loss at Rs. 3,030/- and applying 15 years multiplier the pecuniary loss was estimated at Rs 45,000/- by this Court in the aforesaid judgment. So far as the compensation of pain and suffering was concerned, it was observed by the Division Bench in the aforesaid judgment that the boy aged 12 years in that case had got his right foot amputated above the ankle. In order to ascertain the amount of compensation payable for such pain and suffering suffered by the victim on account of amputation of his right foot, it was observed that it was well settled that a person injured by another's wrong is entitled to general damages for non pecuniary loss such as his pain and suffering, past and future, and his loss of amenity and enjoyment of life. Reliance was placed on the earlier judgment of the same Bench delivered in Babu Mansa Vs. The Ahmedabad Municipal Corporation and Others, . It was further observed that there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will correctly fall. The particular circumstances of the Plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award. It was further observed that the fall in the value of money, leads to a continuing reassessment of these awards and to periodic reassessment of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases. It was further observed that the age of the injured person will also make a considerable difference because, for example, an old lady with a broken and deformed leg will have fewer years to suffer than a young boy with a similar handicap. Now coming to the question of increased cost of living because of the fall in the purchasing power of money, it was observed that in such cases, the proper global figure which would take care of the pain and suffering suffered by the victim on account of amputation of his foot above the ankle, and considering his age being 12 years would be Rs. 25,000/- and that amount was found to be just and proper in that case. It was observed that in considering the young age of the Appellant in that case and considering the periodical reassessment of damages at certain key points and the falling value of money and the rising standard of living, Rs. 25,000/- would properly be awarded to the Appellant in that case by way of general damages for non-pecuniary loss for pain and suffering and for loss of amenities and enjoyment in life.

9-A. Keeping in view the aforesaid principles, which emerged from the judgments of this Court, we have to assess the proper damages awardable to the Appellant in the present case. As already stated above, this is a case of personal injury not

resulting in the death of the victim; but he has to be compensated for the loss suffered by him and which will render him a helpless cripple for the rest of his life. At the threshold of his career when he was aged 25 years the Appellant suffered from this unfortunate accident which left him a complete cripple, and both of his legs had gone due to amputation above the knee. In such cases, for the victims who were surviving and whose subsequent future life after the accident had become a misery, a proper compensation has to be worked out on the well settled principles as culled out from the above judgment of this Court. It is also relevant at this stage to refer to certain observations found in Volume I of Kemp & Kemp on the Quantum of Damages, 1975 Fourth Edition. It has been observed by the learned author in Chapter 9 in the said volume that in actions brought in respect of personal injuries the ordinary common law principles for assessing damages apply. Such actions are usually founded upon a tort, but may be founded upon a breach of contract. Here of course, we are concerned with actions founded upon a tort. It has been further observed by the learned author in the aforesaid volume that the courts have found it convenient to consider under various heads the damage caused to the Plaintiff through his personal injuries and that all the factors which were discussed must be taken into account in the assessment of damage. Heads of damage in the personal injury cases have been divided into two groups--first group was capable of being calculated in terms of money or which were styled as pecuniary loss and the other group consisted of those heads which were impossible of being assessed by arithmetical calculation or which were styled as non-pecuniary loss. In the head "pecuniary loss" are listed four types of sub-heads. The first is in respect of expenses which the victim may have undergone on account of the injuries suffered by him. He would be entitled to recover damages in respect of all expenses caused by his injuries, such as medical expenses, nursing care, the cost of his fares to and from hospital, extra domestic help and so on. The second sub-head of "pecuniary loss" has been styled as loss of earnings or other profits and in this subhead are found those types of damages which are to be awarded to the victim in respect of earnings or profits which he has lost as a result of his injuries up to the date of the trial. This could be worked out on the basis of the salary or wages paid to the victim from the date of the accident till the date of the trial and when assessed, this type of damages would represent special damages. It was further observed by the learned authors while discussing this aspect that in the case of a self employed or professional man whose earnings fluctuate the court will have to estimate this loss and award general damages in respect of it and special damage would be difficult in the absence of exact data of monthly earnings by him from the date of the accident till trial. In the second category of damages in the same sub-head of loss of earnings are shown general damages in respect of any prospective loss of earnings resulting from the injuries. It has been observed that in calculating loss of earnings or profits, tax must be taken into account which would have been payable and even certain national insurance benefits were required to be taken into consideration. The third sub-head of pecuniary loss is shown as "loss of earning capacity" or

incapability in the labour market. In this category is found a situation when the victim because of his accident loses the capacity to earn fully or partially because of the permanent injury suffered by him out of the accident. It has been further observed by the learned authors that because of the injury the actual earning which the victim may be having would be sliced down and the average income will be at a reduced rate showing to that effect the loss of earning capacity by that accident. Sometimes permanent partial disability may not have immediate effect on the Plaintiff's earnings and it may be found that he was still able to earn his pre-accident wages and to perform his pre-accident work. Nevertheless his disability would render him unfit for some profession or occupation for which he was previously fit and qualified and such a man is at a disadvantage compared with his colleagues in the labour market. While discussing this matter reliance was placed on the observation of Somervell L.J. in the case of *Deakin v. Sankey* 1951 C.A. No. 21. The learned authors observed that in the aforesaid case the Plaintiff suffered a permanent injury to his hand and there was evidence that there was a loss of function which might, if he were thrown on the labour market, militate against his getting work. He might want to get other work or better paid work, which he could have accepted if he had all his fingers and a fully competent hand. Somervell J. further observed that the chances of life are such that with a man of fifty-four one must in awarding damages give some sum, not a token sum, in respect of such loss of capacity of earning power as was found there which would mean a financial loss if for any reason he was thrown on the ordinary labour market. It was observed that this head of general damage was to be regarded not as a loss of future earnings but as part of the general damages for disability. The fourth sub-head of pecuniary loss is shown to be material loss other than loss of earnings and under this head have been enumerated various situations which arose because of the injuries suffered by the victim which leaves him a set-back for the rest of his life. It has been observed that if the victim has enjoyed as part of the fruits of his employment material benefits other than his pecuniary earnings, for example, free board and lodgings, he was entitled to be awarded by way of damages the pecuniary equivalent of the material benefits which he had lost upto the date of the trial and which he was likely to lose thereafter. Thus various such amenities in life which the victim would have enjoyed but for the accident, will all be covered by this type of pecuniary loss or material loss other than loss of economic prospects. These types of damages are all covered by the main category of pecuniary loss and the victim would be entitled to adequate compensation on account of all the "pecuniary loss" suffered by him because of the accident. It is true that while arriving at the ultimate global figure the court will have to keep in view all these various, items of pecuniary loss. So far as the non-pecuniary loss is concerned, this category of damages is also shown to consist of various sub-heads. The first sub-head referred to by the learned author in the aforesaid book is for pain and suffering and shock and it has been mentioned that the Plaintiff (claimant in our case) is entitled to general damage in respect of the pain and suffering which he had undergone upto the date of the trial which he is likely to undergo thereafter.

The phrase "pain and suffering" has become almost a term of Art. Pain and suffering are not necessarily synonymous. For example, damages may be awarded for the mental suffering of a Plaintiff who knows that his expectation of life has been greatly reduced and that he must spend his remaining days in misery. Shock should be taken into account in considering pain and suffering. The second sub-head of this category of non-pecuniary loss is the loss of amenities of life and it has been further observed that this head embraces everything which reduces the Plaintiff's enjoyment of life considered apart from any material or pecuniary loss which may be attendant upon the loss of amenity. Reliance has been placed on the observation of Birkett L.J. in the case of *Manley v. Rugby Portland Co. Ltd.* 1952 C.A. No. 286, wherein it has been observed that there is a head of damage which is sometimes called the "loss of amenities" ; the man made blind by the accident will no longer be able to see the familiar things he has seen all his life ; the man who has had both legs removed will never again go upon his walking excursions, things of that kind--loss of amenities. Thus this general head of damages takes account of all types of amenities in life which are lost because of the injury and which may not be strictly considered in terms of material or pecuniary loss and consequently, they are considered to be part and parcel of the non-pecuniary loss. The third sub-head of non-pecuniary loss is shown to be loss of expectation of life and it has been observed that the Plaintiff whose expectation of life was reduced by reason of his injuries is entitled to damages for this loss. Damages under this head are awarded in respect of the happiness which the Plaintiff might expect to have enjoyed in the future years of which he has been deprived and the last sub-head of non-pecuniary loss mentioned is "Inconvenience, discomfort, disappointment or mental distress" and it has been observed that the Plaintiff was entitled to be compensated for inconvenience or discomfort or for the disappointment of being unable to participate in some event to which he had been looking forward. Of course in this category of non-pecuniary loss the first sub-head is pain, suffering and shock which is not very much important and while assessing the non-pecuniary loss consideration has got to be given to the other aspects of non-pecuniary loss and considering all these aspects a global figure has to be arrived at.

10. It is true that while assessing the damages for personal injuries no question of allocating specific sums to the different heads of damage could ordinarily arise ; and the assessment will have to be made by way of global figure for a lump sum but when Judges take over the function of the primary assessment of damages, it would be required to be stated how much has been allocated by them to some or to each of the appropriate heads In any case these items and sub-heads will have to be weighed while assessing and coming to even a global figure for the purpose of both pecuniary and non-pecuniary loss. Considering these aspects on the assessment of damages Harold Luntz in his *Assessment of Damages for Personal Injury and Death*, 1974 Edition observed in Section 1-605 of his book that if the Judge does not itemize the damages in his judgment an

appellate court is placed in a much more difficult position when considering an appeal against the quantum of damages. Reliance is placed by the learned author on the observation of *Ford v. Middlesbrough Co-operative Society Ltd.* (1969) 113 Sol. J. 375 (CA), where the learned Appellate Judge who delivered the judgment observed that it would have been helpful if the Judge had itemized the damages. It has been further observed that itemisation was often useful and desirable for two reasons, first, because the Judge had then to apply his mind to the various items and show that he had done so, and secondly, because it was a great help to the Court of Appeal in computing the overall figure. It has been further observed in laying down rules for the payment of interest at different rates on different heads of damages, the Court of Appeal under Lord Denning in effect compelled trial Judges to itemise the damages, atleast to the extent of distinguishing pecuniary loss to the date of trial, future pecuniary loss and non-pecuniary loss. The cycle was completed in *George v. Pinnock* (1973) 1W.L.R. 118 (CA) where Sachs L.J. said at page 126 that, whatever the attitude had been in the past, since *Jefford v. Gee* (1970) 2 Q.B. 130, the modern practice is to state the component parts and not just to award a global sum. Although he admitted that this is done mainly to enable the interest to be calculated, his Lordship, added that "it also in part due to the general adoption of that considerable body of judicial opinion which held that Plaintiff and Defendant alike are entitled to know what is the sum assessed for each relevant head of damage and thus to be able on appeal to challenge any error in the assessments." Thus, it has been now well settled that while awarding damages, both pecuniary and non-pecuniary or for both losses importances has to be attached to itemisation of these various subheads and, thereafter, total figure of a lump sum even a global figure, could be ascertained by the Court.

11. So far as the damages for non-pecuniary loss is concerned it has been found difficult to assess the damages on that count as has been noted by Earl of Hahbury L.C. in the case of "*Mediana*" (1900) A.C. 113 that nobody can suggest you can by any arithmetical calculation establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident. In truth, it would be very arguable to say that a person would be entitled to what damages for such things. But nevertheless the law recognizes that as a topic upon which damages may be given. It is pertinent to refer to the observation of Diplock L.J. in *Every v. Miles* (1964) C.A. 261, who observed as under:

Any such decision involves an attempt to equate the incommensurable. Such an equation is insoluble, and in the logical sense there is no answer which is right. But since justice is not justice unless even-handed, so that one man gets roughly the same treatment from the courts as another in comparable circumstances, and since the law requires that compensation which the courts can award is money, the courts are compelled to make a pragmatic solution. They have done so by fixing arbitrary standards of monetary compensation for physical injuries which I must loyally accept are not susceptible of analysis. These standards have

evolved from such current consensus of opinion of damage-awarding tribunals as is manifested by the amounts they have in fact awarded in broadly comparable cases.

12. While considering the aspect of pain and suffering of a victim who has suffered because of the accident, Lord Morris in *West v. Shephard* (1964) A.C. 326 has made the following observation:

...money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that as far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional.

13. Thus the assessment of damages would certainly involve some amount of guess work by the Tribunal but while arriving at a just figure of compensation for both non-pecuniary and pecuniary loss with all their relevant sub-heads as mentioned by us above, and which will have to be kept in view while arriving at a final global figure for pecuniary and non-pecuniary damages, itemization of damages of various sub-heads would also be a useful and necessary method to follow so that the Appellate Court can easily find the basis on which the Trial Court has proceeded.

11. Keeping in view the aforesaid principles of assessment of damages as culled out from the judgments of this Court and the English Court specified in the aforesaid standard books as mentioned by us above, we find that in the present case the Tribunal has really not applied a correct test for assessing a just and proper compensation to be paid to the Appellant. We find that the Tribunal has not adopted the correct tests and has gone on wrong principles in awarding compensation for pain and suffering and its decision is erroneous. We, therefore, undertake to do the said task once again on our own. It has been found, as a matter of fact, that the Appellant who was aged 25 years at the time of the accident, lost both of his legs in the bargain. Dr. R.N. Naik of the V.S. Hospital, Exhibit 46, in his evidence at para 2 states that both the legs of the Appellant were amputated above the level of the knee joint because the patient had developed gangrene. Thus the Appellant lost both of his legs above the knee. The result was that he was left a complete cripple and he became a burden for himself and for others for the rest of his life. We have to assess proper damages for being awarded to such a miserable cripple. So far as the pecuniary loss is concerned, as we have stated above, one sub-head of damages for pecuniary loss is for the economic loss suffered by the victim from the date of the accident till the date of the trial. So far as this sub-head of damages is concerned, Mr. Oza, the learned Advocate appearing for the Appellant has not made any submission before us and consequently, we do not propose to dilate on it any

further. Switching over to the general damages under the main head "pecuniary loss" consideration will have to be paid to the future loss of economic prospects for the rest of his life which the victim suffered because of the accident. Mr. Oza also pressed for one sub-head of damages under the head of pecuniary loss namely increased cost of living but that will be taken care of while we assess the damages payable to the victim on account of the loss of future income and loss of amenities of life. The evidence shows that the Appellant was getting a salary of Rs. 150/- per month as a cleaner at the time when he met with the unfortunate accident. The Appellant in his deposition, Exhibit 56. stated that he was getting Rs. 60/- per month plus Rs. 3/-towards daily allowance. He also stated that his father was 60 to 62 years old. He was living in Rajasthan and was working as a labourer. Thus, there appears to be a good longevity in the family to which the Appellant belonged. The Appellant further stated in his evidence that he would have got one month's salary as bonus for every completed year of service if this accident had not occurred. There is no effective cross-examination to the aforesaid version of the Appellant by the other side. Thus we can safely take his yearly income as a cleaner to be Rs. 1950/- i.e. 13 months salary at the rate of Rs. 150/- per month. The Tribunal has reduced this figure to Rs. 75/- per month on the ground that some amount would have been spent by the Appellant towards his food etc. The Tribunal forgot to consider that this was not a case of fatal accident wherein legal representatives of the deceased were to be awarded compensation for loss of dependency benefits but in the instant case the victim was very much alive but was shattered and battered and he himself was claiming compensation on account of pecuniary losses suffered by him. Thus, the entire income which he would have got would be a net loss to him and no amount could have been deducted while arriving at a figure for damages prospective economic loss. Any amount he could have earned, and which now he could not earn, would be a net loss to him and that amount has got to be taken into consideration fully while assessing the damages for prospective economic loss to an injured claimant. Thus, if we were to take Rs. 1950/- to be the yearly loss of income suffered by the living victim the said amount would be the datum figure which could be capitalised by 15 years multiplier as has been done in the cases referred to by us above wherein 15 years multiplier was pressed into service. This would work up to the total of Rs. 29,250/-. This figure would represent prospective future economic loss and which will take care of the increased cost of living which was also pressed in service by Mr. Oza for supporting his claim for enhanced compensation. Thus, so far as damages for the pecuniary losses suffered by the Appellant are concerned, the total amount of Rs. 29,250/- would be a just and proper compensation which would be awarded as a global figure to the Appellant and which would take care of all the aspects and categories of pecuniary losses which the victim suffered because of the accident. We itemize the damages on the head of pecuniary loss as follows:

- (1) Expenses--medical and others suffered by the victim on account of the accident as there is no evidence.... Nil

(2) Loss of earnings and other benefits suffered by the victim from the date of accident to the date of trial i.e. when the victim was examined in the Tribunal Sub-head of Special damages... Nil as Mr. Oza has not pressed for this sub-head.

(2A) Loss of earnings and prospective loss of income due to injury--sub-head of general damages? Rs. 29,250/- as detailed above.

(3) loss of earning capacity in labour market-covered by Rs. 29,250/- as computed under head 2-A above.

(4) Material losses other than loss of earning as there is no evidence.... Nil

14-A. Now switching over to the head of non-pecuniary loss, the most important sub-head thereof would be the damages for pain and suffering and the loss of amenities of life suffered by the victim because of the accident. We are concerned with a case in which the accident has left the victim a complete cripple. Both of his legs came to be amputated above the knees. He has become a burden to himself and others. In such a case no amount of money can be really a substitute for the injuries suffered by the victim. Still, however, an attempt has to be made by us to give him as far as possible a just equivalent and reasonable compensation. As we have already observed, a Division Bench of this Court has awarded Rs. 25,000/- to the Appellant in the case of *Amul Ramachandra Gandhi v. Abhasbhai Kasambhai Diwan and Ors.* 1979 A.C.J. 460, for pain and suffering on account of loss of one leg above ankle. There, a boy aged 12 years had suffered amputation on the right leg above ankle and the disability found in that case was 25 per cent. While in the present case the victim has been left a complete cripple, both of his legs having been amputated above knee joints. The disability suffered by the Appellant is cent percent. Though not strictly relevant, we can get some indication from the provisions of the Workmen's Compensation Act, 1923 regarding such types of personal injuries. In Schedule I of the Workmen's Compensation Act. in Part I under Sections 21 and 4 are listed injuries which are deemed to result in permanent total disablement and at Sr. No. 3 is mentioned double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of other foot, the percentage of loss of earning capacity is mentioned to be 100%. This would broadly indicate the nature and extent of the disability suffered by the victim whose both legs are amputated. It is argued that pain and suffering which a victim would suffer on account of loss of one leg would not necessarily be the same when he lost both of his legs. In Volume 2 of the *Quantum of Damages in Personal Injury and Fatal Accidents Claims* by Kemp and Kemp, 1975 Edition, is listed at part 10 a case pertaining to the loss of both the legs and it refers to the case of *Thome v. May and others*. The Court of Appeal in England in the said decision had an occasion to consider the case in which the victim of the accident had lost both of his legs. In the said case the accident had resulted in severe injury suffered by the Plaintiff who was just under 11 years of age when he was cycling along a narrow lane near Colchester and a lorry attempted to overtake him when there was no room to do so with the result that the Plaintiff rode on to the grass verge, where

the cycle ran into a hidden depression with the result that the Plaintiff was thrown off the cycle and run over by the lorry and suffered very serious injuries indeed. It was found that the injury on the right leg of the Plaintiff was severe on account of the accident and the other leg was also badly injured and had to be amputated. The Trial Court awarded ? 25,000/- to the victim for pain and suffering and loss of amenities of life. While considering this aspect the Court of Appeal in the aforesaid decision observed as under:

We were also referred by Mr. Rougier to recent cases involving amputation of a single leg below the knee, the award in one case having been ? 7,500/- and in the other ? 8,500/-. In the case of a loss of both legs, one above the knee and the other below the knee Mr. Rougier accepts, and is plainly right to do so, that the damages would be more than double what would be appropriate figure for a single leg.

15. Now in the present case both the legs have been amputated. In the case of amputation of one leg the Division Bench of this Court has awarded Rs. 25,000/- in the case of *Amul Ramachandra v. Abasbhai* 1979 A.C.J. 460. Mr. S B. Vakil, the learned Advocate appearing for the Respondent submitted that while awarding damages on account of pain and suffering mere arithemathical calculation could not be resorted to. He submitted that because Rs. 25,000/- were awarded by this Court for the loss of one leg, for the loss of two legs Rs. 50,000/- would not necessarily be awarded. Mr. Vakil submitted that when a victim suffers from the loss of one leg he has to move on crutches even while he retains his another leg and hence he may suffer severe pain and shock. But, instead of one leg if both the legs are gone, the impact of pain and suffering would not necessarily be double and it may be less. It is true that the impact of pain and shock suffered by the victim when he loses one leg or if he loses both legs may not necessarily be capable of being subjected to any mathematical calculation by way of monetary damages ; but the impact of pain would necessarily be more when both the legs are lost as compared to the loss of one leg. Mr. Oza on the other hand submitted that once both the legs have been amputated all the future marriage prospects of this victim were gone for ever, and that has also to be taken into consideration. It is true that this aspect also will be covered by damages on account of pain and suffering and loss of amenities in life but some proper method is necessarily to be resorted to while arriving at a just and proper figure of compensation on this head of pain and suffering on account of amputation of both legs. Keeping in view the decision of this Court in *Amul Ramachandra v. Abhasbhai* where Rs. 25,000/-were awarded for the loss of one leg to the victim, if Rs. 35,000/- are awarded to the Appellant in the present case on this head, that figure would take care of the loss of future prospects of marriage suffered by the victim on account of the amputation of both of his legs and that figure, in our view, would represent a reasonable and just compensation which could be awarded to the Appellant-claimant on this head of non-pecuniary damages for pain, shock and sufferings. We have not thought it fit to grant any separate amount by way of damages for loss of marriage prospects as the

Tribunal has done, as we find that Rs. 35,000/- which we are awarding for non-pecuniary loss by way of pain and suffering would take care of this aspect. In the result, the Appellant will be entitled to Rs. 35,000/- by way of non-pecuniary damages for shock and pain suffered and for loss of amenities and Rs. 29,250/- by way of pecuniary damages for future economic loss. The total of both of these amounts comes to Rs. 64,250/-. The Tribunal has awarded Rs. 23,000/-. Thus, the Appellant would be entitled to an additional amount of Rs. 41,250/- by our decision in the present appeal and on that additional amount of Rs. 41,250/- the Appellant shall also be entitled to 6% interest from the date of the application till payment. The appeal will have to be allowed accordingly in part and the award of compensation as made by the Tribunal will have to be enhanced by grant of additional amount of Rs. 41,250/- with 6% interest as stated by us. Both the Respondents shall pay the said amount to the Appellant. The insurance company? Respondent No. 2--shall be liable to make good the entire award of Rs. 64,250/- as the Appellant was a third party so far as the offending Maharashtra truck belonging to the insured Respondent No. 1 was concerned. The Appellant will be entitled to proportionate costs to the extent of his additional claim granted in this appeal but to the extent of his claim rejected there will be no order as to costs all throughout. The appeal is partly allowed with proportionate costs, as directed above. Orders accordingly.