

**(2008) 09 GUJ CK 0013**  
**In the Gujarat High Court**  
**Case No : First Appeal No. 1393 of 1990**

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|-------------------------------------------|----|------------|
| Minor Dina Navinchandra Shah              | Vs | APPELLANT  |
| Sokat Husen Abdul Rahim Shaikh and Others |    | RESPONDENT |

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**Date of Decision :** 30-09-2008

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 112, 116, 166, 168  
Penal Code, 1860 (IPC) — Section 279, 337, 338

**Citation :** (2008) 09 GUJ CK 0013

**Hon'ble Judges :** H.K. Rathod, J

**Bench :** Single Bench

**Advocate :** K.F. Dalal, for the Appellant; None, for the Respondent

**Final Decision :** Allowed

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## Judgement

H.K. Rathod, J.—Heard learned Advocate Mr. PP Med for learned Advocate Mr. Dalal for appellant minor Dina Navinchandra Shah. Respondents are served but no appearance is filed by any of respondents in present proceedings though more than eighteen years have passed and matter has remained pending for final hearing. Appeal is admitted by this Court on 28th September, 1990. In view of these facts, this Court has taken up this matter for consideration in absence of respondents being an old matter.

2. Further, respondent has deposited amount as per direction issued by this Court before claims tribunal and, therefore, it is clear that respondents are aware about filing of this appeal and pendency thereof before this Court and yet, no care has been taken by respondents to file appearance in these proceedings. No advocate has been engaged and respondents have also not appeared in person before this Court. Therefore, this being an old matter, this Court is having no other option but to decide matter in absence of respondents.

3. In this appeal, appellant original claimant has challenged award made by MACT No. IV Ahmedabad City Civil Court, Ahmedabad in MACP No. 176 of 1986

dated 8th August, 1989 wherein claims tribunal has awarded compensation of Rs. 98,400.00 in favour of claimant with 12 per cent interest. By filing this appeal, claimants are praying for enhancement of award of compensation. For court fee purpose, claim is for Rs. 1,50,000.00.

4. Learned Advocate Mr. Med submitted that claims tribunal has committed gross error in not awarding proper and reasonable compensation to claimant. He submitted that claims tribunal has committed gross error in not considering decision relied upon by advocate for appellant before claims tribunal. He also submitted that claims tribunal has committed gross error in not considering loss of marriage prospects of claimant. He also submitted that claims tribunal has committed gross error in not considering serious and severe injuries received by claimant on her left leg and right hand on 3rd March, 1986. He emphasized that because of injury received on left leg and right hand, her marriage prospects have disappeared and in place of leg, her leg is there without any flesh leaving a very ugly limb which she has to cover up by wearing long socks. He also submitted that at the time of accident, she was minor. No proper amount is awarded towards pain, shock and suffering because such pain and suffering will remain continue all throughout her life. He also submitted that claims tribunal has committed gross error in not considering that in all six operations had to be performed plus skin grafting, skin donated by her relatives and others and she was in hospital from 6th March, 1986 to 1st May, 1986, future operation is also necessary. He submitted that 25 bottles of blood and 100 bottles of glucose had to be given and all this has left a permanent disability left a permanent disability of 65 per cent of the limb as certified by the Doctor in para 35 of award. He submitted that there was total rash and negligent driving of AMTS Bus Driver who had admitted guilt of committing offence before criminal court. He also submitted that loss of amenities in life and diminishing of marriage prospects and disfigurement of body have not at all been properly appreciated by claims tribunal while awarding compensation. He submitted that injuries were certified by Doctor and there is 65.45% functional disability on her left lower limb component. Such assessment was made by Dr. Kanabar by adopting method of Dr. Kessler. Therefore, his submission is that claimant appellant is entitled for more amount or enhancement in awarded amounts by claims tribunal.

5. Respondents, though served, have not remained present before this Court when this matter is taken up for final hearing. Therefore, this being an old matter, this Court is having no option but to take it up for final hearing and consider merits thereof in absence of respondents.

6. I have considered submissions made by learned Advocate Mr. Med and I have also perused impugned award made by claims tribunal.

7. Accident occurred on 3rd March, 1986 at 11.30 a.m. Appellant minor Dinaben was aged about 10 years at that time. She was studying in 5th Standard. On that day, due to inspection, she was relieved earlier from school and was going to bus stand on eastern side of school. At about 11.30 a.m., she had crossed 3/4th

portion of the remaining road, when opponent No. 1 during the course of his employment of opponent corporation, came driving bus of route No. 39/2 going from Kalupur side to Narayannagar in full speed and in rash and negligent manner and he dashed left front portion of bus with minor Dinaben and dragged her to some distance, as a result of which, Dinaben sustained serious injuries on her left leg and right hand. Opponent No. 1 did not lower down speed nor he applied brake to stop it nor he blew horn though he was supposed to drive bus very carefully in school premises zone. Thereafter, minor Dinaben was immediately shifted to VS Hospital where she was admitted and treated but there was no improvement and there was infection in wound, so, she was transferred to Shardaben Hospital where she took treatment as an indoor patient from 3.3.86 to 6.3.86. She was also admitted in Hospital of Dr. Sanjiv Vasa where she was treated and six operations were carried out and skin grafting was done. She had to remain as indoor patient in hospital of Dr. Vasa from 6.3.86 to 1.5.86, even then, she is not completely cured. Future operation is also necessary. 25 bottles of blood and 100 bottles of glucose had to be given and all this left permanent disability of 65.45 % disability as certified by Dr. Kanabar. Respondent No. 2 and 3 resisted claim by filing their written statement at Exh. 17 and 16 and Insurance Company is exonerated by claims tribunal as per para 23 of award. Issues were framed by claims tribunal at Exh. 20 and documents were produced by claimant vide Exh.5 and 30 over and above oral evidence. List Exh. 58 contains case papers issued by Jaliyan Orthopedic Hospital Exh. 59. List Exh. 61 contains criminal complaint lodged before Metropolitan Magistrate's Court No. 15 being No. 841/86 Exh. 63.

8. Issue No. 1 is whether claimant proves that she received injuries on account of rash and negligent driving of AMTS Bus by opponent No. 1 which was answered in affirmative by claims tribunal. In the peculiar facts and circumstances of this case, only issue for consideration of this appeal is, whether claimant is entitled for enhancement of compensation awarded by claims tribunal or not? If yes, what would be enhancement?

9. On issue No. 1, claims tribunal has come to conclusion that accident occurred due to rash and negligent driving of AMTS Bus by opponent No. 1 as discussed in para 20, 21. Opponent No. 1 has admitted that he was prosecuted departmentally also for this accident and he was held guilty and was punished by department. Opponent No. 1 was also prosecuted by police for this accident wherein he was acquitted for offence u/s 279, 337 and 338 of IP Code and Section 112 and 116 of MV Act. Thereafter, claims tribunal has examined matter for quantum as discussed by claims tribunal in para 31 to 36 of award. Therefore, para 31 to 36 of award are reproduced as under:

31. The positive photographs, showing injuries of Dinaben are produced at Exh.34. Bills and receipts are also produced, as shown above.

32. Considering the above evidence, Shir DN Shah, the learned Advocate of the petitioner, has argued that the future income of the petitioner should be

considered at Rs. 600/- per month, and at 65% functional disability, 65% loss should be assessed, according to which, monthly loss will come to Rs. 400/- and yearly loss will come to Rs. 48000/- to which 20 multiplier should be applied, so, Rs. 96000.00 should be awarded for future economic loss.

33. SO far as pain, shock and suffering are concerned, Shah Shah LA for the petitioner has argued that Rs. 35,000/- should be awarded for diminishing marriage prospects of Dinaben, Rs. 30000/- should be awarded for pain, shock and suffering, Rs. 30,000/- should be awarded for expenses of treatment, Rs. 5000/- should be awarded for conveyance charges and Rs. 10,000/- for special diet.

34. On the other hand, Shri RJ Desai, LA for the opponent corporation has argued that the claim is very much excessive and exorbitant. She has not sustained any fracture. He has also argued that assessment of disability is very much expensive and Dr. Kanabar has issued certificate relying upon the book of Dr. Kessler but he has not carried out the measurement as suggested by Dr. Kessler and has also not followed certain theories of Dr. Kessler. He has argued that Dinaben had only a crush injury and skin grafting was done so disability cannot be assessed more than 25 to 40% and accordingly reasonable amount should be awarded on all the counts.

35. In support of his above arguments, Shri Shah, LA for the petitioner has cited a decision of our own High Court in the case of Chandrashekhar Madhusudan v. Subhash Shankar Shirke and Ors. reported in 23(2) GLR 379 in which the accident had caused fracture of pelvic bone and rupture of urethra. One of the excretory functions of the applicant was seriously impaired resulting in need of dilatation and that the impairment was likely to persist for the whole life of the petitioner and further complications were also possible, so, considering all those factors Rs. 35,000/- were awarded. Here as aforesaid, the injuries of Dinaben are not so serious.

36. The second decision cited on this point by Shri Shah, LA for the petitioner, is also of our own High Court reported in 23(2) page 180 in which injured Niranjana was aged about 21 years at the time of accident. Due to the accident, he suffered fracture of right femur; the injury had left a permanent handicap, even on the date of trial, he had limping and difficulty in sitting, squatting and walking. He could not walk without the aid of the stick. Hospitalization was of 21 days and follow up treatment continued for two months and he was confined to bed for four months, so Rs. 15000/- were awarded for pain shock and suffering. Here Dinaben could come to the court, could give evidence. I have also examined her injured leg. She was able to talk. In another case, which was tried along with Niranjana's case, there was total loss of right eye and brain injuries, resulting in numerous complications, leaving various after effects to the petitioner, so the petitioner was awarded Rs. 37500/-. Here we have no such case. The injury caused to Dinaben is quite different.

10. Thus, claims tribunal has while considering physical disablement of minor Dinaben and family back ground and educational career, held that future economic loss will not be more than 40% and Rs. 400/- monthly income was assessed and 40% monthly loss comes to Rs. 160/- and yearly loss comes to Rs. 1920/- and applying 20 multiplier, amount comes to Rs. 38,400/-. Thereafter, claims tribunal awarded Rs. 20,000.00 for pain, shock and suffering, Rs. 10,000/- for expenses of treatment, Rs. 5000 for conveyance charge and special diet, total of which comes to Rs. 98,400/-.

11. While awarding compensation to claimant under different heads, claims tribunal has ignored or rejected claim for marriage prospects which are adversely affected due to injury caused in accident but claims tribunal has considered that this aspect has not been made clear by minor Dinaben or her mother Sushilaben and, therefore, in absence of any specific evidence, no such amount can be awarded to minor Dinaben on the ground of diminished marriage prospects. Medical Certificate issued by Dr. Kanabar assessing 65.45% disability of minor Dinaben having functional disability of leg is reduced to 40% without any reason and rational. Income of minor Dinaben appellant is assessed by claims tribunal to Rs. 400.00 without any basis. Decision referred to and relied upon by learned advocate Mr. Shah has not been properly appreciated by claims tribunal. Relevant record Exh.5, 30,58 and 61 produced by claimants have not been properly appreciated by claims tribunal. Claims Tribunal has considered injury received as per medical certificate Exh. 28 as referred to in para 25, therefore, para 25 of award is reproduced as under:

25. Soon after the accident, minor Dinaben was removed to v. Hospital. She was admitted there on 3.3.85, that is on the date of the accident. As per that certificate Exh. 28, she had following injury on left lower limb.

Extensive deg loving injury extending from Ant. aspect of 1t. Thigh from its middle 1/3rd over ant. aspect of 1t. Knee upto junction of M/L Jn of Lt. leg over anterolate aspect with overltng anadriceps expansion patella and muscle of leg exposed.

In addition to the aforesaid injury, she had a CLW 3 on x 3cm over medial aspect of right ankle. She was clinically and radiologically examined, but no fracture was detected. She was treated and discharged from v. Hospital on 6.3.1986, As per follow up card Exh. 30, she was advised to be admitted in Plastic Surgery Department of SCL Hospital.

12. Evidence of claimant appellant is discussed by claims tribunal in para 26 which suggests pain, shock and suffering as well as permanent disability suffered by appellant due to accidental injury, therefore, para 26 of award is reproduced as under:

26. Dinaben has deposed that she was then removed to the Hospital of Plastic Surgeon Dr. Vasa on 6.3.1986 where she was treated upto 1.5.1986. She further says that 25 bottles of blood and 100 bottles of glucose were used during her

treatment and she was 6 times operated, skin grafting was done. She says that till the period of treatment, she was unable to move, took complete rest in bed and also in a moving chair. She further says that her mother and her aunt attended her during the period of her hospitalization and her mother's mother was called from Bombay for doing house hold work.

13. Claims tribunal has discussed cross examination of Dr. Kanabar in para 30 of award. Therefore, para 30 of award is reproduced as under:

30. In cross examination, Dr. Kanabar admits that Dinaben had not sustained any fracture. He says that she could not cooperate in measuring her muscle power, so he tied to measure it by his his hand. He says that he used spiring weight to measure weight bearing capacity of Dinaben and spring weight was not used for measuring her muscle powers. Dr. Kanabar says that he has assessed permanent functional disablement. He admits that if a particular limb is totally destroyed, the disability can be 99% only, for that limb. He says that he does not agree with Kassler's theory that while assessing disability of a body as a whole, the disability which is assessed of a particular limb can be less. The certificate issued by Dr. Kanabar is produced at Exh. 60. The case papers prepared by the Doctor are produced at Exh. 59.

14. Based on the aforesaid evidence, claimant was demanding that the future income of the claimant should be considered at Rs. 600.00 p.m. and at 65 per cent functional disability, 65 per cent loss should be assessed, according to which monthly loss will come to Rs. 400/- and yearly loss will come to Rs. 4800/- x 20 multiplier = Rs. 96000/- but same was not accepted by claims tribunal and for not accepting same, no reason is given by claims tribunal as to why submission made by learned advocate Mr. Shah for claimant is not acceptable. No amount is awarded for diminishing marriage prospects. Claims tribunal has relied upon one fact that appellant has not sustained any fracture and Dr. Kanabar has not carried out measurement as suggested by Dr. Kessler and not followed certain theories of Dr. Kessler, therefore, according to my opinion, claims tribunal has not properly dealt with the matter and has not properly understood seriousness of injuries suffered by ten years old minor girl Dinaben in left leg which has adversely affected her marriage prospects and it also amounts to disfigurement of body, according to my opinion. It also reduces physical strength of girl but these facts have not been properly appreciated and decision relied upon by advocate for claimant before claims tribunal has been distinguished on different angle ignoring hard reality of life of having grievous injuries on left leg which resulted in 65.45% permanent disability certified by Dr. Kanabar.

15. Recently apex court has considered in case of Sapna v. United India Insurance Co. Ltd. and Anr. reported in 2008(3) Supreme Today page 735 wherein apex court considered what should be the fair and adequate compensation for permanent disability suffered by a 12 years" girl in an accident involving a motor vehicle is the question involved herein. On 3.9.1999, at about 10.00 am, Sapna, while going to a temple, was hit by a `jeep", used as a taxi.

She was dragged along with the jeep to a distance of about 15-20 feet. She suffered compound fracture of left knee and dislocation of Patellae/bone of left knee and skin and muscles above and below came out and veins got cut and knee got completely damaged and bones of left leg became bare due to tearing of skin and flesh and left leg bent at 90 degree at knee as a result whereof she has become crippled and completely disabled to walk. The skin of right leg from thigh to ankle was also peeled off resulting in serious wounds. She was taken to a hospital and admitted as an inpatient therein for about 25 days. A sum of Rs. 45,000/- were expended for her treatment till that day. It is stated that she is still required to undergo treatment from the aforementioned hospital. Relevant discussion made by apex court in para 8 to 15 is reproduced as under:

8. The principles governing a claim petition for assessing the damages in case of bodily injury suffered is that while awarding the compensation, the Tribunal should consider all relevant factors so as to enable the insured to be put in the same position as if he had not sustained any injury. The principle of Restitutio-in-integrum may be applied in a case of nature. Pecuniary loss and non-pecuniary loss are required to be pressed under certain heads. So far as the pecuniary loss is concerned, the same can be ascertained. What is required to be done is a balancing act by awarding such sum which, on the one hand, shall take care of the loss suffered by the claimant for the present time and future pecuniary benefits and, on the other, pecuniary advantages which from whatever source comes to them by reason of such injuries. So far as non-pecuniary loss is concerned, the same has to be assessed broadly under certain heads, namely, damages for physical pain, mental suffering etc. besides the amount spent on medical treatment, if any.

9. Expenditure for medical treatment has been granted. The High Court, in its judgment, noticed that although the Tribunal had referred to the likely effect on the matrimonial prospects of the appellant on account of permanent disability, due regard in that behalf had not been given. The High Court opined:

Considering the age of the claimant Km. Sapna at the time of the accident; the nature of the injuries and the fractures suffered by her in the accident; the extent of permanent disability suffered by her in left leg on account of the injuries sustained in the accident; the amount of physical pain and mental suffering she must have suffered during the period she remained hospitalised and her left leg was under plaster; the fact that the permanent disability to the extent of 90% in her left leg is bound to affect adversely her matrimonial prospects and that for rest of her life she would remain crippled and in view of the guidelines laid down by the Apex Court in the above quoted dicta, we are of the opinion that a lump sum of Rs. 2,00,000/- (Rupees Two Lakhs only) would be just and proper compensation to the claimant for the injuries suffered by her in the accident, the amount spent on treatment, physical pain and mental suffering, loss of future earning capacity and other permissible heads.

10. No reason has been assigned in support thereof. In arriving at the said

figure, only loss of matrimonial prospect has been taken into consideration. The fact that she would remain crippled throughout her life was also noticed but it does not appear that any serious consideration was bestowed thereupon.

11. The principle that is to be applied in a case of this nature that the amount of compensation should be just and fair is not in dispute. What would, however, be just and fair amount of compensation is required to be determined having regard to the facts and circumstances of the case involved. In given cases, the courts may deviate from the structured formula. In terms of the Second Schedule, where the deceased or injured were not having any income, the statute presumes an income of or about 15,000/- per month. If having regard to the age of the appellant, the multiplier of 15 is applied, a sum of Rs. 2,25,000/- would be payable.

Besides the said sum, not only some amount of compensation should be awarded under the heading of mental agony but also some provision should be made for future treatment.

12. In *Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another*, it was held:

11. It is now a well-settled principle of law that the payment of compensation on the basis of structured formula as provided for under the Second Schedule should not ordinarily be deviated from. Section 168 of the Motor Vehicles Act lays down the guidelines for determination of the amount of compensation in terms of Section 166 thereof. Deviation from the structured formula, however, as has been held by this Court, may be resorted to in exceptional cases. Furthermore, the amount of compensation should be just and fair in the facts and circumstances of each case.

We may also notice a decision in *Nagappa Vs. Gurudayal Singh and Others*, wherein a Three Judge Bench of this Court opined that the law does not permit passing of any further award after the final award was passed, stating:

Therefore, in a case where injury to a victim requires periodical medical expenses, fresh award cannot be passed or previous award cannot be reviewed when the medical expenses are incurred after finalization of the compensation proceedings. Hence, the only alternative is that at the time of passing of final award, the Tribunal/court should consider such eventuality and fix compensation accordingly. No one can suggest that it is improper to take into account expenditure genuinely and reasonably required to be incurred for future medical expenses. Future medical expenses required to be incurred can be determined only on the basis of fair guesswork after taking into account increase in the cost of medical treatment.

What would be the genuine and reasonable expenditure likely to be incurred by the appellant towards her future treatment is not borne out from the records. It would require serious consideration for the purpose of award of damages. When

a person becomes completely incapable to do any work and virtually has no enjoyment for life, the same form relevant factors and, thus, requires consideration for the purpose of determining a fair and reasonable amount of compensation.

It has not been disputed that future treatment for the appellant would be necessary. If future treatment is necessary, some provision should be made therefor. In absence of any clear cut estimate, we are inclined to award a further sum of Rs. 75,000/- under the said head. She may require another operation. She may require to be provided with an artificial limb. We, direct accordingly.

15. Similar question came up for consideration in *Madhya Pradesh State Road Transport Corporation Bairagarh, Bhopal v. Sudhakar and Ors.* AIR 1977 SC 1189 wherein this Court held:

The other appeal (C.A. No. 2255 of 1968) relates to the injury sustained by a boy aged about four years. He suffered compound fracture of his right tibia and fibula lower third near the ankle joint with infection of the wound, skin-grafting had to be done and the boy had to remain in hospital from June 25 to August 4, 1961. According to the doctor who examined him, the child was likely to develop a permanent limp which might require another operation at the age of 16 years or so. In any case, in the opinion of the doctor the deformity was certain to persist till the boy was 16 years when another operation might remove it. The tribunal awarded Rs. 10,000/- as general damages and Rs. 890/- as special damages. The High Court increased the general damages to Rs. 20,000/-. It appears from the evidence that the boy comes from a well-to-do family. Though the possibility was there of the deformity being removed by surgical operation when he grew up to be 16 years, the other possibility cannot be altogether ruled out. That being the position, we are not inclined to interfere with the sum awarded by the High Court.

16. In aforesaid decision of apex court, an amount of Rs. 82569.00 was awarded by claims tribunal together with interest at the rate of 8 % per annum in favour of Sapna Claimant and High Court enhanced amount of compensation to Rs. 2 lacs but reduced rate of interest from 8 per cent to 6 per cent. Apex court awarded Rs. 2,25,000.00 with 75000/- for future further medical treatment. Aforesaid decision is almost applicable to the facts of this case.

17. In case of *Saravanan @ Saravanakumar v. M. Sankaran and Anr.* reported in (2008) 4 MLJ 1193, Madras High Court was considering question of enhancement of compensation. It was a claim filed by pillion rider. Claimant sustained irreparable injury. Lost manhood. He was declared to be impotent and sterile. Tribunal awarded Rs. 2,44,000.00 as against claim of Rs. 4,00,000/-. Claimant, a business executive was earning Rs. 1750.00 as per Exh.A/6. Tribunal assessed earning as Rs. 1000.00 which was held to be improper by Madras High Court by holding that materials on record show that claimant had lost his amenities of life, therefore, claim was enhanced to Rs. 5,00,000/- though amount claimed is

lesser. It was also held that in a fit and proper cases and upon sufficient materials, tribunals can award higher compensation than that of amount claimed. It was observed by Madras High Court in para 9,10 and 11 as under:

9. The question is what is the reasonable compensation. In K.S apana v. B. Appa Rao 1998 ACJ 113 M. JAGANNADHA RAO, J.(as he then was), considered the case of girl who had suffered serious damage and made claim for loss of prospects of marriage and loss of future earnings. The learned Judge dealt with "loss of Amenities of life".

Loss of amenity is broad and amorphous category, and embraces a hotpotch of disabilities, such as the interference with or prevention of the pursuits of former activities and it goes further. This head of non pecuniary damages embraces every thing which reduces the plaintiff's enjoyment of life considered apart from any material or pecuniary loss which may be attendant upon the plaintiff's injuries. The words "loss of amenities" have been explained in a vivid manner in the off quoted unreported case Manley v. Rugby Portland Cement Co. Ltd. CA No. 286 of 1952, referred to in Kemp & Kemp, 1982, para 3.001, page 3001 by BURKITT,LJ as follows:

There is a head of damage which is sometimes called 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 and will never go upon his walking excursions things of that kind loss of amenities

Several High Courts in India have followed Manley v. Rugby Portland Cement Co. Ltd. CA No. 286 of 1952.

This head of damages can be understood better by reference to a few examples. Loss or impairment of any of the five senses arguably falls under this head of damage as does interference with the victim's sex life; reduction in or loss of prospectus of marriage of a young woman, fall under this head; loss of the pleasure and price a craftsman takes in his work and particularly the loss of having to replace such craft by humdrum work is loss of an amenity....

In 2005(1) TN MAC 87, the claimant had sustained fracture on the right thigh right knee and injuries all over the body. He was unable to stand,walk freely climbing stairs and not able to drive and his right leg shortened than that of the left leg."The Division Bench felt that the award should be based on the larger perspectives of justice, equity and good conscience and technicalities in the decision making must be eschewed and held as follows:

...There should be realisation on the part of the Tribunals and Courts that the possession of one's own body is the first and most valuable of all human rights and that all possessions and ownerships are extensions of this primary right, while awarding compensation for bodily injuries. Bodily injury is to be treated as deprivation which entitles a claimant to damages. The amount of damages varies according to gravity of injuries. Deprivation sustained as a consequence of bodily

injuries may bring with it three consequences namely (i) loss of earnings and earning capacity, (ii) expenses to pay others for what otherwise he would do for himself and (iii) loss or diminution in full pleasures and joys of living. Though it is impossible to equate money with human suffering, agony and personal deprivation, the Tribunals and Courts should make an honest and serious attempt to award damages so far as money can compensate the loss. Loss of curing and earning should adequately be compensated. Therefore, while considering deprivation, the Tribunal and Courts should have due regard to the gravity and degree of deprivation as well as the degree of awareness of the deprivation. In awarding damages in personal injury cases, the compensation awarded by the Court should be substantial it should not be merely token damages.

11. The injuries suffered by the claimant in this case is almost the same as the injuries in the above case. In addition to that, the appellant also suffered loss of manhood and perhaps any hope of normal material life had come to an end. The Division Bench further observed that,

Money cannot renew a physical frame that has been battered and shattered. All the Judges and Courts can do is to award sums which must be regarded as giving reasonable compensation. In the process, there must be the endeavor to secure some uniformity in the general method of approach. In personal injury cases the Courts should not award merely token damages but they should grant substantial amount which could be regarded as adequate compensation. The general principle which should govern the assessment of damages in personal injury cases is that the Courts should award to injured person such a sum of money as will put him in the same position as he would have been in if he had not sustained the injuries. But, it is manifest that no award of money can possible compensate an injured man and renew a shattered human frame. It is well settled principle hat in granting compensation for personal injury, the injured has to be compensated (1) for pain and suffering; (2) for loss of amenities; (3) shortened expectation of life, if any; (4) loss of earnings or loss of earning capacity or in some cases for both; and (5) medical treatment and other special damages.

Therefore, considering peculiar facts of case before hand, injuries received by appellant in this case and also considering case of apex court as referred to above and decision of Madras High Court, according to my opinion, appellant is entitled for enhanced amount of compensation while considering monthly income at Rs. 600.00. While considering 65.45% functional disability as stated above, monthly loss would come to Rs. 400.00, therefore, annual loss would come to Rs. 4800.00 and applying multiplier of 20, looking to age of minor Dinaben 10 years at that time, future economic loss comes to Rs. 96,000.00. Appellant is entitled for Rs. 50,000.00 for diminishing marriage prospects of appellant and Rs. 30,000.00 for pain, shock and suffering and Rs. 30,000.00 towards expenses of treatment already incurred by appellant and Rs. 20,000.00 for future treatment that may be necessary for appellant and Rs. 10000.00 for conveyance

charges and Rs. 15000.00 for special diet required to have immediate recovery from injury. Thus, appellant is entitled for compensation on different heads as under:

Rs. 96,000.00 Future economic loss Rs. 50,000.00 For diminishing marriage prospects Rs. 30,000.00 For pain, shock and suffering Rs. 30,000.00 Towards expenses of treatment already incurred by appellant Rs. 20,000.00 For future treatment Rs. 10,000.00 For conveyance charges Rs. 15,000.00 For special diet ----- Rs. 2,51,000.00 Total compensation.

18. Thus, claims tribunal ought to have awarded Rs. 2,51,000/- but has awarded Rs. 98,400/-, therefore, deducting amount already awarded by claims tribunal from Rs. 2,51,000/-, claimant is entitled for enhanced amount of Rs. 1,52,600.00 looking to serious injury to appellant and permanent disability to the extent of 65.45% and diminishing marriage prospects and pain, shock and suffering and expenses of treatment and special diet being reasonable, just and proper enhancement in case of appellant which, according to my opinion, cannot be considered to be unreasonable or on higher side but same is just, reasonable and proper amount of compensation in view of peculiar facts and circumstances of case. According to my opinion, amount awarded by claims tribunal is not just and proper amount considering injury suffered by claimant and diminishing marriage prospects. It was duty of claims tribunal to award such reasonable amount. Injury suffered by claimant has adversely affected physical strength of minor Dinaben and it has diminished her marriage prospects too and has ruined her entire life and future including educational prospects and therefore, considering object of MV Act, according to my opinion, appellant in this case is entitled for reasonable and fair compensation which has not been awarded by claims tribunal. According to my opinion, claims tribunal in this case has adopted orthodox approach while assessing compensation of appellant and that has caused injustice to appellant and, therefore, matter requires interference of this Court looking to injury caused to appellant as certified by Dr. Kanabar in certificate Exh. 28. Therefore, according to my opinion, appellant is entitled for this much enhanced amount of compensation with interest thereon at 12% p.a. from date of claim petition till realization thereof.

19. Accordingly present appeal is allowed with direction to respondent No. 1 and 2 to deposit enhanced amount of Rs. 1,52,600.00 before claims tribunal with interest thereon at 12 per cent per annum from date of claim application till realization before claims tribunal Ahmedabad City Civil Court Bhadra Ahmedabad within three months from date of receipt of copy of this order. No order as to costs.