

(2012) 05 RAJ CK 0102

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 234 of 2000

Shashi Kant Bagrecha

APPELLANT

Vs

Shahjahan and Others

RESPONDENT

Date of Decision : 30-05-2012

Acts Referred:

Citation : (2013) 1 ACC 577 : (2013) 1 RLW 249

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Ganesh Joshi, for the Appellant; S.C. Purohit, P.K. Kasliwal and Mr. C.M. Sharma, for the Respondent

Judgement

Mohammad Rafiq, J.—These four appeals are directed against the common award dated 25th November, 1999 passed by Motor Accident Claims Tribunal, Kishangarh, Ajmer seeking enhancement of compensation relating to same incident, hence they are being decided by this common order. In CMA No. 234/2000, appellant Shashi Kant Bagrecha, aged 34 years at the time of accident filed Claim Case No. 40/1995 for compensation on account of 100% permanent disability suffered by him in a road accident involving the vehicle insured with the New India Insurance Co. Ltd. in which case, he was awarded a sum of Rs. 6,00,000 as lump sum compensation.

2. In CMA No. 232/2000, appellant Smt. Usha Bagrecha aged 29 years, who sustained 37.5% disability in the same accident, filed Claim Case No. 38/ 1995. Tribunal awarded Rs. 6,000 for six months for domestic help computing Rs. 1,000 per month. Rs. 48,605 were awarded for medical expenses and Rs. 50,000 for permanent disability of 37.5%. Thus, a total sum of Rs. 1,28,000 was awarded as compensation.

3. In CMA No. 235/2000, appellant Smt. Usha Bagrecha filed Claim Case No. 37/1995 for the death of her minor child Chintu, aged three years, in which case she was awarded a lump sum amount of Rs. 75,000 as compensation.

4. In CMA No. 236/2000, Claim Case No. 39/1995 was filed for 40% permanent disability of head and private organs sustained by Puneet Bagrecha, aged eight years, through her mother Smt. Usha Bagrecha. Tribunal awarded Rs. 4720.80 towards medical expenses, Rs. 12,000 towards pain and suffering and Rs. 85,000 for permanent disability of 40%. In all, an award for a sum of Rs. 1,02,000 was passed for the injuries of Puneet Bagrecha.

5. Mr. Ganesh Joshi, learned Counsel appearing for the appellants has argued that in CMA No. 234/2000, appellant-Shashi Kant Bagrecha sustained 100% permanent disability and has been rendered completely crippled to lead vegetative life till he survives inasmuch as, an award of compensation of Rs. 6,00,000 could not by any stretch of imagination be held to be justified. Evidence proved that he was working as Managing Director of M/s. Praman Motors Pvt. Ltd. Parvatpura. He was income tax payee and his monthly income at the time of accident took place on 2nd July, 1993 was Rs. 1,40,000 p.a. Had he not suffered disability, he would have earned till the age of 70 years. His income tax return is Ext. 858. There were chances of substantial increases in his income. He was a qualified Engineer. He was a Gold Medalist. He was first position holder of his batch in the University, which is evident from Ext. 854. He received training in Germany, which was proved by Ext. 855. He received nine injuries, which is proved from Ext. 889. He sustained 100% permanent disability, which is fortified from the permanent disability certificate Ext. 914 issued by Dr. B.K. Mathur, M.S. Medical Jurist, Jawahar Lal Nehru Hospital, Ajmer and then he was referred to S.M.S. Hospital, Jaipur. Since certain complications developed, he was referred to Bombay Hospital, Bombay, where he remained hospitalized for six months in the Intensive Care Unit. He was under the treatment of renowned Surgeon Dr. S.N. Bhagwati. Bombay Hospital is the costliest hospital. He was then shifted to Indore for further treatment and stayed in a private accommodation under the supervision of Doctors there. In October, 1996 he was again admitted in Bombay Hospital and remained under the treatment of Dr. Chabariya, Physiotherapist. Then, he was shifted to Surat. There also, he continued to receive treatment of Dr. S.N. Bhagwati. For all this time, a male nurse was permanently engaged for taking care of him at Indore and Surat. Name of male nurse was Shri Chandresh Jangid, who attended appellant-Shashi Kant Bagrecha for the period from December 1994 to August 1995. Thereafter, Shri Sharad Vyas and then Shri Sharma were engaged as male nurses. There was one more domestic servant, who was taking care of him. Appellant-Shashi Kant Bagrecha submitted bills from Ext. 1 to Ext. 659, Ext. 815A to 816A to Ext. 852 and Ext. 860 to Ext. 913 of actual medical expenses of Rs. 8,74,970.30. His gross income as per the income tax returns Ext. 858 was Rs. 93,447 p.a. at the time of accident. The Tribunal has mechanically awarded a sum of Rs. 6,00,000 as total compensation, which is too meagre amount of compensation. There is no justification why actual expenses were not allowed. There is also no justification at all for not awarding him compensation under the heads of pain and suffering, physical incapacity, loss of future income, permanent disability, future treatment and attendants. All

these aspects were completely ignored by the Tribunal. Tribunal completely ignored the fact that he was a qualified Engineer with Gold Medal and had received training from Germany. The Tribunal has awarded a lump sum amount of compensation of Rs. 6,00,000, which is even less than the actual medical expenses of Rs. 8,74,970.30.

6. Mr. Ganesh Joshi, learned Counsel appearing for the appellants has argued that in CMA No. 232/2000, appellant-Smt. Usha Bagrecha sustained permanent disability of 37.5% in her both hands, legs, entire body and head. Her right leg was shortened by 1", which was proved by disability certificate Ext. 801. Despite this, learned Tribunal awarded a meagre amount of compensation of Rs. 50,000 against her permanent disability of 37.5%. She remained hospitalized in J.L.N. Hospital Ajmer till 6th July, 1994 and then was shifted to Cure Well Hospital, Indore on 7th July, 1994, where she was subjected to surgery. She was thereafter discharged on 31st July, 1994 but was again admitted in Cure Well Hospital, Indore on 25th August, 1994 and was subjected to second surgery and was discharged therefrom on 26th August, 1994. She was again admitted in the same hospital on 25th October, 1994 and was discharged on 29th October, 1994. Then, she was again admitted in the same hospital on 24th November, 1994 and was later discharged on 18th December, 1994. She sustained crush injury of humerus bone of right leg and also hip bone of the left leg. She also sustained fracture of left hand and fracture of wrist of her right hand. She also sustained injuries on the parietal bone, forehead and other parts of the body. She sustained seven injuries in all, out of which, four were grievous in nature and three were simple injuries. She was awarded a paltry sum of Rs. 23,000 for pain and suffering, Rs. 6,000 for engagement of domestic help for household work for a period of six months @ Rs. 1,000 per month, Rs. 48,605 towards actual medical expenses of Bills Exts. 783 to 786 and for prolonged hospitalization and total medical expenditure incurred on her treatment of Rs. 3,00,000, only a sum of Rs. 50,000. In all, award for payment of compensation of a sum of Rs. 1,28,000 was passed in her case. It is argued that even though it is shown that claimant-Smt. Usha Bagrecha was a household wife, her contribution to the family cannot be undermined as per settled proposition of law following judgment of Supreme Court in Arun Kumar Agrawal and Another v. National Insurance Company & Ors., V (2010) SLT 290 : III (2010) ACC 313 (SC) : 2010 A.C.J. 2161, wherein income of deceased house hold wife was held to be Rs. 3,000 per month (Rs. 36,000 p.a.) but looking to fall in the value of rupee, it should be now raised to Rs. 10,000 per month, which can be accepted her contribution to the family and on that basis, structured formula can be applied on multiplier of 17. Though the Supreme Court in that case assessed income of the deceased-wife to be Rs. 5,000 per month and enhanced amount of compensation of Rs. 2,50,000 awarded by the Tribunal to Rs. 6,00,000.

7. Mr. Ganesh Joshi, learned Counsel appearing for the appellants has argued that in CMA No. 235/2000, child Chintu aged three years died in accident. It was argued that payment of compensation of only Rs. 75,000 can hardly be justified.

This is a very painful story that the entire family was completely ruined in the accident. If this child would have been alive, he would have supported the family. In this connection, learned Counsel for the appellants has relied on the judgment of this Court in a leading case of Smt. Nana Devi & Ors. v. Gurumel Singh & Ors., SBCMA No. 870/2001 and 21 other appeals, in which case, this Court following number of Supreme Court judgments, allowed the appeals vide judgment dated 2nd November, 2011 arriving at the conclusion that compensation for atleast a sum of Rs. 1.5 lacs should be awarded for the accidental death of child upto the age of 5 years and still higher compensation was awarded for children in the higher age group.

8. Mr. Ganesh Joshi, learned Counsel appearing for the appellants further argued that in CMA No. 236/2000, another son of Smt. Usha Bagrecha Master Puneet, aged eight years, sustained 40% permanent disability due to head injury and injury to private organs as a result of accident. He sustained severe head injury owing to which, he is still suffering several complications. His right eye was damaged. He developed glaucoma. Although he is growing but due to the effect of accident, he will have to throughout his life suffer complications as pieces of glass pierced into forehead, face and private organs of his body. Since his private organs have been damaged, he has been rendered incapable of performing sexual intercourse. His entire life has been ruined. Learned Tribunal has erred in law in awarding only a sum of Rs. 1,02,000, which includes Rs. 4720.80 towards medical expenses, Rs. 12,000 towards pain and suffering and awarded only Rs. 85,000 for permanent disability of 40%.

9. Mr. Ganesh Joshi, learned Counsel for the appellants in support of his arguments cited judgments of Supreme Court in Raj Rani and Others v. Oriental Insurance Co. Ltd. and Others, IX (2009) SLT 211 : 2009 A.C.J. 2003; Lata Wadhwa and Others Vs. State of Bihar and Others, ; R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, ; Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and Another, -VII Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and Another, : Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and Another, ; Nagesha Vs. M.S. Krishna and Another, ; Swatantra Kumar Vs. Qamar Ali and Others, , Shashendra Lahri Vs. UNICEF and Others, , and judgment of this Court in Kunal Gaurav Saxena Vs. Anil Kumar and Others, : Kunal Gaurav Saxena Vs. Anil Kumar and Others, , and argued that compensation should be reasonably enhanced as per the law laid down by the Supreme Court and this Court in all the aforecited judgments.

10. Mr. Ganesh Joshi, learned Counsel for the appellants also cited the judgment of Supreme Court in Santosh Devi Vs. National Insurance Company Ltd. and Others, : Santosh Devi Vs. National Insurance Company Ltd. and Others, : Santosh Devi Vs. National Insurance Company Ltd. and Others, : Santosh Devi Vs. National Insurance Company Ltd. and Others, , and argued that claimants should be awarded benefit of "future prospect" on the income of appellant-Shashi Kant Bagrecha.

11. Per contra, Mr. P.K. Kasliwal, learned Counsel for the Oriental Insurance Company has opposed the appeals and argued that the amount of compensation that has been awarded by the Tribunal to the claimants is just and adequate because the appellants are related to each other and hence they cannot be awarded higher amount of compensation as the law is well settled that the compensation has to be just and reasonable and not a bonanza. While appellant Shashi Kant Bagrecha has been awarded Rs. 6,00,000, which, considering the fact that the accident took place in the year 1993, was quite a big amount of compensation. He was in private service and, therefore, it cannot be accepted that he would have received the same income for whole of his life. Referring to the income tax returns, Ext. 858, learned Counsel for the respondent-Insurance Company argued that some part of the income of Shashi Kant Bagrecha was from interest and dividends, which he would continue to receive in any case and, therefore, this should not be treated as loss of earning capacity. Appellant-Smt. Usha Bagrecha has rightly been awarded Rs. 1,28,000 as compensation for her own injuries as well as Rs. 75,000 for the death of her minor child Chintu aged three years. Rs. 1,02,000 awarded to Puneet in CMA No. 236/2000 is also a sufficient amount of compensation partly accepting his permanent disability of 40% as no medical officer was produced to prove his disability. Accident took place on 2nd July, 1993 and the award was passed on 25th November, 1999. For delay of all this time, they have further received handsome amount by way of interest and therefore the amount of compensation granted in all the appeals is just and reasonable.

12. Mr. S.C. Purohit, learned Counsel appearing for Oriental Insurance Company in CMA No. 232/2000 while adopting arguments aforesaid made by Shri P.K. Kasliwal has cited judgment of the Supreme Court in New India Assurance Co. Ltd. Vs. Charlie and Another, , in which case, Supreme Court reduced the amount of compensation from Rs. 4,68,825 to Rs. 3,50,000 to a claimant, who suffered permanent disability of 100%. Learned Counsel for the respondent-Insurance Company argued that all the judgments cited by the learned Counsel for the appellants are distinguishable on facts and are not applicable to the present case.

13. I have given my anxious consideration to rival submissions, perused the impugned award, carefully examined the records and respectfully studied the case law cited at the bar.

14. Before proceeding to deal with the rival submissions, I deem it appropriate to deal with some of the judgments cited at the bar.

15. In R.D. Hattangadi (supra), claimant R.D. Hattangadi was a practicing Advocate, who suffered 100% permanent disability on account of becoming paraplegic due to accident. Tribunal awarded a sum of Rs. 26,25,992 but in appeal, same was reduced by the High Court to Rs. 8,57,352. Apex Court enhanced amount of compensation awarded by the High Court from Rs. 1,00,000 to Rs. 3,00,000 for pain and suffering and loss of amenities of life, from Rs. 12,000 to Rs. 50,000 for future physiotherapy and thus, enhanced the amount of

compensation awarded by the High Court from Rs. 8,57,352 to Rs. 14,46,000. High Court awarded Rs. 1,00,000 under the head of pain and suffering and loss of amenities of life but the Supreme Court enhanced the same to Rs. 3,00,000. That was a case in which accident took place long ago on 20th May, 1980 and value of the rupee at that time as compared to the present time was quite low and, therefore, amount of Rs. 3,00,000 awarded for pain and suffering and loss of amenities, by the Supreme Court in 1995 was quite high amount. It would be apposite to reproduce para 9 of the report, as under-

9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

16. In Arvind Kumar Mishra (supra), the injured was a final year student of Mechanical Engineering aged about 25 years. He had passed all his semester examinations with distinction. He suffered 70% permanent disablement. Tribunal awarded a sum of Rs. 1,50,000 towards medical expenses and Rs. 1,00,000 towards other non-pecuniary damages. High Court allowed Rs. 2,00,000 instead of Rs. 1,00,000. Apex Court assessed future income at Rs. 60,000 p.a. and loss of earning capacity at Rs. 42,000 p.a. by adopting multiplier of 18 and allowed Rs. 7,56,000 plus Rs. 1,50,000 as medical expenses for future treatment. The award of Rs. 3,50,000 was thus enhanced to Rs. 9,06,000.

17. In Nagesha (supra), claimant remained hospitalized for a period of four months and was subjected to several surgical operations. Even after treatment for four months, he remained paralyzed for life and extent of permanent disablement assessed was 95%. The Tribunal awarded Rs. 2,85,000. Supreme Court held the same to be inadequate and observed that the assessment of compensation should be in the light of overall requirement of claimant for the remaining life and constant care of some other persons even for his ordinary needs. Accident in that case took place in the year 1992. Supreme Court enhanced the compensation to Rs. 6,00,000.

18. On the contrary, judgment cited by the learned Counsel for the respondents

in Charlie (supra), is wholly distinguishable on facts because that was a case in which income of the injured was from agricultural field and would continue to be received. In those facts, quantum of compensation was reduced from Rs. 4,68,825 to Rs. 3,50,000. Facts of the said case are entirely different.

19. It is not in dispute that appellant-Shashi Kant Bagrecha sustained 100% permanent disability. It is also not disputed that he was subjected to prolonged treatment and number of surgeries in hospitals at different places i.e. Jaipur, Ajmer, Indore, Bombay and Surat. His actual medical expenses amounting to Rs. 8,74,970.30 have been proved by production of medical bills as Ext. 1 to Ext. 659, Ext. 815A to 816A to Ext. 852 and Ext. 860 to Exb. 913 on record. Apart from actual medical expenditure, he had incurred transportation charges to these places. In the light of this evidence, it is difficult to comprehend as to how the Tribunal was justified in awarding only a lump sum amount of compensation of Rs. 6,00,000, far less than the actual medical expenses of Rs. 8,74,970.30. This was proved expenditure. Apart from this, the income tax returns proved his regular annual income of Rs. 93,447. The Tribunal has not considered this accepted income on the premise that some part of the income of Shashi Kant Bagrecha was from the interest and dividends, which he would have continued to receive and, therefore, this income should not be treated as loss of earning capacity. It is evidently clear that Shashi Kant Bagrecha was a Gold Medalist student in the University and was a qualified Engineer having received training abroad and was capable of earning reasonable livelihood for himself. AW-1 Smt. Usha Bagrecha in her statement has stated that he was earning Rs. 11,500 from M/s. Praman Motors. His salary from M/s. Abhinav Traders was Rs. 3,000 per month. They were totally dependent upon him. His only surviving son Puneet has become so disabled that he would be incapable of maintaining family. Medical bills have been proved by AW5 Shri Rajesh Bagrecha, brother of appellant-Shashi Kant Bagrecha. He has also proved expenditure incurred in treatment of other family members. At any rate, his income could not be accepted less than Rs. 5,000 per month, even if nothing is added to his income for future prospects. He was 34 years of age at the time of accident and has been totally and permanently rendered disable for rest of his life. There is no reason why compensation is not computed on the structured formula applying the multiplier method. Accepting his monthly income at Rs. 5,000, multiplier of 17 has to be applied as per the judgment of Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . Computing thus, loss of future income should be accepted at Rs. 5,000 and with the multiplier of 17, computed thus: $5000 \times 12 \times 17 = 10,20,000$.

20. It is also a fact that appellant has received multiple injuries and he remained hospitalized in intensive care unit in the first instance for a period of six months and then he remained hospitalized in Government Hospitals at Ajmer and Jaipur and, thereafter, he was shifted to Bombay Hospital, Bombay then to Indore and then to Surat. He had suffered unimaginable, mental and physical agony for all this time. It would be rather highly unjust not to award him any compensation

for pain and suffering. He has to for rest of his life remain dependent on someone else and for that he would need to engage an attendant considering that his wife herself sustained 37.5% permanent disability and his only surviving son 40% permanent disability. He deserves to be awarded a sum of Rs. 8,75,000 towards actual medical expenses. Nothing has been awarded to him under the head of "transportation charges" overlooking the fact that appellant-Shashi Kant Bagrecha was subjected to prolonged treatment at different places i.e. Jaipur, Ajmer, Indore, Bombay and Surat. Therefore, atleast a sum of Rs. 25,000 is liable to be awarded under the head of "transportation charges". Similarly, nothing has been awarded under the heads of "pain and suffering", "attendant" and "future medical care and expenses". He deserves to be awarded Rs. 2,00,000 for pain and suffering, Rs. 1,00,000 for attendant and Rs. 1,00,000 for future medical expenses. The total amount computed is thus: $10,20,000 + 8,75,000 + 25,000 + 2,00,000 + 1,00,000 + 1,00,000 = 723,20,000$.

21. The Supreme Court in Santosh Devi (supra), while deviating from the judgment of Sarla Verma (supra), held that the workers and employees working in private and unorganized sectors should also be held entitled to future prospects. The Supreme Court took judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in that category is increased substantially. It was held that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income. Learned Counsel for the appellants has been relying on the judgment of Supreme Court in Santosh Devi (supra), also prayed for grant of benefit for "future prospect" of 30%. However, in view of substantial increase in the amount that is being awarded to the claimant as compensation, it is not considered proper to award any benefit of "future prospects".

22. Adverting now to CMA No. 232/2000 filed by appellant-Smt. Usha Bagrecha, it should be noticed that Shashendra Lahiri (supra), of Supreme Court was a case in which the injured aged 17 years sustained permanent disablement of shortening of leg by 3". He was a brilliant student of B.Com. He underwent bone-grafting and remained hospitalized for sometime in different hospitals. The accident took place in 1977 and the Tribunal awarded Rs. 33,000, which was enhanced to Rs. 58,000 in appeal by the High Court. Supreme Court additionally awarded a sum of Rs. 4,00,000 to him. Relying on this judgment, another injured Swatantra Kumar approached Supreme Court. Supreme Court in Swatantra Kumar (supra), awarded a sum of Rs. 1,00,000 for pain, shock and suffering and future economic loss in addition to what was already awarded compensation by the Tribunal. In Kunal Gaurav Saxena (Minor), the Tribunal awarded Rs. 7,02,793 to the injured, who was rendered completely paralyzed of lower part of body. This Court additionally awarded Rs. 2,00,000 for future medical care and expenses, Rs. 1,00,000 for special damages on different heads and Rs. 2,00,000 for loss of future earning thereby, enhancing amount of compensation of Rs. 5,00,000. Supreme Court in Lata Wadhwa (supra), has held that so far as the deceased housewives are concerned, in the absence of any

data, even though actual income of housewives is not shown, attempt has to be made to determine the compensation, on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has to be applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs. 12,000 per annum in cases of some and Rs. 10,000 p.a. for others, appears to be grossly low. But, even in the absence of such data and taking into consideration, but considering multifarious services rendered by the housewives for managing the entire family, their contribution to the family even on a modest estimation, should be accepted at Rs. 3,000 per month and Rs. 36,000 per annum, held the Supreme Court. Same view was reiterated by the Supreme Court in recently pronounced judgment in Arun Kumar Agrawal (supra). In the present case, appellant-Smt. Usha Bagrecha was only 29 years and, therefore, her contribution to the family cannot be ignored.

23. Considering the position of law thus, and the fact that appellant-Smt. Usha Bagrecha was 29 years, it would be just and reasonable to compute the compensation payable to her applying the multiplier system on 29 years, which is 17 as per the judgment of Supreme Court in Sarla Verma (supra), accepting her income at Rs. 3,000 per month and her disability to be 37.5% because her right leg was shortened by 1". This disability has been proved by disability certificate Ext. 801. She would face inconvenience and hardship and would be incapable of discharging normal life and performing day-to-day activities throughout her life. Although, it is true that statement of the medical officer has not been recorded but appellants have in their statements proved that Smt. Usha Bagrecha cannot properly sit and squat on the ground. She cannot drive a vehicle. Her right leg has been rendered short by 1". It must be held that reduction of her earning capacity, being at least 1/3rd, should be valued at Rs. 1,000 per month. Smt. Usha Bagrecha has been awarded Rs. 1,28,000 for her permanent disability that was assessed at 37.5%. I find that even though, appellant-Smt. Usha Bagrecha has produced medical bills of Rs. 48,605 but, in the claim petition as well as in her statement she has asserted that expenditure of Rs. 3,00,000 was incurred for the entire treatment, which she had to undergo for a very long time. As noted above, she remained hospitalized in J.L.N. Hospital, Ajmer till 6th July, 1994 and then was shifted to Cure Well Hospital Indore on 7th July, 1994 and was subjected to surgery, wherefrom, she was discharged on 31st July, 1994 but was again admitted in Cure Well Hospital Indore on 25th August, 1994 and was subjected to second surgery and was discharged therefrom on 26th August, 1994. She again was admitted in the same hospital on 25th October, 1994 and was discharged on 29th October, 1994. Again admitted in the same hospital on 24th November, 1994 and was again discharged on 18th December, 1994. In all, she remained hospitalized on four occasions. She sustained crush injury of humerus bone of right leg and also hip bone of the left leg. She also sustained fracture of left hand and fracture of wrist of her right hand. She also sustained injuries on the parietal bone, forehead and

other parts of the body. She sustained in all seven injuries, out of which, four" were of grievous nature and three were simple injuries. She was awarded a paltry sum of Rs. 23,000 for pain and suffering, Rs. 6,000 for engagement of domestic help for house hold work for a period of six months @ Rs. 1,000 per month, awarded Rs. 48,605 towards actual medical expenses of Bills (Exts. 783 to 786) and for remaining hospitalized out of total medical expenditure incurred on her treatment, only a sum of Rs. 50,000 has been awarded against 37.5% permanent disability even though she was 29 years of age at the time of accident. In all, award for a sum of Rs. 1,28,000 was passed in her case. For all the aforesaid reasons therefore, award of only for a sum of Rs. 50,000 against the actual medical expenditure of Rs. 3,00,000, cannot be considered just and proper amount of compensation under this head. Therefore, the amount of Rs. 50,000 towards actual medical expenses is liable to be enhanced to Rs. 1,00,000. She also deserves to be awarded a sum of Rs. 1,00,000 for pain and suffering because, she was hospitalized and subjected to several operations on several occasions and she sustained four fractures. She thus deserves for Rs. 5,000 each of four fractures i.e. Rs. 20,000 for four fractures. Rs. 3,000 is awarded for each three injuries i.e. Rs. 9,000 for three injuries. Rs. 50,000 is awarded for loss of marital life. Rs. 50,000 is awarded for future medical expenses. Rs. 6,000 awarded by the Tribunal towards domestic help for a period of six months is maintained. Accepting Rs. 1,000 per month towards loss of earning capacity multiplying with the multiplier of 17, the amount of compensation is computed thus: $1,000 \times 12 \times 17 = 2,04,000 + 1,00,000 + 1,00,000 + 20,000 + 9,000 + 50,000 + 50,000 + 6000 = \text{Rs. } 5,39,000$.

24. Coming now to CMA No. 235/2000 filed by appellant-Smt. Usha Bagrecha for the death of her minor child Chintu aged three years in which case she was awarded only a sum of Rs. 75,000 as compensation, it is to be noted that the Tribunal has awarded a very meagre amount of Rs. 75,000 as compensation for this death claim case. This Court in Smt. Nana Devi (supra), while taking into consideration the aspect of future prospects in such matters and number of Supreme Court judgments, where children died on account of accident, accepting that if he/she lived longer life, he/she would certainly have advanced in life to be of help to his/her family and utility to the nation, while relying upon the judgments of Supreme Court in R.K. Malik and Another Vs. Kiran Pal and Others, ; Oriental Insurance Co. Ltd. Vs. Syed Ibrahim and Others, ; Kaushlya Devi Vs. Shri Karan Arora and Others, ; Lata Wadhwa and Others Vs. State of Bihar and Others, ; New India Assurance Co. Ltd. Vs. Satender and Others, : New India Assurance Co. Ltd. Vs. Satender and Others, : New India Assurance Co. Ltd. Vs. Satender and Others, ; State of Haryana and Another Vs. Jasbir Kaur and Others, , enhanced amount of compensation in the case of accidental death of child upto the age of 5 years to Rs. 1,50,000. Therefore, award of compensation of Rs. 75,000 deserves to be enhanced to Rs. 1,50,000 in this appeal.

25. In CMA No. 236 / 2000 filed by appellant-Puneet Bagrecha through his

mother for his injuries, it is noted that Puneet was minor child aged eight years. Evidence has proved that his permanent disability was assessed by experts vide Ext. 789 to be only 15% but in course of time when he was subjected to prolonged treatment, it was realized that he has suffered a higher degree of permanent disability to the extent of 40%. Mere non-production of the medical officer to prove permanent disability of 40% in this case would not be fatal to the case of claimants because there is otherwise sufficient evidence on record to prove such disability. This was proved by AW-1 Smt. Usha Bagrecha, who by appearing in the witness box stated that Puneet sustained injuries on his face, forehead and private organs due to piercing of the pieces of glass into those parts. He was admitted to Government Hospital at Ajmer for one day and then was referred to the SMS Hospital at Jaipur on the next day, where he remained hospitalized for four days. Then, he was referred to Bombay Hospital, Bombay, where he remained hospitalized for twenty days. Thereafter, he was shifted to Cure Well Hospital at Indore, where he remained admitted for ten days. He became patient of Epileptic and he regularly receives Epileptic Fits. Blood got clotted in his head. His memory became weak due to which he could not attend regular classes in the school. He has been rendered incapable of sexual intercourse, due to the injuries sustained in his private organs. He is still being subjected to minor surgery after every few years frequently. He has difficulty in urinating. He has suffered prolonged mental as well as physical agony. He is incapable of earning anything for himself for rest of his life. A sum of Rs. 1,00,000 was actually spent on his treatment. He is still under treatment. His mental growth has also been retarded. Therefore, award of Rs. 1,02,000 cannot at all be justified. Appellant-Puneet Bagrecha is held entitled to receive Rs. 1,50,000 for his permanent disability, Rs. 50,000 for pain and suffering and Rs. 50,000 for future treatment and care. Award of compensation of Rs. 1,02,000 deserves to be enhanced to Rs. 2,50,000 in this appeal.

26. In the result, all the appeals are allowed. The common award dated 25th November, 1999 passed by Additional District and Sessions Judge, Kishangarh, Ajmer-cum-Motor Accident Claims Tribunal, Kishangarh, Ajmer is modified in following terms:

27. In CMA No. 234/2000, Shri Shashi Kant Bagrecha v. Shri Shahjahan & Ors., arising out of Claim Case No. 40/1995:

- (a) Rs. 5,000 accepted income.
- (b) $\text{Rs. } 5,000 \times 12 \times 17 = 10,20,000$.
- (c) Rs. 8,75,000 is awarded towards actual medical expenses.
- (d) Rs. 25,000 towards transportation charges.
- (e) Rs. 2,00,000 towards pain and suffering.
- (f) Rs. 1,00,000 for attendant.

(g) Rs. 1,00,000 for future medical expenses.

(h) $10,20,000 + 8,75,000 + 25,000 + 2,00,000 + 1,00,000 + 1,00,000 = 23,20,000$.

(i) Amount of compensation of Rs. 6,00,000 is enhanced to Rs. 23,20,000.

(j) Appellant shall be entitled to receive interest @ 6% p.a. from the date of filing claim petition on the enhanced amount of compensation of Rs. 17,20,000.

(k) A sum of Rs. 10,00,000 out of the aforesaid amount shall be deposited in the Monthly Income Scheme (M.I.S.) account of the post office, monthly interest whereof shall be paid to the claimant. The principal amount shall continue to remain deposited atleast for four terms permissible for opening the said account. A further sum of Rs. 3,00,000 out of the awarded compensation shall be invested in the FDR Account with any nationalized Bank in the name of the claimant for a duration of five years and shall thereafter be released to him. Remaining amount inclusive of the amount of interest may be disbursed to the claimant.

28. In CMA No. 232/ 2000, Smt. Usha Bagrecha v. Shri Shahjahan & Ors., arising out of Claim Case No. 38/1995:

(a) Rs. 1,000 per month being 1/3rd of monthly income as accepted loss of earning capacity.

(b) $1,000 \times 12 \times 17 = 2,04,000$.

(c) Rs. 1,00,000 is awarded for actual medical expenses and hospitalization.

(d) Rs. 1,00,000 is awarded towards pain and suffering.

(e) Rs. 20,000 (Rs. 5,000 for each four grievous fractures) is awarded.

(f) Rs. 9,000 (Rs. 3,000 for each three simple injuries) is awarded.

(g) Rs. 50,000 is awarded for loss of marital life.

(h) Rs. 50,000 is awarded under the head of "future medical expenses".

(i) Rs. 6,000 awarded by the Tribunal for domestic help is maintained.

(j) $2,04,000 + 1,00,000 + 1,00,000 + 20,000 + 9,000 + 50,000 + 50,000 + 6,000 = 5,39,000$.

(k) Amount of compensation of Rs. 1,28,000 is enhanced to Rs. 5,39,000.

(l) Appellant shall be entitled to receive interest @ 6% p.a. from the date of filing claim petition on the enhanced amount of compensation of Rs. 4,11,000.

29. In CMA No. 235/2000, Smt. Usha Bagrecha v. Shri Shahjahan & Ors., arising out of Claim Case No. 37/1995:

(a) Lump sum amount of compensation of Rs. 75,000 is enhanced to Rs. 1,50,000.

(b) Appellant is entitled to receive interest @ 6% p.a. from the date of filing claim petition on the enhanced amount of compensation of Rs. 75,000.

30. In CMA No. 236/2000 Puneet Bagrecha v. Shri Shahjahan & Ors., arising out of Claim Case No. 39/1995:

(a) Rs. 1,50,000 is awarded for permanent disability of 40%.

(b) Rs. 50,000 is awarded for pain and suffering,

(c) Rs. 50,000 is awarded for future treatment and care.

(d) $\text{Rs. } 1,50,000 + 50,000 + 50,000 = 2,50,000$.

(e) Amount of compensation of Rs. 1,02,000 is enhanced to Rs. 2,50,000.

(f) Appellant shall be entitled to receive interest @ 6% p.a. from the date of filing claim petition on the enhanced amount of compensation of Rs. 1,48,000.

31. Compliance of the award in all these cases be made by the non-claimants held liable by the Tribunal to pay compensation, within three months from the date copy of this judgment is produced before them. Records of all the appeals be sent back to the Tribunal forthwith.