

THE HIGH COURT OF SIKKIM: GANGTOK

(Civil Appellate Jurisdiction)

SINGLE BENCH: HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

M.A.C. Appeal No.01 of 2020

Suja Khilingay
D/o Kumar Khilingay,
R/o Tadong Bazar,
P/o Tadong & P.S. Gangtok,
East Sikkim.

.... Claimant

versus

1. Archana Chettri,
D/o R. K. Chettri,
R/o Arithang,
P.O. & P.S. Gangtok,
East Sikkim
2. The Branch Manager,
New India Assurance Company Limited,
M.G. Marg,
P.O. & P.S. Gangtok,
East Sikkim.
3. Sabin Tamang,
S/o Late Ran Bahadur Tamang,
R/o Arithang, East Sikkim.

.... Respondents

Appeal under Section 173 of the Motor Vehicles Act, 1988.

Appearance:

Mr. Thupden G. Bhutia, Advocate for the Claimant.

Ms. Zola Megi, Advocate for Respondent nos. 1 and 3.

Mr. Sudesh Joshi, Advocate for Respondent No.2.

Date of hearing : 19.03.2021, 01.04.2021 & 03.04.2021.

Date of judgment : 10.05.2021

J U D G M E N T

Bhaskar Raj Pradhan, J

1. The claimant is a private school teacher. She was walking on the side of the road when a vehicle bearing registration no.SK.01 TR 3193 (Mahindra KUV100), driven by the respondent no.3, came in excessive speed and hit the claimant. As a result, the claimant was thrown 70-80 feet from the place of impact and sustained multiple grievous injuries on 11.03.2016. She was 26 years old at the time of the accident. The claimant was earning a total monthly income of Rs.13,500/- (Rs.8000/- as monthly salary plus Rs.5,500/- from private tuition). She filed a claim petition before the Motor Accident Claims Tribunal (Claims Tribunal) seeking compensation of an amount of Rs.24,23,463/- on 06.12.2017 under Section 166 of the Motor Vehicles Act, 1988. Written objections were filed by the respondent nos.1 and 2, the owner and the Insurance Company respectively. The respondent no.3 the driver of the motor vehicle did not file a counter to the claim petition. The claimant examined herself and her sister Ms. Puja Khilingay to prove the accident; the grievous injuries sustained by her; the period she had to undergo hospitalization and treatment as a result of which she could not join duty. The claimant also examined Ms. Anita

Singh, Principal of Sernya English Medium School to prove that she was a teacher and earning a salary. She examined Mr. Ram Chettri to prove that she also give private tuitions and earned additional income. Dr. S.K. Dewan, Associate Professor in the Department of Orthopaedics at Central Referral (Manipal) Hospital, Tadong was examined by the claimant to prove the nature of grievous injuries, the duration of hospitalization and her medical consultation with him even after the hospitalization. The respondent no.1 examined herself as the owner of the vehicle. She proved that the vehicle was duly insured with the respondent no.2 and the policy was subsisting at the time of the accident; the vehicle was well maintained and mechanically fit and that the driver had a valid driving license. The respondent no.2 in its written objection took all possible legal objections and contended that there was no nexus between the accident and the cause of death. The respondent no.2 also denied the facts asserted by the claimant in her claim petition and contended that the compensation claimed was excessive. The respondent no.2 did not lead any evidence. The Claims Tribunal vide judgment and award dated 31.10.2019 however, awarded compensation only to the tune of Rs.5,56,060/- along with

interest @ 12% per annum from the date of the filing of the claim petition till full and final payment.

2. Heard the learned counsel for the parties.

3. Mr. Thupden G. Bhutia, learned counsel for the claimant submits that the claimant is aggrieved by the quantum of compensation awarded by the Claims Tribunal as it had wrongly held that the accident was a “*routine personal injury*” case and by so doing disentitled the claimant from receiving just compensation under various other heads. Mr. Sudesh Joshi, learned counsel for the respondent no.2 submitted that the Claims Tribunal had been extremely fair and granted compensation wherever entitled to the full extent of claim. Ms. Zola Megi, learned counsel representing the respondent no.1 i.e. the owner of the motor vehicle and respondent no.3 i.e. the driver of the motor vehicle submitted that motor vehicle was roadworthy and duly insured. She further submitted that the respondent no.3 was a good driver having a valid driving license.

4. In the claims petition the claimant had claimed the following amounts:

Amount of Compensation Claimed:	
a. Transportation to hospital:	Rs.1000/-

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b. Medical expenditure:	Rs.1,44,463/-
c. Extra nourishment:	Rs.50,000/-
d. Pain and sufferings:	Rs.2,00,000/-
e. Food & Accommodation:	Rs.60,000/-
f. Loss of amenities and loss of expectation of life:	Rs.3,00,000/-
g. Further partial disability (disfigurement of face/legs/teeth and after accident the claimant has suffer loss of vision because of which she has started wearing spectacles after the accident.):	
h. Loss of marriage prospectus (sic prospects):-	Rs.6,00,000/-
i. Attendant charge(Rs.5000 x 12)	Rs.2,00,000/-
j. Future medical expenses;	Rs.60,000/-
k. For general charges:-	Rs.7,00,000/-
1.Compensation for the loss of earning power (during the period of continuing disability)	
Rs.13,500 x 12 months: Rs.1,62,000/-	
-1/31,62,000-54000	Rs.1,08,000/-
Grand Total:	Rs.24,23,463/-

5. The Claims Tribunal concluded that the claimant had sustained serious/grievous injuries due to the accident and that the manner in which the claimant was hit by the motor vehicle would indicate that the accident had occurred due to rough and negligent driving by the respondent no.3 who had failed to be cautious while driving in a public place. The Claims Tribunal further held that the accident had occurred during the subsistence of the insurance policy taken by the respondent no.1 which was a private car package policy covering third parties. The

Claims Tribunal held that the respondent no.2 could not avoid its liability to compensate the claimant as it had insured the respondent no.1. However, relying upon the judgment of the Supreme Court in **Raj Kumar vs. Ajay Kumar**¹ the Claims Tribunal held that this was a case of “*routine personal injury*” and not a serious injury and substantially reduced the compensation amount.

6. In **Raj Kumar (supra)** the Supreme Court while once again examining a claim under Section 166 of the Motor Vehicles Act, 1988 for permanent disability held:

“6. *The heads under which compensation is awarded in personal injury cases are the following:*

Pecuniary damages (Special damages)

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

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

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

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

(iii) *Future medical expenses.*

Non-pecuniary damages (General damages)

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

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

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

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific

¹ (2011) 1 SCC 343

medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

7. *Assessment of pecuniary damages under Item (i) and under Item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses—Item (iii)—depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages—Items (iv), (v) and (vi)—involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decisions of this Court and the High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability—Item (ii)(a). We are concerned with that assessment in this case.”*

7. In **Govind Yadav vs. New India Insurance Company limited**² the Supreme Court examined a claim for compensation under Section 166 of the Motor Vehicles Act, 1988 for permanent partial disablement and held:

“11. *The personal sufferings of the survivors and disabled persons are manifold. Sometimes they can be measured in terms of money but most of the times it is not possible to do so. If an individual is permanently disabled in an accident, the cost of his medical treatment and care is likely to be very high. In cases involving total or partial disablement, the term “compensation” used in Section 166 of the Motor Vehicles Act, 1988 (for short “the Act”) would include not only the expenses incurred for immediate treatment, but also the amount likely to be incurred for future medical treatment/care necessary for a particular injury or disability caused by an accident.”*

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“18. *In our view, the principles laid down in Arvind Kumar Mishra v. New India Assurance Co. Ltd. [(2010)*

² (2011) 10 SCC 683

10 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 4 SCC (Civ) 153] and Raj Kumar v. Ajay Kumar [(2011) 1 SCC 343 : (2011) 1 SCC (Cri) 1161 : (2011) 1 SCC (Civ) 164] must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.”

8. The Claims Tribunal was of the opinion that the present case was a case of “*routine personal injury*” as there had been considerable improvement in the condition of the claimant and therefore only entitled to:-

- (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.
- (ii) (a) loss of earning during the period of treatment.
- (iii) Damages for pain, suffering and trauma as a consequence of the injuries.

9. For treatment and medical expenses the Claims Tribunal awarded a total amount of Rs.1,43,059.43 tabulating the entire medical bills and invoices submitted by the claimant for her treatment at the Central Referral Manipal Hospital, including expenditure made for medicines at Jimini Enterprise and Sunshine Dental Care. The claimant has no issue with regard to the quantum of compensation granted for treatment and medical expenses.

10. An amount of Rs.1000/- was awarded towards transportation cost and Rs.50,000/- towards miscellaneous expenses including attendant and extra nourishment charges under the same head. The claimant is not satisfied with the amount of compensation under these subheads.

11. The Claims Tribunal also noted that the claimant has been “*seriously/grievously injured*” and accordingly awarded Rs. 2 lakhs towards pain, suffering and trauma. This was the full amount of compensation sought by the claimant and therefore, she has no grievance under this head.

12. For the loss of earning during the period of treatment the Claims Tribunal considered that the claimant was a teacher in a private school earning a monthly salary of Rs.4,500/-. To that further amount of Rs.3,500/- per month and Rs.5,500/- per mensem were also considered as her earnings from giving tuitions to students. Therefore, the claimants monthly income was calculated as Rs.13,500/-. The Claims Tribunal came to a finding that due to the serious/grievous injuries sustained by the claimant it was possible that she could not resume work for a period of one year. Accordingly, an amount of Rs.1,62,000/- (Rs.13,500 x 12) was arrived at, as the claimant’s loss of earning during period of treatment. The claimant also does not have any

grievance on this count. This is because although in the claim petition she had herself deducted 1/3 of the amount and claimed only Rs.1,08,000/- the Claims Tribunal awarded the entire amount.

13. The claimant is aggrieved by the fact that although the Claims Tribunal had come to a finding that the injuries sustained by the claimant due to the accident were “*serious/grievous*” in nature it went on to hold that it was a case of “*routine personal injury*” and by holding so failed to award compensation under the other heads as per paragraph 6 of the judgment of the Supreme Court in ***Raj Kumar (supra)***.

14. Under the head loss of amenities and loss of expectation of life the claimant had claimed an amount of Rs.6 lakhs towards further partial disability (disfigurement of face/legs/teeth and loss of vision because of which the claimant had to wear spectacles after the accident). An amount of Rs.7 lakhs was claimed as future medical expenses. A further amount of Rs.2 lakhs was claimed for loss of prospect of marriage. None of the above claims were granted by the Claims Tribunal as it held that this was a case of “*routine personal injury*”.

15. As held by the Supreme Court in *Raj Kumar (supra)* the provisions of the Motor Vehicles Act, 1998 makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

16. The claimant in her evidence on affidavit has deposed that she had sustained multiple grievous injuries. According to the claimant she sustained injuries on her face including superficial laceration over left side of forehead, laceration over upper lip and laceration over

mucosal lip. She also suffered a broken tooth. The claimant also claimed that she suffered polytrauma, pelvic fracture, bladder injury/rupture, fracture of the inferior and superior pubic rami on left side with inferior displacement of the pubic bone and lacerated kidney. She further claimed that NCCT of the brain revealed she suffered haemorrhage which was managed by a neurosurgery team. During her cross-examination the claimant admitted that she had not filed any disability certificate from the concerned doctor or from the social welfare department to show the percentage of disability on her due to the accident.

17. Dr. S.K. Dewan (C.W.5) deposed that the claimant was admitted in the hospital on 11.3.2016 and discharged on 11.4.2016. According to him the claimant had suffered multiple injuries including fracture of pelvic bone, injury on her urinary bladder, injury and laceration of kidney. She had also suffered some abrasion on her face. Dr. S.K. Dewan opined that the injuries were grievous in nature. He stated that even after her discharge, the claimant regularly visited him for clinical consultation and that she reportedly had some problems squatting, crossing her legs and standing. He stated that the claimant was still under medical review and had made considerable improvement in

her movements. In cross-examination he deposed that he had not issued any disability certificate to her. Exhibit-1 is the certificate issued by Dr. S.K. Dewan which certifies that the claimant had admitted to the hospital with RTA and sustained fracture of both superior and inferior rami with extra peritoneal bladder rupture with lacerated kidney. According to the certificate the claimant had recovered but at the time of examination she had difficulty in standing, squatting and sitting crossed legged which condition was attributable to the fracture.

18. The discharge summary dated 11.04.2016 from the Central Referral Hospital (exhibit-4) corroborates the aforesaid facts.

19. The question which falls for consideration is whether the injuries suffered by the claimant was “*routine personal injury*” or “*serious injury*” entitling the claimant to the full compensation for personal injury as per paragraph 6 of **Raj Kumar (supra)**.

20. In **Afnees vs. Oriental Insurance Co. Ltd.**,³ the Supreme Court held:

“13. *The personal sufferings of the survivors and disabled persons are manifold. Sometimes they can be measured in terms of money but most of the times it is not possible to do so. If an individual is permanently disabled in an accident, the cost of his*

³ (2018) 13 SCC 119

medical treatment and care is likely to be very high. In cases involving total or partial disablement, the term “compensation” used in Section 166 of the Motor Vehicles Act, 1988 (for short “the Act”) would include not only the expenses incurred for immediate treatment, but also the amount likely to be incurred for future medical treatment/care necessary for a particular injury or disability caused by an accident.”

21. In *Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Co. Ltd.*⁴ the Supreme Court held:

“7. The compensation is usually based upon the loss of the claimant's earnings or earning capacity, or upon the loss of particular faculties or members or use of such members, ordinarily in accordance with a definite schedule. The Courts have time and again observed that the compensation to be awarded is not measured by the nature, location or degree of the injury, but rather by the extent or degree of the incapacity resulting from the injury. The Tribunals are expected to make an award determining the amount of compensation which should appear to be just, fair and proper.

8. The term “disability”, as so used, ordinarily means loss or impairment of earning power and has been held not to mean loss of a member of the body. If the physical efficiency because of the injury has substantially impaired or if he is unable to perform the same work with the same ease as before he was injured or is unable to do heavy work which he was able to do previous to his injury, he will be entitled to suitable compensation. Disability benefits are ordinarily graded on the basis of the character of the disability as partial or total, and as temporary or permanent. No definite rule can be established as to what constitutes partial incapacity in cases not covered by a schedule or fixed liabilities, since facts will differ in practically every case.”

22. In *Raj Kumar (supra)* the Supreme Court held:

“Assessment of future loss of earnings due to permanent disability

8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent

⁴ (2011) 13 SCC 236

disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the Disabilities Act", for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

9. *The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%."*

23. The Employee's Compensation Act, 1923 defines "partial disablement" in Section 2(g) which reads:

““partial disablement”, means where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a employee in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces is earning capacity in every employment which he was capable for undertaking at that time: provided that every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement.”

24. Partial disablement is therefore temporary but reduces the earning capacity of the person in the employment he was engaged at the time of the accident. The evidence on record suggests that the claimant was thus temporarily and partially disabled. It was for this reason that the Claims Tribunal awarded compensation of Rs.1,62,000/- as loss of earning during the period of treatment. The oral evidence of the claimant corroborated by the medical evidence of Dr. S.K. Dewan and the medical reports leads to the inevitable conclusion that the claimant had suffered grievous injury which cannot be, under any circumstance, termed as *“routine personal injury”*. This court is of the view that the injuries so sustained by the claimant would amount to partial disability as defined under Section 2(g) of the Employees Compensation Act, 1923. The Supreme Court in ***Afnees (supra)*** has clearly held that in cases involving partial disablement as well the term *“compensation”* used in Section 166 of the Motor Vehicles Act, 1988 would include not only the expenses incurred for

immediate treatment, but also amount likely to be incurred for future medical treatment/care necessary for a particular injury or disability caused by an accident. It is therefore, important to compute the compensation that must be awarded to the claimant under the other heads as per paragraph 6 of the judgment of the Supreme Court in ***Raj Kumar (supra)***.

25. Since there was no permanent disability the claimant is not entitled to compensation under the head “(ii) (b) *loss of future earnings on account of permanent disability.*” Therefore, this court is required to calculate the compensation, if any, payable under three heads i.e. “(iii) *Future medical expenses*”; “(v) *Loss of amenities (and/or loss of prospects of marriage and* “(vi) *Loss of expectation of life (shortening of normal longevity).*” The evidence available under each of these heads shall now be discussed.

(iii) Future medical expenses

26. Except for claiming that she is having difficulty in standing, squatting and sitting crossed leg, the claimant has led no evidence to ascertain the type and quantum of future medical expenses she may incur. The discharge summary (exhibit-4) does not prescribe any extensive medical instructions to the claimant for the future. The

claimant has also not filed any disabilities certificate to gather the extent of disability, although it is certain that she was partially disabled. The claimant has not claimed to be permanently disabled. Dr. S.K. Dewan opined that the injuries sustained by the claimant were grievous in nature. Although he acknowledged that the claimant had reported having some problems squatting, crossing her legs and standing he did not give any opinion as to how long she would take to fully recover as he had deposed that “*there has been considerable improvement in her movements.*” The Supreme Court in **Raj Kumar (supra)** has held that the award under the head, future medical expenses depends upon specific medical evidence regarding need for further treatment and cost thereof. Sketchy as it may be, the evidence does suggest that the claimant may need further medical treatment if she continues to have problem in sitting, standing and squatting. The Claims Tribunal has held that the injury sustained by the claimant was serious and grievous. The claimant had suffered fracture of both superior and inferior rami, extra peritoneal bladder rupture and lacerated kidney.

27. In **Kajal vs. Jagdish Chand**⁵ the Supreme Court examined a claim for compensation for permanent

⁵ (2020) 4 SCC 413

disability. While computing the compensation for future medical treatment the Supreme Court noticed that there was no evidence in this regard but also opined that there can hardly be such evidence. In such circumstances, keeping in mind the nature of injuries and other relevant facts the Supreme Court awarded a lump sum compensation for future medical expenses.

28. In the circumstances, this court is of the opinion that an amount of Rs.25,000/- would be just and reasonable award for future medical expenses of the claimant to cover any incidental medical expenses she may incur to resolve her problem of sitting, standing and squatting.

Loss of marriage prospects.

29. In ***Raj Kumar (supra)*** the Supreme Court held that assessment of non pecuniary damages like loss of amenities (and/or loss of prospects of marriage) involves determination of lump sum amounts with reference to circumstances such as age, nature of injury, deprivation, disability suffered by the claimant and the effect thereof on the future life of the claimant. The claimant was a young 26 years old private school teacher at the time of the accident. She suffered serious and grievous injuries due to the accident for no fault of hers. According to the claimant she

has suffered disfigurement of the face due to the accident. The photographs exhibited by her do reflect disfigurement to a certain extent due to the injuries sustained. Besides facial disfigurement, the serious and grievous injury sustained by her including pelvic fracture, bladder rupture, fracture of the inferior and superior pubic rami and displacement of the pubic bone may also contribute to her marriage prospects. The evidence suggests that she still suffers when she sits, stands or squats. This would also be an additional contribution to her diminished marriage prospects. In the circumstances, this court is of the opinion that the claim for loss of marriage prospect is not out of place. An amount of Rs.2,00,000/- as claimed by the claimant is therefore, awarded under this head.

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

30. There is no specific medical evidence that due to the injuries sustained by the claimant there would be loss of expectation of life (shortening of normal longevity) of the claimant although the claimant had been seriously and grievously injured. Dr. S.K. Dewan had certified and deposed that the claimant had recovered. In the circumstances, this court is of the opinion that no amount

was required to be granted as compensation under this head.

31. The claimant submits that the award of compensation under the head - expenses relating to transportation, and nourishing food is abysmally low. The Claims Tribunal has awarded an amount of Rs.1000/- towards transportation cost and Rs.50,000/- towards miscellaneous expenses including attendant and extra nourishment charges. The claimant was in hospital from 11.03.2016 till 11.04.2016 grievously injured both internally and externally. The Claims Tribunal has concluded that even after her treatment at the hospital for a month she had to undergo follow ups thereafter. The Claims Tribunal has also held that even the serious nature of injuries sustained by the claimant it is highly possible that she could not have been able to resume work for a period of one year, thus resulting in loss of income. Although the claimant was residing at Tadong Bazaar and she was treated at Central Referral Hospital which is also located at Tadong it is quite obvious that due to the serious nature of injuries sustained by her she would have incurred substantial transportation costs. Though the claimant has not deposed that she had hired a care giver it would not be unreasonable to assume that her family

members must have fitted into that role and diverted their time for her care. It is also reasonable to assume that the claimant needed nourishing food during the entire period of treatment and thereafter, to recoup her health. The transportation charges must include the transportation charges incurred by the caregivers as well. Similarly if the caregivers would incur expenses for food during the period of care giving those expenses could be included as miscellaneous expenses. The claimant had sought for Rs.50,000/- for extra nourishment; Rs.1000/- for transportation and Rs.60,000/- for food and accommodation. In the facts and circumstances of the present case, a lump sum amount of Rs.1,00,000/- towards this head would be reasonable.

32. The total compensation thus computed would be:

Pecuniary damages (Special damages)

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

towards treatment, hospitalization and medicine	Rs.1,43,059.43
towards expenses relating to transportation, nourishing food, expenses for caregivers including their food and other miscellaneous expenses.	Rs.1,00,000/-

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- (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:
- (a) Loss of earning during the period of treatment;
- (b) Loss of future earnings on account of permanent disability.

(a) towards loss of earning during period of treatment.	Rs.1,62,000/-
(b) Loss of future earnings on account of permanent disability.	Nil

(iii) *Future medical expenses.*

towards future medical expenses	Rs.25,000/-
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Non pecuniary damages (General damages)

- (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
- (v) Loss of amenities (and/or loss of prospects of marriage).
- (vi) Loss of expectation of life (shortening of normal longevity),

(iv) towards damages for pain, suffering and trauma as a consequence of the injuries.	Rs.2,00,000/-
(v) towards loss of prospects of marriage.	Rs.2,00,000/-
(vi) Loss of expectation of life (shortening of normal longevity),	Nil

Grand total	Rs. 8,30,059.43/-
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33. The judgment and award of the Claims Tribunal dated 31.10.2019 are accordingly modified. As against a total compensation of Rs.5,56,060/- computed by the Claims Tribunal an amount of Rs. 8,30,060/- (rounded off) is awarded to the claimant. As directed by the Claims Tribunal the said amount shall carry an interest @ 12% per annum from the date of filing of the claim petition i.e. 06.12.2017 till full and final payment.

34. The appeal is allowed to the above extent.

35. No order as to costs. Copy of this Judgment be sent to the learned Claims Tribunal, East Sikkim for information. Records of the learned Claims Tribunal be remitted forthwith.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**
Internet : **Yes**

to/