

Baldev Krishan and ors. Vs. Chander Deep Jain

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Court : Punjab and Haryana

Decided On : Aug-05-1983

Reported in : AIR1984P& H9

Judge : S.P. Goyal, J.

Appeal No. : F.A.F.O. No. 450 of 1981

Appellant : Baldev Krishan and ors.

Respondent : Chander Deep Jain

Judgement :

1. Chander Deep Jain filed a claim for awarding Rs. 13,25,000/as compensation ion for the injuries received by him in an accident. However, the Tribunal passed the award vide judgment dt. March 30, 1981 In the amount of Rs. 1,68,000/- with interest at the rate of 6 per cent per annum from the date of the application, i. e. July 9, 1979 which satisfied none of the parties. The owners of the vehicle involved in the accident filed F. A. O. No. 450 and the claimant F. A. O. No, 452 of 1981 against the

award and both the appeal shall be disposed of by this judgment.

2. On January 12, 1979 at about 11.30 A. M. the claimant was going on Scooter No. CHU 6171 on the road dividing Sector 9C and 9D with his brother t Vipam Kumar Jain sitting on pillion-seat from North towards South, that is, from the shopping centre of Sector 9 towards the Madhya Marg. When he was about 50 yards from the point where this road joins the Madhya Marg, a Jaunga driven by Baldev Krishan came from the right lane at a high speed, struck his scooter as a result of which it turned down and both the riders fell on the ground. Chander Deep Jain became immediately unconscious and was removed to the P. G. I. by Baldev Krishan in Jaunga No. HIL 5195. Although he was wearing a helmet but still he suffered fractures of the right frontal temporal and parietal bones. As he was having epileptic fits he was operated upon to remove the blood clot on the right side of his head which was detected upon a spot test. Gradually, his condition improved and he was discharged from the hospital on February 5, 1979. However, as a result of the head injury c1aim,ant's memory and intelligence quotient were very badly affected and he became incapable of pursuing further studies. It may be mentioned that when the accident took place he was a student of law at Simla. Consequently he filed the present action before the Motor Accident Claims Tribunal Chandigarh, alleging that the accident in which he received Injuries took place entirely because of the rash and negligent driving of the Jaunga owned by Messrs, Krishna Engineering Works, Factory Area, Patiala, and driven by Baldev Krishan. The National Insurance Company was impleaded as the insurer.

3. Baldev Krishan being one of the partners in the firm which owned the Jaunga, e common written statement was filed on their behalf though a separate written statement was filed by the Insurance Company, yet the pleas taken by both of them were common. The blame for the accident was entirely put on the claimant and in the alternative it was pleaded that he being equally responsible for it was not entitled to any compensation.

The allegations regarding the seriousness of the injury, the permanent damage done to the brain as well as the right to compensation were also denied. On the pleadings of the parties, the Tribunal framed the following two Issues.

1. whether the claimant Chander Deep suffered injury in the motor vehicle accident caused due to rash and negligent driving of Jaunga Jeep No. HIL 5195 driven by Baldev Krishan, respondent No. 1, or due to the rash and negligent driving of the scooter by the claimant himself?

2. If issue No. 1 is proved, to how much compensation if any, the claimant is entitled to and from which of the respondents?

4. After recording evidence of the parties, under Issue No. 1, the Tribunal held that both the parties were responsible for the accident and ascribed 30 per cent and 70 per cent negligence to the claimant and the driver respectively. Under Issue No. 2, he allowed Rs. 15,000/- on account of out of pocket expenses, Rs. 40,000/- for pain and suffering, Rs. 25,000/- for disfigurement and loss of marriage prospects and Rs. 2,40,000/- on account of loss of future earnings, the total being Rs. 3,20,000/-. This amount was reduced by 30 per cent on account of the contributory negligence of the claimant and further by another 25 per cent as the amount was being paid in lumpsum. Thus, an award in the amount of Rs. 1,68,000/- was passed with interest at the rate of 6 per cent from the date of the application in favour of the claimant and against the respondents who were held responsible jointly and severally to pay the same.

5. The learned counsel for the judgment-debtors has challenged the finding of the Tribunal on issue No. 1 on the ground that Baldev Krishan was to cross the road on which the scooter was running and before entering the inter-section took all the precautions, slowed down and blew the horn. The scooter-driver, on the other hand, never slowed down the speed and struck against the left door and the front wheel when the Jaunga had covered almost 2/3rd of the intersection portion of the road. The learned counsel for the claimant, on the other hand, to seek modification of the finding of the Tribunal regarding 30 per cent contributory negligence ascribed to the injured. argued that the claimant was running the scooter on the main road at a reasonable and permissible speed and it was due to Jaunga driver's entry on the inter-section from the right lane without stopping and ensuring that by doing so he was not endangering the safety of any one that the accident took place. After perusal of the record and hearing the arguments of the learned counsel for the parties, I am of the view that the plea of the claimant must prevail and that the accident took place entirely because of the rash and negligent driving of Jaunga by Baldev Krishan.

6. No doubt, the road on which the scooter was running is not designated as the main road but it cannot be denied that it is one of the two main roads of Sector 9, and is 22 feet wide whereas the Jaunga was coming from the by-lane and was to cross this road to enter sector 9C, It could not be disputed that prudence requires that the driver of the vehicle who wants to cross or enter the main road of a sector from a by-lane has to take all the precautions for the safety of the person on the main road before attempting to cross it. If the driver fails to take precautions required of a reasonable and prudent man, he would obviously be guilty of rash and negligent driving. It was, therefore, required of Baldev Krishan to stop at the end of the by-lane and not to cross the road till he ensured the safety of all persons and the vehicles running on the road dividing sector 9C and 9D. Not only he did not stop at the end of the by-lane even he did not slow down the speed before entering the main road which is evident from the skid marks on the main road up to 24 feet after he applied his brakes just on entering there and seeing the scooter. Even after the impact he could only stop the vehicle at a distance of about 15 feet which goes to show beyond doubt that while crossing the main road his speed was anywhere between 40 to 60 kms per hour. Moreover, from the map, Exhibit P-3, it is evident that on the left side of the by-lane and parallel to the main road there was a hedge of 8 feet height which made almost impossible for Baldev Krishan to notice the traffic coming from the left side on the main road This further made it obligatory on him to stop at the end of the by-lane and not to enter the main road unless it was safe to do so. The driver of the Jaunga was, therefore certainly guilty of rash and negligent driving while crossing the road dividing sector 9C and 9D.

7. It has now to be determined as to whether the driver of the scooter was guilty of any contributory negligence in causing the accident. The argument of the learned counsel for the judgment-debtors in this respect that it was the scooter which struck into the Jaunga and that its driver also made no attempt to slow down and avoid accident has no merit. The circumstances relied upon for this argument are that there were some scratches on the left side door and the front wheel of the Jaunga. The Tribunal relying upon the fact that the main impact had been on the right front corner of the Jaunga as is evident from the photograph, Exhibit P-5, held that it was the Jaunga which struck with the scooter and because of that impact the scooter had a complete turning and in that process some scratches were caused on the left door and the front wheel of the Jaunga. The finding of the Tribunal is based on the correct analysis of the circumstances under which the accident took place and I have no hesitation in endorsing the same. The argument of the learned counsel for the judgment debtors that it was the scooter which struck the Jaunga, therefore, cannot be accepted. In spite of the said finding, the Tribunal held that the scooter driver was guilty of 30 per cent contributory negligence on the ground that he did not slow down the speed while approaching, the inter-section nor applied his brakes to avoid the accident. This approach was wholly unwarranted. From the evidence on the record it cannot be said that the scooter was going at a high or beyond the permissible speed. Though Baldev Krishan stated that the scooter was going at a high speed but no reliance can be placed on his ipse dixit as he himself admitted that he could not tell the speed at which the scooter was running. Chander Deep Jain, claimant, has stated that he was going at a slow speed and there is no evidence to contradict him on this point. As regards the application of the brakes by him, possibly neither there was any chance nor any occasion for him to do so. As observed above the hedge parallel to the road on which he was going on the scooter was of the height of more than six feet and it was not possible for him to notice if any vehicle was coming in the bye-lane: He could only notice the Jaunga when he had already entered the inter-section. As the Jaunga was running at a speed of 40kms, per hour it must have taken a split of a second to reach where the scooter was and hit it, The scooter driver could not possibly do anything to avoid the accident. end. there was no occasion for him either to slow down the speed any further or apply brakes. Moreover, even some slight negligence on the part of the scooter driver, if there was any, would not be sufficient to hold him guilty of the contributory negligence because as noted by Salmond in his book on 'TORTS' at page 336 (XIV edition), unless that negligence was an operative cause of the accident none of the problems connected with the contributory negligence arise. The scooter driver, as already observed above, was running on the main road of Sector 9 and he had every right to assume that a person entering the road from the side bye-lane would stop and not enter therein till the road was clear. He was, therefore, under no obligation to slow down the speed. Otherwise also as held by the Privy Council in *Toronto Railway Company and King*, (1908) AC 260, the traffic in the streets would be impossible if the driver of each vehicle did not proceed more or less on the assumption that the drivers of all other vehicles do what is their duty to do, namely, observe rules regulating the traffic of the streets. As already observed above, it was the duty of the driver of the Jaunga to stop at the end of the bye-lane before entering the main road of the sector and not to enter thereupon till the road was clear. He alone therefore was guilty of rash and negligent driving by attempting to cross the said main road at a speed of more than 40 kms per hour and the scooter driver could not in the circumstances noticed above avoid accident nor he in any way contributed towards it by not applying the brakes or slowing down the speed. However, the learned counsel for the appellant to support the finding of the Tribunal relied on a decision of *R. N. Mittal, J. in Tourist Cooperative Society Ltd., Ambala Cantt. v. Dr. Om Parkash*, 1973 Acc CJ 361, wherein it was held that the rider of the motor-cycle in not slowing down his speed while approaching the road intersection was guilty of contributory negligence. From that decision it is not clear as to what was the nature of the two roads. Ought we know, both, the roads were of equal importance. On the contrary, in the present case; the scooter driver was running on the main road of sector 9 and the Jaunga was to enter the inter-section from the bye-lane. Obviously, *Dr. Om Parkash's* case (supra) is distinguishable on facts and has no bearing on the present case. The other decision in *Tara Chand v: Dr. Brij Mohan Gupta* 1980 Ace CJ 402 (Punj & Har) relied upon, by the learned counsel is also distinguishable on the same reasons as the accident in that case took place at a tri-junction of three main roads. The finding of the Tribunal on issue No. 1 is consequently modified to the extent that the claimant is absolved of 30 per cent contributory negligence

ascribed to him and it is held that the accident took place entirely because of the rash and negligent driving Baldev Krishan, driver of the Jaunga

8. Before dealing with the question of compensation-for the damages it would be proper to notice the nature and seriousness of the injuries and their aftereffects on the claimant. During the trial, the claimant relied only on the statements of Dr. D. R. Gulati, Professor of Neuro Surgery, P. G. I. Chandigarh, Dr. Kulbhushan Hasti, Tirath Ram Hospital, New Delhi and Dr. S. S. Sharma, Medical Officer, P. G. I. Chandigarh. None of the parties examined an expert on mental psychology working in the psychiatry Department of the P. G. I. Chandigarh, who only was competent to depose as to the effects of the injury on the mental capabilities of the claimant. Consequently, the claimant was referred to the P. G. I.; Chandigarh with the consent of the learned counsel for the parties to examine and determine the effect of the injuries on his IQ power of concentration, memory and comprehension. Dr. Dwarka Pershad, Lecturer, Department of Psychiatry P. G. I., Chandigarh examined him and appeared in the court as C. W. 1. The report submitted by him was duly proved and exhibited as Exhibit C-1 An opportunity was given to the judgment debtors to lead any further evidence if they so desired but none was led To prove the injuries its seriousness and his physical and mental condition till discharge from the P. G. I. on Feb. 5. 1979 the claimant relied upon the statements of Dr. D. R. Gulati P.W. 5, Professor of Neuro Surgery P. G. I Chandigarh Dr. Gulati deposed that the claimant was brought to the P. G. I. in an unconscious state. He showed his tongue on repeated requests. He was Having epileptic fits. Examination by Neuro Surgery Registrar showed that the patient was unconscious did not obey any commands but moved his limbs when painful stimuli were applied There was swelling of the right eyelid and the right cheek. Then Pupils of both the eyes were normal: Then he had another epileptic fit at 1.15 P. M. on the same day and was, kept under observation. On the next day at 8.45 A. M. his condition deteriorated and the pupils of the right eye became enlarged. Immediately a special test was carried out which showed the presence of blood clot on the right side of the head. At 9.15 A. M. an operation was performed. A bone fracture was seen involving the right frontal, temporal and parietal bones: There was another fracture at the base of the skull A blood clot was found present and removed, The patient gradually started improving though he was fed only by ryhis tube till January 31 1979: The examination carried out on Feb. 4, 1979 showed that he was responding to a few questions and gating of his own. He further deposed in cross-examination that the patient passed through various stages of semi-consciousness before regaining full consciousness and that in this case the brain had been affected as was evident from the epileptic attacks. After Feb. 2, 1979, the claimant remained an out-door patient and was referred to for physiotherapy on Feb. 11, 1979: Thereafter, he remained under the treatment of Dr. S. S. Sharma Medical Officer, P. G. I., Chandigarh as an out-door patient up to April 1979 and during this period he visited the hospital 30 times. According to P.W. 4 Dr. S. S. Sharma there was slight dropping of the right angle of the mouth of the claimant which made his speech blurred. His facial muscles. had gone weak. He could not continue the sentence for a long time nor he could speak fluently. As regards the IQ, power of concentration, memory and comprehension Dr. Dwarka Pershad C. W. 1 has made the following report:--

'Certified that the subject as referred above was examined on 27-11-1982. He was co-operative and communicative but he was slow in reacting to presented stimuli. He appeared to be trying actively to attend to the stimuli and comprehend. The record of. his testing is kept in the Department at serial No 751/82

His performance in IQ was found to be 78 and verbal IQ comes to be 66 (Mean IQ 72). There was or inter or intra scatter in his performance. His capacity of comprehension and attention and concentration was found to be equally affected.

On visual organisation test he obtained markedly low scores (9/30). suggestive of severe degree of impairment in his capacity to comprehend and organise visually. His memory is working below 20th per centile (50th percentile, being normal). The performance on various subscales of P. G. I. Memory test indicated that he was Consistently poor in learning new things and retaining them. Perceptual ocuity has also gone down. He cannot maintain Pro-positions properly on visual motor tasks

His overall IQ is 72 whereas, it should have been about 120, keeping his academic achievement into account, Memory is working below 20th percentile level. Capacity to comprehend and organise visual material is poor.

Keeping his academic achievement into account, the poor performance on intelligence, memory comprehension, attention and concentration can be attributed to the injuries he sustained,.

A perusal of this report shows that in spite of the lapse of four years, the claimant has not regained his mental capabilities which appear to have been adversely affected beyond repairs, The claimant as a result of the injury has become more or less a mental wreck. had to leave studies and is incapable of pursuing any Professional vocation, With his present mental condition it is also extremely doubtful if he can engage himself gainfully in any trade or commerce. He was a second class Commerce Graduate and studying law. As he came of a family of lawyers, his two brothers doing very well in the profession, he was likely to settle in the profession within a couple of years after getting the law degree. A fairly good career has been cut short by the impact of the injuries on the mental capabilities of the claimant. It is in this background that compensation or damages are to be assessed.

9. As observed by Salmond in his wellknown book on 'TORTS', there are two main heads of damages for injury cases, namely, Special Damages and General Damages. Special damages consist of out-of-Pocket expenses and loss of earnings up to the date of the trial and are capable of substantially exact calculation. Under this head, the injured claimed Rs 25,000/- which were alleged to have been spent on medical treatment and other expenses till the date of the filing of the claim but the Tribunal allowed him Rs. 15,000/-. The actual amount spent on the medicines and other bills during his stay in the P. G. I. was proved to be to the tune of Rs. 4,000/-, Rs. 5,000/- were alleged to have been spent on the injured on account of his special diet after he had been discharged from the hospital and remained under treatment for three months as an outdoor patient, Rest of the amount of Rs. 6,000/- was allowed as other miscellaneous expenses incurred to look after the injured. There was no proof on the record apart from a vague oral statement as to on what count this amount of Rupees 8,000/- was spent. Before any amount can be allowed under this head; the extent of out-of-pocket expenses has to be strictly proved by the claimant. The Tribunal was therefore, not justified in allowing this amount of Rs. 6,000/- on account of miscellaneous-expenses which is reduced to Rs. 1,000/- and the total amount allowable under this head is assessed at Rs, 10,000/-. As the claimant was not earning at the time of the accident no special damages were claimed or allowed for loss of earnings till the date of the filing of the claim.

10 Under the head, 'General Damages' Rs. 2,00,000/- were claimed for the adverse effect on matrimonial prospects in life Rs. 1,00,000/- for pain and suffering and Rs. 10,00,000/- for the loss future earnings. The general damages can be allowed for the pain and suffering, loss of amenities of life, shortened expectation of life and loss of future earnings. No claim was made for damages for shortened expectation of life and the amount claimed for loss of matrimonial prospects would obviously be covered under the head 'loss of amenities of life'. It may be mentioned here that it is not necessary for the claimant to make a special pleading to claim general damages and it is for the court to assess them on the material available on the record..

11. As observed by Earl of Halsbury L. C. in the case of *The Owners of the Steamship Mediana v. The Owners, Master and Crew of the Lightship 'Comet'*, (1900) AC 113, nobody can suggest that you can by any arithmetical calculation establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident. Money cannot renew a shattered human frame. Still pain and suffering being well-recognised head of damages the Court can award a fair and reasonable compensation to ameliorate the sufferings of the claimant. The Tribunal keeping in view several decided cases referred to in its order assessed the compensation at Rs. 40,000/- under this head. But its correctness is sought to be challenged on the ground that the claimant having remained unconscious for a considerable period was not capable of having and feeling of pain and suffering and as such for that period no damages could be allowed. The argument is wholly misconceived. As deposed to by Dr. D. R. Gulati, P.W. 5. the claimant when admitted in the P. G. I. though unconscious showed his tongue on repeated requests. Even

after the epileptic fits he moved his limbs when painful stimuli were applied. This shows that the patient was in semiconscious state of mind and as such it cannot be said that he was not having any feeling of pain and suffering. Instead he was in precarious condition, fighting for life and had to be operated upon on June 13, 1979 for removing blood clot from his head. Thereafter, his condition started improving and he passed through various stages of consciousness till he regained it fully. It is not difficult to imagine the physical and mental agony and pain which the claimant must have undergone for all the days when he was fighting for life and till he regained consciousness fully. As the injury has caused permanent damage to the mind, the feeling of suffering is to continue and cling to him throughout his life. Though the claimant did not specifically claim damages for the injury caused to his brain, yet the court is not debarred either in awarding damages for that injury or to take it into consideration while assessing damages for pain and suffering. However, the amount of Rs. 10,000/- allowed under this head appears to be excessive and is not justified from any reported decision. In my view, Rs. 20,000/- would be a reasonable amount to compensate the claimant under this head and the amount allowed is accordingly reduced.

12. The loss of amenities is again such a head of damages which does not admit of being measured in terms of money. So, the court has to award reasonable damages the tight of the Previous awards made for comparable injuries. The Tribunal relying on State of Punjab v. Lt. J.P.S. Kapoor, 1973 Acc CJ 216 allowed the amount of Rs. 25,000/- under this head for the adverse effects on his marriage prospects in life. This amount is stated to be excessive by the learned counsel for the judgment-debtors. If the loss of amenities consisted of entirely of the loss of the prospects of merit in this contention. However, the state of his mental and physical health as described in Exhibit C-1, Shows that the claimant has been rendered incapable of leading full and successful life and deprived of pleasure of all sports including the driving of any motor vehicle. No good cause, therefore, exists to interfere with the discretionary assessment of the damages under this head.

13. The real difficulty in the present case is as to the assessment of the compensation for the loss of future earnings. If the claimant was earning on the date of the accident, the court could determine his annual income with certainty and then arrive at the compensation by using a suitable multiplier. On the other hand, where the claimant is a youth and has not entered on any career, there is no figure to arrive at, for no annual loss commenced to accrue to him on the date of the accident. In a case like this, the subject-matter of estimation is very much what might be called a series of imponderables and the Court has to rely mostly on pure guess work. Consequently; unless the Tribunal has acted arbitrarily and has assessed the damages either too low or too high, it would not be proper for this court to interfere with the assessment of damages on account of loss of future earnings. It is in this background of the legal Position that the finding of the Tribunal on the assessment of damages for loss of future earnings has to be judged

14. It is not disputed that the claimant was a graduate in commerce and studying for a degree in law at Simla. He had already Passed the 1st semester and was in the 2nd Semester when the accident took place. Though he appears to have joined the 3rd semester after appearing in the three papers of 2nd Semester but he had to leave his studies as he was unable to concentrate on his work and used, to develop frequent headache. He passed his B. Com. Examination in 2nd division and according to his teacher in Law College. Shri Sanjay Tripathi, P.W.10, he was one of the 5/6 brilliant students of his class., In any case the academic result-shows that the claimant was a student of more than average intelligence and capable of qualifying for law degree which would have enabled him to start his career as an advocate. His father was an advocate and his two brothers being in practice in the High Court it would not have been difficult for him to settle in the profession. Even at the threshold of his career with the help of his brother, who is a senior counsel of this Court, he could easily be expected to earn Rupees 1500/- per month from junior brief alone. The estimate of his income by the trial Judge at Rs. 1,000/- per month was therefore, extremely on the low side. Calculated at the rate of Rs. 1500/- per month, the annual income of the claimant in the beginning of his career would have been Rs. 18,000/- per annum. However, there is no evidence that the claimant with his present shattered mental and physical health is totally unable to earn any livelihood by engaging himself in some activity or the other. Although it is well nigh impossible to approximately guess as to what extent he would be able to make

good his loss but it would be quite reasonable to reduce the loss of his income by 33 per cent. Thus reduced the annual loss of income to the claimant is assessed at Rs. 11,000/- per annum. The claimant would have started earning this amount near about at the age of 22 years and was expected to be in the profession' for more than 40 years. However, his professional career was subject to so many imponderables. If no accident had taken place, nevertheless many circumstances might have happened to prevent him from earning. He could be disabled by illness and was subject to ordinary accidents and vicissitudes of life and if all these circumstances of which no evidence could be given are looked at it would be impossible to exactly estimate the loss of future earnings on the basis of the span of years he was likely to continue to work as an advocate. On the other hand, in the profession he might have gradually achieved success and increased his income in due course of time to 5/6 times a month or even more like his elder brother. Because these imponderables, to arrive at a fair and just compensation, the courts normally apply 15 to 20 years multiplier to the annual income and thereafter the amount is not liable to any deduction on ground like those of lump sum payment. So far as this court is concerned, a multiplier of 16 has been the normal rule even the claimant is a middle aged person, As the claimant in the present case would have entered the profession at the age of 22 years, sixteen would be the most reasonable multiplier in his case. Thus calculated, the loss of future earnings would come to Rs. 1,92,000/-.

15. The total amount of compensation payable to the claimant under all the four heads comes to Rs. 2,47,000/-. The Tribunal allowed six per cent interest on the amount of compensation assessed. The interest could be allowed only on the amounts other than the amount allowed for the loss of future earning as the claimant was not earning anything by the time when the award was passed in his favour nor would have started doing so till today. As the interest allowed is at a very low rate, so it is ordered that the claimant shall be entitled to interest at the rate of 12 per cent per annum on the amount of Rs. 55,000/- till the date it was realized. On the amount of the award which consists of the loss of future earnings, the claimant shall not be entitled to any interest.

16. Before parting with the judgment. in all fairness to the learned counsel for the parties, I must notice the decisions relied upon by them on the question of quantum of damages, even though as observed by Singleton, L.J. in *Waldon v. War Office*, (1956) 1WLR 51, 'No. one knows what the right sum of damages in any particular case, and no two cases are alike'. The learned counsel for the appellant laid great stress on the decision of *Tewatia, J. in Hanuman Dass v. Usha Rani*, 1978. Acc CJ 310: (AIR 1978 Punj & Har 177), where a girl of 6th class who suffered fracture of collar bone, amputation of right arm near shoulder and chopping of three fingers of the right foot was awarded Rs. 8,000/- for the pain and suffering and Rs. 10,000/- for permanent deformity. The injuries being totally different in nature and there being no claim for loss of future earnings, the decision hardly furnishes any guidance in the present case. In *Sundara Shetty v. Sanjeeva Rao*, 1982 Acc CJ 129: (AIR 1982 Kant 84), a boy of 8 years was awarded Rs. 30,000/- for pain and suffering and loss of amenities even though the riding was that he was in no way physically or mentally retarded because of the injuries suffered. This case therefore, helps the claimant rather than the appellant. In *K. Gopalakrishnan v. Sankara Narayanan* 1969 Acc CJ 34: AIR 1968 Mad 436), for the amputation of the left leg above knee, the claimant was allowed Rs. 57,865. A four-year old child for the permanent deformity in the leg was allowed Rupees 20,000/- in *Madhya Pradesh State Road Transport Corporation, Bairagarh, Bhopal v. Sudhakar*, 1977 Acc CJ 290: (AIR 1977 SC 1189). In *Virendre Kumar v. Gyani Ram*, 1975 Acc CJ 122 (Delhi), a young student was allowed Rs. 20,000/- for amputation of left arm just above the elbow. For similar injuries in *S.A. Ghani v. K. A. Ponnem*, 1981 Acc CJ 269 (Kant) and *G.R. Shetty v. Unnikrishna Nair*, 1981 Acc CJ 293 (Kant) the damages awarded were Rs. 20,000/- Rs. 22,000/- Obviously because of the different nature of injuries and consequential pain and suffering, none of these cases is of any help in assessing damages in the present case.

17. On the other hand, in *State of Punjab v. Lt. J. P. S Kapoor*, 1973 Acc J 216 the claimant. whose annual income was assessed at Rs. 10,000/- was awarded Rs. 2,80,000/- on account of loss of future earnings Rs. 90,000/- on account of loss of pension.. Another Rs. 20,000/- was awarded for the loss of enjoyment in life. Accident in this case took place in the year 1984 when the purchase value of the rupee was at least six times

than what is today. Again, in *Delhi Transport Under-taking v. Kumari. Lalita*, 1973 Acc CJ 79 (Delhi) where the accident took place in the year 1961, a girl of 8 years who had been crippled physically and mentally for life was awarded Rs. 50,000/- In *Mohinder Singh Singh v. Ramesh Kumar*, 1981 Acc CJ 326: (AIR 1981 Punj & Har 199), a sepoy in the Army aged 18 years earning Rs. 260/- per mensem as his Pay was awarded Rs. 50,000/- on account of loss of future earnings and Rs, 20,000/- for pain and sufferings even though there was no finding that the claimant had been rendered incapable of pursuing any vocation after his discharge from Military service. Reliance was also placed by the learned counsel for the respondent on an English decision in *Lim Poh Choo v. Camden And Islington Area Health Authority*, 1979 Acc. CJ 362 where a lady Doctor aged 36 years who had suffered irreparable brain damage rendering her incapable of pursuing the profession, was awarded 243 309. It may be observed that the claim ant was not as yet entitled to be registered as psychiatrist and had failed in the test in which she appeared. In appeal, the award was affirmed by the House of Lords in its judgment reported in *Lim Poh Choo v. Camden And Islington Area Health Authority*, 1980 Acc CJ 486 with a slight modification that the amount was reduced to 229,298.64. In *F. A. O. 207 of 1973 (Col. N. A. Subramaniam v. Sh. Jai Singh)* decided on May 20, 1977*, Bains,:T. allowed Rs. 4,28,000/- as compensation to the claimant who had disfigurement of the face, blockade of the nose causing breathing difficulty, loss of vision from one eye, recurring pain in the right a trium and neuralgia due to crushing of the 5th nerve (maxillary). The loss of future earning was allowed only for 10 years. In the light of the various judicial pronouncements noticed above, I have assessed the damages under the various heads and the overall amount o! Rs. 2,47,000/- in my view would be just and fair compensation in the circumstances of this case.

18. In view of the finding recorded above, the appeal, F. A: O. No. 450 of 1981 is dismissed subject to the slight modification mentioned hereafter. The appeal of the claimant, F. A. O. No. 452 of 1981 is partially allowed, the award of the Tribunal modified and the amount of. compensation enhanced to Rs. 2,47,000/-. The claimant shall be entitled to interest at the rate of 12 per cent only on the amount of Rs. 55,000/- till the date of realization and not on the amount of Rs. 1,92,000Iewardred on account of the loss of future earnings. The order of the Tribunal allowing interest is accordingly modified. In view of the partial success of the parties, they are left to bear their own costs.

19. Order accordingly.

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