HIGH COURT OF GUJARAT

Bench: Hon'ble Mr. Ashutosh Shastri and Hon'ble Mr. Divyesh A. Joshi

Date of Decision: 27 September 2023

R/FIRST APPEAL NO. 3009 of 2021 With R/FIRST APPEAL NO. 1270 of 2022 With R/FIRST APPEAL NO. 2859 of 2021

CHOLAMANDALAM MS GENERAL INSURANCE CO LTD

Versus

RAM DHUNDIYA VANZARA

Sections, Acts, Rules, and Articles:
Article 173, 166, 168 of the Motor Vehicles Act, 1988

Subject: Compensation for Personal Injury - Issue of negligence - Previous decision by Tribunal in an earlier claim petition - Applicability of the principle of res judicata.

Headnotes:

Motor Accident Claim - Appeal against judgment and award - Common judgment disposing of appeals challenging the judgment and award passed by the 4th Additional District Judge, Kheda - All appeals relate to the same incident - Issues involve negligence, compensation, and liability - Appeal filed by Insurance Company challenging negligence and compensation - Claimants seeking enhancement of compensation - Examination of evidence and arguments by respective parties - Constructive res judicata considered in relation to negligence - Tribunal's view aligned with earlier Tribunal's findings - Compensation awarded on various heads - Examination of evidence regarding medical expenses - Request to reduce compensation on certain heads. [Para 1-16]

Motor Accident Claim - Issue of negligence - Previous decision by Tribunal in an earlier claim petition - Applicability of the principle of res judicata - Examination of the evidence and findings of the earlier Tribunal - Conclusion reached in the previous case that negligence of the truck driver was 70% and that of ST (State Transport) driver was 30% - Applicability of res judicata even when the parties in the earlier and subsequent proceedings are different - Citing relevant case law to support the application of the principle of res judicata - Upholding the findings of the earlier Tribunal as binding in the subsequent proceedings related to the same accident. [Para 17-25]

Compensation - Personal Injury - Calculation of compensation for a victim with 100% functional disability - Examination of the victim's condition and testimony of medical experts - Consideration of the victim's age, occupation, and future prospects - Enhancement of compensation awarded by the Tribunal to reflect current market conditions and government norms for wages. [Para 26-32]
Attendant Charges - Determination of expenses for an attendant required for the injured victim - Reference to government wage norms - Calculation

of attendant charges based on the wages of skilled laborers - Application of the multiplier for the victim's life expectancy - Enhancement of attendant charges awarded by the Tribunal. [Para 33-36]

Special Diet and Transportation Charges - Evaluation of expenses for special diet and transportation related to medical treatment - Consideration of the victim's need for regular hospital visits - Application of the multiplier for future expenses - Enhancement of special diet and transportation charges awarded by the Tribunal. [Para 37]

Loss of Marriage Prospect - Reassessment of compensation for loss of marriage prospect - Increase in the amount awarded by the Tribunal to reflect the victim's future prospects. [Para 37]

Total Compensation - Calculation of the total compensation amount, including enhancements to various heads - Clarification that no interest is applicable to the enhanced amount for attendant charges - Direction to deposit the revised compensation amount with the Motor Accident Claims Tribunal. [Para 40-41]

Referred Cases:

- R.D. Hattangadiv vs. M/s. Pest Control (India) Pvt. Ltd.& Ors., AIR 1995 SC 755
- Meena Pawaia & Ors. vs. Ashraf Ali & Ors., 2022 ACJ 528 (SC), 2019 ACJ 3164 (SC) and 2019 ACJ 1070 (Allahabad High Court)
- Nizam Institute of Medical Science vs. Prasanth S. Dhananka, 2010 ACJ 38 (SC)
- Kajal vs. Jagdish Chand, reported 2020 ACJ 1042
- Khenyei vs. New India Assurance Company Limited 2015 (9) SCC 273
- United India Insurance Co. Ltd. vs. Laljibhai Hamirbhai & Ors., (2007) 48(1) GLR 633
- National Insurance Co. vs. Pranay Sethi, reported in 2017 (16) SCC 680
- Sarla Varma vs. Delhi Transport Co., reported in 2009 (6) SCC 121
- Mona Baghel & Ors. vs. Sajjan Singh Yadav & Ors., reported in 2022 Livelaw (SC) 734
- Bhavik @ Bhavin Dwarkadas Vithlani vs. Ganpathsinh Manubhai Jadeja, First Appeal No. 2015 of 2018

Representing Advocates:
Mr Vibhuti Nanavati, Mr Rathin P Raval

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE DIVYESH A. JOSHI)

1. The appellant-Cholamandalam MS General Insurance Co. is the original opponent No.5, respondent Nos.5 and 6 are the original claimants and respondent Nos. 1 to 4 are the original defendant Nos.1 to 4 in the main proceedings. For the sake of convenience and brevity, they shall hereinafter be referred to as the appellant, claimants and respondent Nos.1 to 4 respectively. The Civil Procedure Code, 1908 be hereinafter referred to as

the 'Code' and Motor Vehicles Act, 1988 be hereinafter referred to as the 'M.V. Act'.

2. By way of preferring this appeal under Section 173 read with Section 166 of the M.V. Act, the appellant-Insurance Company has challenged the judgment and award passed by the 4th Additional District Judge, Kheda at Nadiad dated 11.02.2009 in Motor Accident Claim Petition No.1673 of 2009.

3. During the pendency of the present first appeal, it has come to the notice of this Court that the original claimants have also challenged the impugned judgment and award by way of preferring a separate appeal, seeking enhancement of the claim amount and the Insurance Company of the truck driver, namely, Shriram General Insurance Co. has also assailed the impugned award by way of preferring another first appeal.

4. Considering the fact that the challenge in all the three captioned appeals is to the self-same judgment and award passed by the very same Tribunal, those were heard analogously, and as such, are being disposed of by this common judgment and order.

5. As the issue involved in all the appeals are based upon same set of evidence and are connected with each other, the First Appeal No.3009 of 2021 is treated as the lead matter.

6. Learned advocate Mr. Vibhuti Nanavati appearing on behalf of the Insurance Company has submitted that the judgment and award passed by the learned Tribunal is against evidence available on record and contrary to the basic principles of law and, therefore, the same is required to be quashed and set aside. Learned advocate Mr. Nanavati has submitted that for the purpose of deciding the issue of negligency, the Tribunal has put reliance upon the decision rendered in the earlier proceedings wherein 60% liability of negligency was fixed on the head of the driver of the car and, as such, in the case on hand also, the learned Tribunal had fixed 60% liability on the head of the driver. The said view adopted by the Tribunal is erroneous one because in the earlier claim petition, the Insurance Company, owner and the driver of the car were not joined as parties and, therefore, in their absence negligency was decided. In the previous order passed by the Tribunal, the driver of the car was held to be 60% negligent on the basis of the first information report and the Panchnama. It is an admitted position of fact that the driver of the car passed away in the accident and the complaint was registered by the driver of the truck. Thereafter, investigation ensued and 'A' summary report was filed by the Investigating Officer which was accepted by

the concerned court. These basic facts were lying before the Tribunal in the previous proceedings which was accepted and 60% negligency is fixed on the head of the car driver, whereas here in the case on hand, Insurance Company appeared and raised their defense which was at all not considered and properly appreciated by the Tribunal. The learned Tribunal has fixed 60% liability of negligency on the head of the car driver by considering the principles of constructive *res judicata* which is, in fact, not applicable in the case on hand.

7. Learned advocate Mr.Nanavati has submitted that the claimant of the earlier claim petition was not an eye witness, whereas in this claim petition, injured Nikitaben is the eye witness and she has deposed in a very categorical terms that the truck was coming with an excessive speed, and due to negligence on the part of the driver of the truck who was coming from the wrong side with an excessive speed, the said incident took place. The said evidence has not been properly appreciated or rather it would be said that the evidence of the said witness is discarded at the time of deciding the issue of negligency is concerned. Therefore, considering the above stated factual aspect of the matter, the entire negligency, due to which, the said incident has taken place, would 100% go on the head of the driver of the truck and as a consequent effect, car driver should be exonerated from the charge of negligency. The second bone of contention raised by the learned advocate Mr. Nanavati is that it is the settled proposition of law that at the time of calculating the future expenditure of the claimants, the learned Tribunal need not have to count the interest upon the said amount as the said amount is yet not spent by the claimants. He has put reliance upon the decision in the case of ***R.D. Hattangadiv vs. M/s. Pest Control (India) Pvt. Ltd.& Ors.***, reported in AIR 1995 SC 755 and submitted that since 1995, the principles enunciated by the Hon'ble Apex Court in the aforesaid judgment is being followed by all the Courts including the Hon'ble Apex Court as well as all the various High Courts. Learned advocate Mr. Nanavati has submitted that from bare perusal of the deposition of the injured eye witness, it is found out that incident had occurred due to head on collusion and as per the contents of the Panchnama, damages are found on the right side, i.e, the driver side of the car and on the left side of the truck and the said incident had occurred on the approach road close to the express highway, and as per the say of the claimants, the truck driver was trying to overtake the rickshaw from the wrong side in a very excessive speed and dashed with the car coming from the opposite direction in a right side which resulted into the accident.

8. Learned advocate Mr. Nanavati has submitted that very exorbitant amount was awarded by the learned Tribunal under all the heads solely on the basis of assumption and presumption without appreciating and considering the evidence available on record in a true spirit and proper perspective and, therefore, the judgment and award passed by the Tribunal is required to be modified upto certain extent so far as quantum of award of the claim is concerned. Learned advocate Mr. Nanavati has submitted that considering the above stated factual aspect, appeal requires consideration and by allowing the present appeal, the issue pertaining to negligency of the car driver as well as the amount of compensation calculated was excessively high in nature, requires to be reduced as per the principle enunciated by the Hon'ble Apex Court in the above referred decision and followed by various High Courts.

9. Learned advocate Mr. Bhalodi who appears on behalf of the original claimants has filed the first appeal for enhancement of the claim amount awarded by the Tribunal. Learned advocate Mr. Bhalodi has submitted that the claimant is 20 years old girl and due to the said accident, she had sustained serious injuries and since then living in a totally vegetative state in a quadriplegia condition. Learned advocate Mr. Bhalodi has submitted that at the time of the incident, she was studying in T.Y. B.Com and after the college time, she was doing job in the R.C. Thakkar Chartered Accountant Firm and was earning Rs.4500/- per month and in the evening time, she used to conduct the tuition classes, and by doing so, she was earning Rs.2500/- to 3000/-. In short, in total, she was earning Rs.7000/- per month, however, due to such accident, she could not be able to secure the documents pertaining to her income. The learned Judge has notionally considered the income of the injured victim as Rs.2950/- per month. The said amount is very meager amount as in the present price showing index, wherein for the purpose of sustainment of life, considering the price rise in the commodities, minimum Rs.20,000/- income ought to have been considered by the learned Tribunal. To buttress his submission, learned advocate has put reliance upon the decision of the Hon'ble Apex Court in the case of ***Meena Pawaia & Ors. vs. Ashraf Ali & Ors.***, reported in 2022 ACJ
528 (SC), 2019 ACJ 3164 (SC) and 2019 ACJ 1070 (Allahabad High Court) and submitted that the father of the appellant passed away years before the said unfortunate accident and in absence of the father being elder member of the family, the entire responsibility of earning the livelihoods for the entire family came on the shoulder of the appellant-claimant. Learned advocate Mr. Bhalodi has submitted that it is an admitted position of fact that the incident

occurred on 11.02.2009 and since then she is not able to stand on her own legs and living totally in quadriplegia condition. In short, due to the said incident, she was in a vegetative state and has to do all her daily routine activities on bed and to fulfill her daily routine activities, she needs help of someone else. The said position is still continuing even in the year 2023, and as per the opinion given by the doctor, who is giving treatment to her, she has to spend her entire life in such a condition and there will not be any chance of improvement in her condition in future. Therefore, she is entitled to get more than Rs.15,00,000/- under the head of pain, shock and suffering, whereas the Hon'ble Court has granted Rs.3,00,000/- and by granting such a meager amount, the Tribunal has committed a grave error. In support of her claim, she has produced certain documentary evidences and witnesses were also examined vide Exhs. 67, 83, 85 and 80. In this regard, learned advocate Mr. Bhalodi has put reliance upon the decision of the Hon'ble Apex Court in the case of ***Nizam Institute of Medical Science vs. Prasanth S. Dhananka***, reported in 2010 ACJ 38 (SC) and in the case of ***Kajal vs. Jagdish Chand***, reported in 2020 ACJ 1042 and submitted that the ratio laid down by the Hon'ble Apex Court in the above case laws are squarely and adequately applicable to the present case. Therefore, the amount of compensation under the head of pain, shock and suffering requires to be enhanced accordingly.

10. Learned advocate Mr. Bhalodi has further submitted that it is also an undisputed fact that at the time of accident, she was 20 years old and to fortify her claim, she has produced her school leaving certificate which clearly establishes that at the time of the accident, she was only 20 years old young girl. The appellant victim is suffering from very grave mental shock and due to her physical condition, she is not in a position to live her life normally. Due to the serious injuries sustained by her in the said accident, her marriage prospects are ruined and she will be forbidden from getting married throughout her lifetime and, therefore, she is entitled to get amount of compensation of Rs.5,00,000/- under the head of loss of marriage prospect. Considering the principles enunciated by the Hon'ble Apex Court in the case of ***Kajal vs. Jagdish Chand***, reported in 2020 ACJ 1042 (SC), learned Tribunal ought to have considered the amount of compensation at Rs.5,00,000/- under the said head, however, instead of doing so, the learned Tribunal has awarded only Rs.75,000/-.

11. Learned advocate Mr. Bhalodi has also submitted that witnesses have also been examined to prove the medical expenses incurred by the

claimant during the treatment. Not only that, since last 10 years, due to her bedridden condition, she needs to take services of one attendant on 24X7 basis continuously. She also needs to take treatment from physiotherapist regularly. The medical expenditures incurred by the claimant during the said treatment are very huge and exorbitant in nature and, therefore, considering the oral and documentary evidence available on record, the Tribunal ought to have allowed Rs.10,00,000/- under the head of future medical bills. The appellant has already incurred huge medical expenses of Rs.16,28,971/- in past 10 years and, therefore, considering the physical condition, evidences available on record as well as the opinion of the experts, Rs.10,00,000/- further is required to be granted for the purpose of future medical expenditures which will have to be borne out by the appellant for the purpose of getting simple treatment regularly. Learned advocate Mr. Bhalodi has submitted that considering the above stated factual aspect of the matter, this is a fit case wherein amount of compensation is required to be enhanced substantially almost on all heads.

12. Learned advocate Mr. Bhalodi has further submitted that at the time of deciding the claim petition, the Tribunal has fixed 60% liability on the head of the driver and owner of the car, whereas 40% liability has been fixed on the head of the driver, owner and insurance company of the truck. Admittedly, the appellant-claimant is a third party and the incident is occurred due to the fault on the part of the drivers of both the sides as is evident from the evidence of the witnesses as well as the from the contents of the Panchnama and the first information report that there was head on collusion between the two vehicles, and being a third party, as per the settled proposition of law as enunciated by the Hon'ble Apex Court in the case of ***Khenyei vs. New India Assurance Company Limited***, reported in 2015 (9) SCC 273, the injured victim is entitled to get amount of compensation from either party. Here in the case on hand, all the parties are available on record. The copy of the award passed by the learned Tribunal who has decided the claim petition of the deceased driver of the car is produced, and if this Hon'ble Court would make a cursory glance upon the contents of the operative part of the said award, then it is found out that the condition of the vehicle, contents of the Panchnama and the first information report have been discussed in threadbare and passed the award and, therefore, the impugned award passed by the Tribunal is not required to be interfered.

13. Learned advocate Mr. Bhalodi has submitted that it isthe settled proposition of law that once negligence is decided by one Tribunal in the case of accident and, thereafter, subsequent matter pertaining to the same set of

facts is being filed or required to be decided, in that event, considering the principle of law of constructive *res judicata*, the Tribunal who has to decide subsequently, has to adopt the view taken by the earlier Tribunal at the time of deciding the claim petition provided that the earlier Tribunal has decided the said issue after considering all the relevant materials available on record. Here in the case on hand, admittedly, the Tribunal has already adopted the view taken by the earlier Tribunal. Learned advocate Mr. Bhalodi has submitted that copy of the judgment and award passed by the earlier Tribunal is produced on record and if Hon'ble Court would go through the observations and findings given by the concerned Tribunal at the time of deciding the said issue, then it is found out that the learned Tribunal has arrived at the conclusion after discussing all the parameters of the Panchnama as well as the first information report and passed just, fair and reasonable order.

14. In such circumstances, referred to above, learned advocate Mr. Bhalodi prays that there being merit in his appeal, the same may be allowed.

15. Learned advocate Mr. Rathin Raval who appears on behalf of the Insurance Company of the car has submitted that the impugned judgment and award passed by the Tribunal is not just, fair and reasonable and not based upon the sound principles of law and, therefore, is required to be interfered with at the end of this Court. Learned advocate Mr. Raval has submitted that essentially the first appeal filed by him is preferred mainly on two grounds viz. that the learned Tribunal has committed a grave error in holding that the driver of the truck is 40% negligent and, accordingly, liability has been fastened on the head of the Insurance Company of the truck. In fact, after the occurrence of the incident, immediately complaint was filed by the driver of the truck, and if the Hon'ble Court would go through the contents of the complaint, then it is found that due to fault on the part of the driver of the car, the said incident has occurred. Not only that, on the strength of the registration of the complaint, investigation was commenced and, thereafter, 'A' Summary was filed before the competent court which was accepted by the court simply because of the reason that the driver of the car has passed away, otherwise, he would have been held solely responsible and charge-sheet would have been filed against him. Learned advocate Mr. Raval has further submitted that immediately after the registration of the complaint, the Investigating Officer has gone to the place of occurrence and drawn the Panchnama. If Hon'ble Court would go through the contents of the Panchnama, in that event, it is found out that due to fault on the part of the driver of the car, the said incident has occurred. The Investigating Officer

was examined as a witness by the Insurance Company. He has deposed in a very categorical terms that the accident has occurred solely due to the mistake committed by the driver of the car. Therefore, considering the above stated evidence available on record, 100% negligency is required to be fastened on the head of the driver of the car. Despite the fact that the said evidence is available on record, the learned Tribunal held 40% negligency on the head of the driver by making undue emphasis upon the decision rendered by the earlier Tribunal in the claim petition filed by the legal heirs of the deceased. Learned advocate Mr. Raval has submitted that it is true that the principle of constructive *res judicata* operates at the time of deciding the issue of negligence, but in certain instances, the Hon'ble Court would have to deviate from the said principle. Learned advocate Mr. Raval has put reliance upon the decision in the case of Cholamandalam MS General Insurance Company Ltd. vs. Smt. Rinku Sen (Dutta) & Ors., MAC App No.9 of 2019, decided on 04.12.2019 and submitted that it is held by the Tripura High Court that the claim Tribunals might have expressed a different opinion in connected claim petitions, however, those awards were not challenged before the High Court, and in that event, considering the materials available on record, the Hon'ble High Court can take independent view.

16. Learned advocate Mr. Raval has submitted that all the evidences and materials available on record clearly goes on to show that due to sole negligency on the part of the driver of the car, the incident of accident has occurred and, therefore, 100% liability requires to be fixed on the head of the driver of the car, and as a consequent effect, the driver, owner and insurance company of the truck is required to be exonerated from the liability to pay the amount of compensation and, accordingly, the judgment and award passed by the Tribunal is required to be modified. Learned advocate Mr. Raval has submitted that the second limb of his argument is that the learned Tribunal has awarded very exorbitant and high volume of amount on different heads and, therefore, the said amount is required to be reduced considerably. Learned advocate Mr. Raval has submitted that for the purpose of proving the expenditures incurred by the claimants, attendant was examined, and In her deposition, she has narrated the facts about the injury and physical condition of the injured victim, but bare perusal of her cross-examination crystalized the entire position. She was not able to give proper answer to the simple question like that which kind of tablets were required to be administered to the injured victim. Even she does not know the name of the doctor who gives treatment to the victim. She does not know about the timing as to when tablets are to be administered to the victim and the effect of the

tablet. In short she does no know anything about the mode of treatment given to the victim. In short, totality of the evidence of the said witness shows that she was not in constant touch with the injured victim and providing any kind of assistant to her. Therefore, per days wages mentioned by the witness in her deposition cannot be granted considering the standard of services she was providing. Learned advocate Mr. Raval has further submitted that same way, physiotherapist Dr. Hardik Maheshbhai Soni was also examined by the claimant and during the course of his cross-examination, certain very important questions were being asked to him by the learned advocate for the insurance company. The answer given by the witness itself fortify the version of the insurance company and, prima facie, it seems that the said doctor has not narrated the correct facts before the concerned Tribunal. Therefore, evidence of the said witness is also not believable. Even though the learned Tribunal has put reliance upon the said set of evidence and passed the impugned judgment and award which even otherwise not believable one and, therefore, the compensation awarded of Rs.8,40,000/- for attendant charges is required to be reduced considerably and same way, the amount awarded towards the medical expenditures incurred by the witnesses during the treatment of physiotherapist is not just and fair and the said amount is also required to be reduced. Learned advocate Mr. Raval has further submitted that the incident is occurred in the year 2009 and claim petition was decided on 11.02.2019. Before pronouncement of the award, the claimant has produced certain medical bills which were duly exhibited, but at the time of arguments, learned advocate for the insurance company has drawn attention of the Hon'ble Court towards the contents of medical bills which shows that certain bills were issued in the year 2015, 2016, 2017 and 2018 and majority of bills were issued in the year 2018. The said medical expenditures were not borne by the victim in the year 2009 and, therefore, in the absence of any expenditure being made, she is not entitled to get any interest on the said amount from the year 2009 and considering the said request made by the learned advocate for the insurance company, more particularly, the fact that certain bills were issued in the year 2018-19, learned advocate for the claimant has given broad consensus and candidly accepted the version narrated by the insurance company and, therefore, in the operative part of the order, the Tribunal has divided the amount of interest of compensation from the particular period and the said order passed by the Tribunal is just, fair and reasonable and does not require any interference at the end of this Court.

17. Mr. Raval has straneously submitted that the deposition of the Investigating Officer as well as the contents of the complaint and the Panchnama clearly goes on to show that the incident of accident is occurred due to sole negligence on the part of the driver of the car, i.e, the deceased. Unfortunately, the driver of the car has passed away due to the said incident and, therefore, the Investigating Officer has not filed chargesheet against him, but instead of that, an 'A' summary report was filed, which was subsequently accepted by the concerned court. Therefore, the evidence available on record clearly goes on to show that the driver, owner and insurance company of the truck are, at all, not in fault and, therefore, requires to be exonerated from the liability to indemnify the amount of compensation to the claimants, and as a consequent effect, 100% negligence should be fastened on the head of the driver, owner and insurance company of the car.

18. We have heard the learned advocates appearing for the rival parties and also gone through the relevant evidences available on record.

19. In the present group of appeals, all the respective parties have filed different appeals challenging the impugned judgment and award. As the issue involved in the present appeals are based upon the same set of evidence and the same impugned award has been challenged, we have decided to dispose of these appeals by way of common judgment and award.

20. It is the case of the appellant-insurance company that essentially the order of the Tribunal is challenged solely putting reliance upon the previous decision rendered by the Tribunal in the earlier proceedings, wherein, present insurance company has not been joined as the party-respondent and, therefore, the Insurance Company did not get an opportunity to lead evidence and confront with the documents and evidences produced by the claimant in that regard, and in absence of the insurance company, if any decision is being taken, it would not be binding to the Insurance Company in the subsequent proceedings and, therefore, solely on the basis of principle of constructive res judicata the liability fastened on the head of the insurance company by computing and calculating the liability of negligence by adopting the findings given in the earlier proceedings is required to be modified.

21. Learned advocate Mr. Raval put much emphasis upon the deposition of the Investigating Officer. He has straneously submitted that collectively all the evidences available on record show that the incident is occurred solely due to the negligence on the part of the deceased, however, unfortunately, the said person has expired and, therefore, charge-sheet is not filed against

him, but an 'A' summary was submitted by the Investigating Officer which was accepted by the learned Tribunal. Therefore, the evidence available on record irresistibly goes on to show that the driver, owner and insurance company of the truck are, at all, not in fault and, therefore, requires to be exonerated from the liability and 100% negligency should be fastened on the head of the driver, owner and insurance company of the car.

22. We have gone through the findings recorded by the Tribunal so far as issue pertaining to negligence is concerned. It is settled proposition of law that if number of claim petitions are preferred by different parties based upon occurrence of one and same incident, in that event, with an intention to see that in future no further complications would arise and also to avoid the multiplicity of the proceedings in future, all those petitions are required to be consolidated, tried together and decided by common judgment. Sometimes, it happens that one claim petition is filed in different jurisdictional Tribunal and another is in different jurisdictional Tribunal, in that event, those matters cannot be clubbed and tried together, however, if the cause of action is based upon the one and same incident, in that event, after proper appreciation of the materials available on record, if one Tribunal has passed an order and decided the issue of negligency after considering and appreciating all the evidences available on record, in that event, considering the principle of constructive *res-judicata*, the findings given by the said Tribunal is binding to the other Tribunal and other Tribunal cannot deviate from said the view adopted by the Tribunal in the earlier proceedings based upon same set of evidence as principle of *res judicata* squarely operates.

23. We have also gone through the record and proceedings, more particularly, the award passed by the Tribunal so far as the issue pertaining to negligence is concerned. It appears that the Tribunal has arrived at a particular conclusion after appreciating and considering all the materials available on record, more particularly the contents of the Panchnama as well as the complaint. The learned Judge has considered almost all the aspects of the matter including the condition of the vehicles. Not only that, after discussing all the evidences in a threadbare manner, the learned Judge has come to a particular conclusion. We have gone through the observations made by the learned Judge at the time of deciding the issue of negligence and we are of the opinion that reasons assigned and conclusion arrived at by the learned Judge is correct one and we do not find any infirmity and perversity in the said decision. At the time of reaching to the final conclusion, the Tribunal has recorded the following findings in paragraph Nos. 20, 21 and 22, the free English translation of which are as under;

"(20) Now, if the documentary proofs produced by the applicant in the matter are considered, the Police Complaint regarding accident is produced at Ex-46, it is lodged by the Respondent No.1 at Chaklasi Police Station. In the said complaint, the facts regarding the accident are stated that he had left for going to Pune by driving the truck in question. At around quarter to four hrs. in the evening, when he was passing through Kanajari Cross-roads on National Highway No.8, one truck was coming in front from the side of Anand City. Meanwhile, one Indica car came from behind, overtaking the said truck and dashed with the truck of the Respondent No.1. Therefore, the Respondent No.1 and his conductor stopped the truck there itself and got down. Thus, such is a statement of the Respondent No.1 in the said complaint that while they were moving, the truck was coming from the front, Indica car overtook it and dashed with driver side of his truck.

(21) Now, the police personnel in this case, immediately drew Panchnama of the scene of incident, it is produced at Ex-47. If we see its important facts, the scene of incident is indicated by the Respondent No.1, it is a place on National Highway No.8, in front of Krushna Cold Storage. At the said place, one Truck of Tata company is lying on the eastern side of road, it is facing towards Vadodara. The mudguard at the driver side of said truck was bent and silver colour is stuck there. Colour of the truck is green. The damage costing around Rs.Three Thousand is caused to said truck. From the said place concerned, on spending out the road along North-South direction at a distance of around 25 steps, one silver coloured Indica car is lying in the western direction and it is facing east. The portion from the bonet to the driver side door, main front wind shield and the carrier on the car are broken. Damage is also caused to the engine of said car. Further, it is believed that the damage of around Rs.Fifty Thousand is caused to the said car. At the said place, there appear tyre marks indicating application of breaks. Also, the wreckage of plastic and glass pieces appear there. On spending out gutter on the road, towards eastern direction from the said place, there is Krushna Cold Storage. Towards western direction, on spending out up to down road, there are Jay Khodiyar hotel and spices and other shops are located. Along North-South directions, there is up to down National Highway No.8 along Ahmedabad to Vadodara and Vadodara to Ahmedabad.

(22) Upon perusal of complaint and facts of panchnama, it is clear that truck is in its right side i.e. on the left side, whereas Indica car is lying facing east direction, leaving north-south road, 25 steps far from the aforesaid truck. In view of the same, the car appears to have turned after the accident. Looking at the truck, mud-guard of the driver side has bent, and the mud-guard of front wheel has bent, and silver colour of Indica car has stuck at the said place. In view of the same, it appears that Indica car has collided with mud-guard of the front wheel of the truck on the driver side. Therefore, in view of the said fact, it is not the case that truck had come in the middle of the road. If it is the case, damage may have been caused in the middle of the front side of the truck. Therefore, vehicles have not collided heads on. The investigation has been conducted by police in connection with aforesaid accident. At the conclusion of the investigation, final report in the form of abated summary was filed against Premalbhai, car driver of Indica, and the said abated summary was granted by the Magistrate. Therefore, submission advanced by Ld. Advocate for the applicant about complete negligence of the truck driver in the accident cannot be believed. In view of the condition of the vehicle at the place and the fact of negligence of the car driver, more negligence can be attributed to the deceased Premalbhai, the car driver, in the aforesaid accident. However, the accident has

taken place on the National Highway No. 8. It does not transpire from the panchnama as to how wide aforesaid road was and as to how far truck was lying from the edge of the road. Considering the National Highway, it is so wide that two vehicles can pass together on both sides. As mentioned in the complaint by truck driver, if Indica car had come after overtaking the truck running ahead of it, truck driver could have allowed the car to pass by taking his truck to the side. Therefore, it cannot be believed that there is no negligence on the part of the truck driver at all. When some vehicle comes after overtaking, driver of the vehicle on its opposite side should slow down his vehicle so that the said vehicle may pass. It is not the case that truck driver has taken such care. Nothing has been mentioned in the complaint that the car appeared suddenly, but it is the statement of the respondent no. 1 in the complaint that Indica car, having overtaken the truck ahead of it, collided its side. He has not mentioned in the complaint that he has taken care to avert the accident. Therefore, negligence can also be attributed to the truck driver in this accident. In view of aforesaid all the facts, as it appears that more negligence can be attributed to Premalbhai, the car driver, than truck driver, I hold negligence of Premalbhai – car driver to be 60% and truck driver i.e. respondent no. 1 to be 40%, and accordingly, I reply to the issue no. 1 in partly affirmative."

24. To understand the controversy involved in the present case, we would like to reproduce the excerpts of the paragraph Nos. 6 to 21 of the decision of our own High Court in the case of ***United India Insurance Co. Ltd. vs. Laljibhai Hamirbhai & Ors.***, reported in (2007) 48(1) GLR 633, which are as under;

"6. The limited question, therefore, arises before this Court for consideration is whether the Tribunal could have taken different view on the issue of negligence than the one taken in former proceedings since the bar of res-judicata operated. So far the eligibility of the claimant to receive compensation and the quantum of compensation are concerned, no dispute has been raised by the learned advocates. I have, therefore, concentrated on the sole controversy whether principle of res-judicate could be applied in the present case. Section 11 of the Civil Procedure Code deals with res-judicata. It is as under :-

"11 : Res-judicata – No Court shall try any suit or lease in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by such Court.

7. It is, therefore, contended by Mr. Medh that theissue with regard to negligence was directly and substantially in issue in the former proceedings, namely MAC Application No. 48 of 1981 between the same parties and that issue was heard and finally decided by the Tribunal. Hence, the Tribunal in subsequent proceedings involving the same issue between the same parties could not have decided it since bar res-judicata operated. It may be seen here that in the earlier proceedings which were filed by Amratlal Devchandbhai against five respondents for claiming compensation of Rs.25,000=00, Opponent no. 2 of the said proceedings was, owner of the offending truck who is also opponent no. 1 in the present proceedings. Opponent no. 3 of the said case is the appellant in the present appeal i.e. the insurance

company of the truck, against whom notice under Section 96 (2) of the Act was taken out, during the course of hearing, as the insurer of opponent no. 1 namely Amin Transport Company. Thus, both i.e., the appellant and the insured were opponents in the earlier proceedings, as also respondent no. 2 i.e., GSRTC. The issue of negligence was raised in MAC Application No. 48 of 1981.

The Claims Tribunal decided that the case of the claimant of that case and the bodily injury received by him were on account of rash and negligent driving of the both the vehicles namely S.T. Bus bearing registration No. GRT 6988 and the truck bearing registration No. GTB 6977. It held that so far as the truck driver was concerned, the negligence was 70% while negligence of the S.T., driver was 30%. Thus, on the basis of the material produced before it, the Tribunal gave the aforesaid finding. In the subsequent proceedings namely, MAC Application No. 520 of 1981 same issue was raised and the contesting parties on the said issue happened to be the same i.e., the insured and the insurer of the truck and the GSRTC. In the subsequent proceedings also, they are the opponents as already stated above. The contention of Ms. Desai is that the claimants in both the cases were different and, therefore, provisions of Section 11 of the Civil Procedure Code did not apply in this case. However, according to Mr. Medh Section 11 of the Civil Procedure Code can come into play even when there are two contesting defendants, who are common in both the cases. In view of these submissions, it will now be necessary for me to refer to the decisions cited and relied on by Mr. Medh.

8. The Privy Council in its decision rendered in the case of Syed, Mohamamd Saadat Ali Khan v. Mirza Wiquar Ali Beg & Ors., reported in A.I.R. (30) 1943 Privy Council at pg. 115 has observed as under :-

“In order that a decision should operate as res judicata between co-defendants three conditions must exist : (1) There must be a conflict of interest between those co-defendants , (2) it must be necessary to decide the conflict in order to give the plaintiff the relief he claims, and (3) the question between the codefendants must have been finally decided.”

9. Thus, the Privy Council has laid down that if the aforesaid three conditions stand satisfied, resjudicata can operate between the co-defendants also. In the present case these conditions are adequately satisfied. The co-opponents are common, the issue of negligence is decided finally and unless that issue was decided no relief could have been given to the claimant. In view of this decision, the submissions of Ms. Desai cannot be accepted.

10. In the case of Iftikhar Ahmed & Ors v. SyedMeharban Ali & Ors., reported in (1974) 2 SCC pg. 151, the Apex Court has held as under :-

“13. Now it is settled by a large number of decisions that for a judgment to operate as re judicata between or among co-defendants, it is necessary to establish that (1) there was a conflict of interest between co-defendants; (2) that it was necessary to decide the conflict in order to give the relief which the plaintiff claimed in the suit; and (3) that the Court actually decided the question.”

11. In the instant case therefore, it is very clear thatthere was conflict of interest between the appellants and respondent no. 2 of the present case and that conflict was needed to be decided to give the

relief claimed by the claimant and the question of negligence was actually decided by the Tribunal.

12. Same view has been taken by the Apex Court in the case of Mahboob Sahab v. Syed Ismail & Ors., reported [1995] SCC pg. 693.

13. Mr. Medh also placed reliance on the decision of the Apex Court in the case of the State of Punjab v. Bua Das Kaushal reported in AIR 1971 SC pg.1676. This decision has been cited by him to meet the submissions of Ms. Desai that the appellant has not specifically pleaded in the written statement the contention with regard to res-judicata. In the aforesaid case, the Apex Court has laid down the principle that even if no specific plea has been raised, if it appeared that the necessary facts were present in the minds of the parties and were also gone into by the Court, provisions of Section 11 of the Civil Procedure Code be applied in a proper case. It may be noted here that the written statement was filed by the appellant on 15th December, 1981 and the judgment that was delivered by the Tribunal in
MAC Application No. 48 of 1981 was on 22nd December, 1981. It is true that the appellant could have amended the written statement in view of the subsequent development, however, the judgment was immediately produced on record by the appellant and it was taken in evidence and exhibited at Exh. 27. Therefore, it can safely be said that these facts were on the minds of the parties, in particular, the contesting opponents and the same was looked into by the Court since it was taken in evidence and exhibited. Therefore, there was no reason for the appellant to raise any specific plea with regard to bar of res-judicata and that plea was presumed to have been raised by the appellant.

14. Ms. Desai has submitted that the decision rendered by the Tribunal in MAC Application No. 48 of 1981 was a decision merely given on the basis of the affidavits filed by the parties, since the claim in the said case was Rs.25,000=00. Therefore, according to her, the issue with regard to negligence could not be said to be directly and substantially in issue in the said proceedings. This submission of Ms.

Desai cannot be accepted. Though the proceedings were decided on the affidavits i.e., in summary way, as the claim of was Rs.25,000=00, nevertheless it is a procedure prescribed under the Act, which was duly followed by the Tribunal. The parties raised this controversy effectively, and the same was also effectively dealt with by the Tribunal as can be seen from the judgment. The issue has been decided after lengthly discussion of the evidence and by giving anxious consideration to various aspects on this count. Therefore, it can never be said that the said finding was given by the Tribunal in a cursory manner. In the decision rendered by the Apex Court in the case of Vijayabai & Ors., v. Shriram Tukaram & Ors., reported in reported in AIR 1999, (Vol. 86) SC at pg.431, has held as under:-

“14. It would be impermissible to permit any party to raise any issue inter-se where such an issue under the very Act has been decided in an early proceeding. Even if res judicata in its strict sense may not apply but its principle would be applicable. Parties who are disputing now, if they were parties in an early proceeding under this very Act raising the same issue would be stopped from raising such an issue both on the principle of estoppel and constructive resjudicata. The finding recorded even by the High Court that possession of the landlord could only be by an order under Section 36 (2) is also not sustainable as that only conceived of the case where tenant is dispossessed and landlord is seeking to get back possession of the suit land from such tenant. In the

present case, there was no such question. For this respondent no. 1 has to be at least a tenant and whether he is a tenant stood concluded, as aforesaid earlier, hence initiation of proceeding under Section 49B cannot be sustained law.

15. The Apex Court has gone to the extent ofobserving that even if the principle of res-judicata may not apply in its strict sense, but its principle would certainly be applicable. When the parties who are disputing in subsequent proceedings, are also parties in earlier proceedings under the very Act, the principle of estoppel and rule of constructive resjudicata will come into play, according to the Apex Court.

16. In the decision rendered in the case of State ofUttar Pradesh v. Nawab Hussain, reported in AIR 1977 SC pg. 1680, the Apex Court has said that the rule of constructive res-judicata is in reality aspect or amplification of the general principle. While explaining the principle of rule of constructive resjudicata it has said as under:-

“This is, therefore, another and an equally necessary and efficacious aspect of the same principle, for it helps in raising the bar of res-judicata by suitably construing the general principle of subduing a cantankerous litigant. That is why this other rule has sometimes been referred to as constrictive resjudicata which in reality, is an aspect or amplification of the general principle.”

17. In the decision of the Apex Court rendered in the case of Satyadhyan Ghosal & Ors. v. Smt. Deorajin Debi & Anr., reported in AIR 1960 SC 941, the Apex Court has elaborately explained the need of giving finality to judicial decisions and has held that the principle of res-judicata is based on such need. It has held as under:

“7. The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter, whether on a question of fact or a question of law has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. The principle of res judicata is embodied in relation to suits in Section 11 of the Civil Procedure Code; but even Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original Court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.

8. The principle of res judicata applies also as between two stages in the same litigation to this extent that a Court, whether the trial Court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to reagitate the matter again, at a subsequent stage of the same proceedings. Does this however, mean that because at an earlier stage of the litigation a Court has decided an interlocutory matter in one way and no appeal has been taken therefrom or no appeal did lie, a higher Court cannot at a later stage of the same litigation consider the matter again.”

18. Ms. Desai contended that the parties in the earlier proceedings and the subsequent proceedings are not the same. In other words,

according to her, the claimant in MAC Application No. 48 of 1981 was the passenger in the Bus, whereas in MAC Application No. 521 of 1981, the claimant was the cleaner of the truck. She, therefore, submitted that Section 11 of Civil Procedure Code will not come into operation. This submission of Ms. Desai also cannot be accepted. Merely because the applicant in both the cases were different, it does not mean that the bar of res-judicata cannot operate since the controversy was between the two defendants who were parties to both the proceedings and that controversy was required to be decided to give relief to the applicants of both the cases. In the case of Ishwardas v. The State of Madhya Pradesh & Ors., reported in AIR 1979 SC. pg.551, the Apex Court has held that in order to sustain the plea of res-judicata it is not necessary that all the parties to the litigations must be common. All that is necessary is that the issue should be between the same parties or between the parties under whom they or any of them claimed. This decision also takes care of second limb of the submission of Ms. Desai that the material that was produced in earlier case was not before the Tribunal in the subsequent case. The Apex Court has further said that once the questions at issue in the two suits are found to be the same, the fact that the material which led to the decision in the earlier suit was not again placed before the Court in the second suit, cannot make the slightest difference. The plea of resjudicata may be sustained without anything more, if the question at issue and the parties are the same, subject of course to the other conditions prescribed by Section 11 of Civil Procedure Code.

19. Last submission of Ms. Desai is that the Tribunalin earlier case has decided the issue of negligence on misreading of the facts. However, on perusal of the said judgment, it appears that the issue has been substantially considered by the Tribunal. An insignificant erroneous statement made at one place by the Tribunal will not render the elaborate discussion and appreciation of evidence meaningless. Apart from that the Courts have gone to the extent that even if the conclusion drawn by the Court in earlier case is erroneous, the plea of resjudicata can be entertained and the bar can be applied in subsequent proceedings.

20. Before the Apex Court in the case of SobhagSingh & Ors. v. Jai Singh & Ors., reported in AIR 1968 SC pg. 1328, it was contended that the order passed by the High Court was interlocutory order remanding the proceedings to the Board of Revenue and on that count the decision of the High Court would not operate as resjudicata either before the Board of Revenue or before this Court. The Apex Court has thereafter held as under:-

“We are unable to accept that contention. Against the order of the Board of Revenue rejecting the claim of Jai Singh to be recognized as the adopted son of Sabhal Singh, a writ petition was moved in the High Court and a prayer for quashing that order was made. The High Court dealt with the dispute on merits and held that the order of the Board of Revenue holding that because of the Matmi Rules the adoption of Jai Singh by Sabhal Singh without the previous sanction of the Ruler could not be recognized for the purpose of determining the succession to the Jagir was erroneous. The High Court did in making the final order direct the Tribunal to decide the case in accordance with the law and in the light of the observations made in the judgment, but the direction was, in our judgment, a surplusage. The High Court issued a writ in the nature of certiorari quashing the order of the Tribunal. It was unnecessary thereafter to direct or advise the Board of Revenue to perform its statutory duty to decide the dispute according to law. The Board of

Revenue had to decide the dispute in accordance with the law declared by the High Court. All questions which had been expressly decided by the High Court on contest between the parties and other questions which must be deemed by necessary implication to have been decided were res-judicata and could not be reopened before the Board of Revenue. In this appeal it is, therefore, not open to the appellant to contend that the decision of the High Court on the questions decided in the writ petition was erroneous."

21. The Tribunal in the present case has referred to Exh. 27 in paragraph 15 of its judgment, but it has not entertained the plea of res-judicata since in its opinion the parties have neither raised nor pleaded, the bar of res judicata and, therefore, the Tribunal has to decide the issue on the evidence before it. This reasoning of the Tribunal does not appear to be proper as already discussed above. Even if the plea is not specifically raised, the adequate material has been placed before the Tribunal by the appellant making its intention explicit. If that be so, the question of res judicata ought to have been examined by the Tribunal and appropriate finding ought to have been given on that issue. That has not been done. Nevertheless, I have gone hrough the judgment rendered in MAC Application No. 48 of 1981 by the Tribunal and in the said decision the Tribunal has referred the evidence of various persons connected with this case, which is in the form of affidavits. It has also referred the panchnama of the incident. The Tribunal has given categorical finding on the basis of the material that the truck driver ought to have maintained safe distance between the two vehicles and the distance of 8 to 10 feet could not be called safe distance. But again in paragraph 25, the issue of negligence has been discussed by the Tribunal and thereafter it has come to the conclusion that negligence of truck driver was 70%, whereas that of ST driver was 30%. In view of the same, by no stretch of imagination, it can be said that the finding given by the Tribunal in earlier case is not significant and it cannot operate as bar of resjudicata in subsequent proceedings. In view of the same, the contentions raised by Mr. Medh are upheld."

25. As it is held by our own High Court that if the issue of negligence is decided by one Tribunal after considering all the materials available on record, in that event, the ratio so far as negligence is concerned, is binding to the Tribunal who is deciding the issue subsequently based upon the same set of documents (evidence) and at the time of deciding the issue of negligence arising out of the very same accident in a different claim petition and, therefore, in view of the same, by no stretch of imagination, it can be said that the findings given by the Tribunal in earlier proceedings is not significant and cannot operate as bar of *res judicata* in the subsequent proceedings. Therefore, we are unable to accept the arguments canvassed by learned advocate Mr. Nanavati and learned advocate Mr. Raval and we hold that the findings recorded by the learned Tribunal so far as the issue pertaining to negligency is just, fair and reasonable and do not require any interference at the end of this Court.

26. Both the learned advocates appearing for the insurance companies have vociferously argued that it is settled proposition of law that the amount

which is not spent and considered as future expenditure, upon which, interest cannot be given because said amount is not actually spent by the injured victim behind the treatment or medical expenditure and, therefore, interest upon the amount which is not utilized cannot be sought for. In this regard we would like to quote certain relevant observations made by the Hon'ble Apex Court in R.D. Hattangadiv (supra) which read thus;

"So far the direction of the High Court regarding payment of interest at the rate of 6% over the total amount held to be payable to the appellant is concerned, it has to be modified. The High Court should have clarified that the interest shall not be payable over the amount directed to be paid to the appellant in respect of future expenditure under different heads. It need not be pointed out that interest is to be paid over the amount which has become payable on the date of award and not which is to be paid for expenditures to be incurred in future. As such we direct that appellant shall not be entitled to interest over such amount."

27. Thus, it is settled proposition of law and since beginning the said principle of law is followed by the Hon'ble Apex Court as well as the various High Courts that claimants are not entitled to get any kind of interest upon the amount which she or he has not spent for expenditures to be incurred in future and, therefore, the said view adopted by the learned Tribunal is required to be modified by removing the interest portion from the said amount.

28. It is found out from the aforesaid discussion that at the time of fixing the liability of negligence, the learned Tribunal has discussed all the aspects of the matter and passed just, fair and reasonable order and we do not find any infirmity in the said findings and, therefore, we are of the opinion that so far as the findings given by the learned Tribunal pertaining to negligence is concerned, the same is correct one and we are in full agreement with the said findings.

29. Facts with regard to accident and injury sustained by the victim are not disputed by either parties. The Tribunal, after detailed examination and on the basis of evidence available on record, has considered 100% functional disability of the claimant. Dr. Hardik Maheshbhai Soni was examined by the claimants, and in his deposition, the said witness has very categorically stated that the injured victim is totally bedridden and all her daily routine activities are required to be carried out on the bed and she is not in conscious state of mind and according to him, she is suffering from 100% permanent disability. The said witness was cross-examined by the learned advocate for the insurance company, but nothing fruitful has come out in the said cross-examination which would shake the effect of the evidence of the said witness.

It is also an admitted position of fact that the evidence of the claimant injured-victim was recorded through Court Commissioner and the Court Commissioner had gone to the house of the claimant for the purpose of recording the deposition and described the condition of the claimant in his report. Therefore, it is undisputed fact that the injured victim was living in a vegetative state and is totally in a bedridden condition, all her daily routine activities has to be carried out on the bed, and for that purpose, she needs services of an attendant round the clock 24 hours in a day and without getting support and assistance from the attendant, she would not be able to do her normal daily routine activities. The said set of evidence itself shows and suggests that she was suffering from 100% functional disability. As per the case of the prosecution, she was 20 years old and studying in T.Y.B.Com at Vadodara. She was having the responsibility to maintain her house and that is why, she was doing the tuition classes for the purpose of earning her livelihood. The entire responsibility to maintain the house was on the shoulder of the victim because her mother is a widow and doing the household work, and in the absence of her father, she has to run and maintain her house and, therefore, along with the study she was doing job as well as running the tuition classes and by doing so, she was earning Rs.7000/- per month. It is true that the claimants have not produced any evidence to substantiate their claim so far as income part is concerned except the oral evidence, but on the strength of the evidence available on record, one can draw the inference that in the present price soaring index, where the prices of all the essential commodities and vegetables are escalated, therefore, it is practically impossible to meet with all the household expenses in the meager income of Rs.2950/- per month.

30. As learned advocate Mr. Bhalodi has put reliance upon the decision in the case of Meena Pawaia (supra) and submitted that in the said case, the Hon'ble Apex Court after taking into consideration the present rise of market prices of all the household articles and essential commodities, has considered the monthly income of the victim at Rs.10,000/-. Herein the present case, the facts are more or less the same. In the present case, the incident has occurred in the year 2009 and victim was doing job in the private firm. The facts of the present case are identically similar to the facts of Meena Pawaia (supra). Hence, at the time of deciding the income of the injured victim, same analogy requires to be applied. As the facts of both the cases are similar in nature, the same yardstick is required to be applied in considering the income of the victim and, therefore, the amount awarded by the Tribunal may be enhanced from Rs.2950/- to Rs.10,000/-. We do not agree with the said proposition of learned advocate Mr. Bhalodi because at

the time of preferring the claim petitions, claimants have come with a case that at the time of accident, the victim injured was earning Rs.7000/- per month and one cannot travel beyond the scope of the pleadings, more particularly, when the factum of income was narrated in the form of admission by the claimants in the plaint and, therefore, the amount of Rs.10,000/- as sought for at this stage, cannot be awarded.

31. Learned advocate Mr. Bhalodi has straneously submitted that during the pendency of the petition before the Trial Court, the claimant incurred huge amount towards the medical expenses and considering the physical condition of the claimant, there are all possible chances that in future she will have to incur much more amount towards the medical expenses and, therefore, claimant has demanded more than Rs.10,00,000/- , however, in support of the same, claimant has not produced any evidence on the basis of which it can be said that in future the claimant will have to spend this much amount under the head of future medical expenditures, and in absence of any concrete material in support of the claim made by the claimant in the application, we deem it fit not to consider the said request made by the learned advocate Mr. Bhalodi. It is matter of fact on record that whatever amount the claimant has spent towards the medical expenses, has already been considered by the learned Tribunal.

32. As we have gone through the evidence available on record, we are of the opinion that the learned Tribunal has awarded Rs.2950/- as monthly income of the injured victim. As discussed herein above, it is found out that considering the present price soaring index, the said amount is too meager amount and it is practically impossible to sustain the family in the income of Rs.2950/-. Therefore, considering the present trend of the market, we hold notional income of the injured victim at Rs.4,000/- per month instead of Rs.2950/- and as per the principle enunciated by the Hon'ble Apex Court in the case of ***National Insurance Co. vs. Pranay Sethi***, reported in 2017 (16) SCC 680, 40% rise under the head of future prospect is required to be given (4000X40%=1600). Therefore, in our view, the claimant is entitled to get Rs.5600/- per month (Rs.4000/- + Rs.1600/-=Rs.5600/-). At this juncture, we would like to apply multiplier of 18 as per the landmark decision in the case of ***Sarla Varma vs. Delhi Transport Co.***, reported in 2009 (6) SCC 121 as at the time of incident, the age of the injured victim was 20 years. Therefore, the claimant is entitled to get total amount of compensation under the head of future loss of income at Rs.12,09,600/- (5600x12x18=12,09,600/-), whereas the learned Tribunal has awarded Rs.8,76,960/- under the said head, which in our opinion, is required to be enhanced to Rs.3,32,640/-.

33. At this stage, it would be appropriate to refer to the observations made by the Apex Court in the case of Kajal (supra). In the said case, the Apex Court, while examining the case of fatal accident, whereby a young girl of 12 years had suffered 100% physical disability, has been awarded the compensation under the following heads:

34. With regard to the fixing of attendant charges the Apex Court in the case of Kajal (supra) has observed thus:

"25: Having held so, we are clearly of the view that the basic amount taken for determining attendant charges is very much on the lower side. We must remember that this little girl is severely suffering from incontinence meaning that she does not have control over her bodily functions like passing urine and faeces. As she grows older, she will not be able to handle her periods. She requires an attendant virtually 24 hours a day. She requires an attendant who though may not be medically trained but must be capable of handling a child who is bed ridden. She would require an attendant who would ensure that she does not suffer from bed sores. The claimant has placed before us a notification of the State of Haryana of the year 2010, wherein the wages for skilled labourer is Rs.4846/ per month. We, therefore, assess the cost of one attendant at Rs.5,000/ and she will require two attendants which works out to Rs.10,000/ per month, which comes to Rs.1,20,000/ per annum, and using the multiplier of 18 it works out to Rs.21,60,000/ for attendant charges for her entire life.
This takes care of all the pecuniary damages."

S. No.	Heads	Amount
(i)	Expenses relating to treatment, hospitalization and transportation.	Rs.2,50,000/
(Ii)	Loss of earnings (family members).	Rs.51,000/
(iii)	Loss of future earnings.	Rs.14,66,000/
(iv)	Attendant Charges.	Rs.21,60,000/
(v)	Pain, suffering loss of amenities.	Rs.15,00,000/
(vi)	Loss of Marriage prospects.	Rs.3,00,000/
(vii)	Future medical treatment.	Rs.5,00,000/

35. A perusal of the observations made by the Apex Court reveals that though there was no evidence adduced with regard to the attendant charges, the Apex Court has considered the notification of the State of Hariyana of 2010 with regard to the fixation of wages for workmen. The Apex Court has considered Rs.4,846/ p.m. of the skilled workman and accordingly fixed the expenses of two (02) attendants and accordingly has awarded Rs.21,60,000/.

36. Learned advocate Mr. Bhalodi has submitted that the said incident is occurred in the year 2009 and as per the norms of wages fixed by the State Government for the skilled labourers so far as year 2010 is concerned was Rs.4210/-. Learned advocate Mr. Bhalodi has put reliance upon the judgment of our own High Court in the case of ***Bhavik @ Bhavin Dwarkadas Vithlani vs. Ganpathsinh Manubhai Jadeja***, First Appeal No.2015 of 2018, more particularly, para-12 and submitted that after considering the materials available on record, the Hon'ble Court observed in the operative part of the order that in the year 2010, wages of skilled labourers was fixed at Rs.4210/- and, therefore, the same analogy and principle adopted by the Coordinate Bench of this Hon'ble Court is required to be considered by this Court at the time of deciding the issue involved in the present case. Learned advocate Mr. Bhalodi has further submitted that it is an admitted position of fact that the claimants have not produced any documents to show that what was the minimum wages for the skilled labourers in the year 2009-10 but the said fact is already reflecting in the operative part of the order of this Hon'ble Court and, therefore, on the strength of the said material available on record, the Hon'ble Court has to consider it and pass appropriate order. It is found out from the record that from the date of incident till the evidence of the witness of the claimant was recorded, claimant has produced certain documents which prove that from day one she used to take treatment of the physiotherapist, and on regular interval for the purpose of physical exercise, physiotherapist used to visit her house and the said physiotherapist, in his deposition, has narrated the physical condition of the injured victim in a great detail and as per the deposition of the said witness, the injured victim will have to take the services of the attendant for the entire lifetime in future. The Tribunal has granted an amount of Rs.8,40,000/- under the head of attendant charges by considering the amount of Rs.2000/- p.m. towards attendant charges. Learned advocate for the insurance company has put much resistance about the services rendered by the attendant. He has opined that certain questions were being asked by the learned advocate for the insurance company to the witness-attendant, however, she could not be able to give proper answer to the question asked by the learned advocate of the insurance company. Therefore, it can be said that no charges can be granted under the said head. It is also found out that the evidence of the said witness is not found to be trustworthy and reliable, but the fact remains that due to ill-health and vegetative physical condition of the injured victim, she needs services of physiotherapist and attendant on regular basis and as per the parameters prescribed by the Hon'ble Apex Court in the case of Kajal (supra), wages of attendant and physiotherapist can be fixed as per the

norms fixed by the State Government for skilled labourers. As the claimants are miserably failed to lead evidence to the effect that what was the actual wages of skilled workers, this Court is of the considered opinion that looking to the wages of the skilled labourers fixed by the State Government by issuing official notification published in the Government Gazette. In that event, it would be appropriate to fix the expenses of Rs.2500/- for physiotherapist and Rs.1500/- for the attendant charges, which in total come to Rs.4000/- (2500+1500=4000) per month, which after applying multiplier of twelve, would come to Rs.48,000/- per annum. As per the principles enunciated by the Hon'ble Apex Court in the case of Kajal (supra), considering the tender age of the injured victim of 20 years, we would expect that at least exigency of life of the injured victim can be considered upto 55 years. In that event, she is entitled to get charges under the head of attendant charges, more particularly, for the purpose of getting services of physiotherapist and attendant which would be required to be calculated by using the multiplier of 35. Thus, the total amount would come to Rs.16,80,000/- (4000x12x35=16,80,000/-), whereas claimant has claimed Rs.15,00,000/- under the said head. An identical issue came up before the Supreme Court in the case of **Mona Baghel & Ors. vs. Sajjan Singh Yadav & Ors.**, reported in 2022 Livelaw (SC) 734, in which, the amount of compensation granted by the Hon'ble Apex Court was higher than what was claimed by the claimant in that petition. We would like to quote the relevant observations made by the Hon'ble Apex
Court in this regard, which read thus;

"The law is well settled that in the matter of compensation, the amount actually due and payable is to be awarded despite the claimants having sought for a lesser amount and the claim petition being valued at a lesser value.

Our view, is fortified by the decision of this Court in the Case of Ramla and Others Versus National Insurance Company Limited and Others 2019 2 SCC 192, wherein, it is held as under:

"Though the claimants had claimed a total compensation of Rs.25,00,000 in their claim petition filed before the Tribunal, we feel that the compensation which the claimants are entitled to is higher than the same as mentioned supra. There is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or Court under Section 168 of the Motor Vehicles Act, 1988 is to award "just compensation". The Motor Vehicles Act is a beneficial and welfare legislation. A "just compensation" is one which is reasonable on the basis of evidence produced on record. It cannot be said to have become time-barred. Further, there is no need for a new cause of action to claim an enhanced amount. The Courts are duty-bound to award just compensation. (See the Judgments of this Court in (a) Nagappa v. Gurudayal Singh, (b) Magma General Insurance Co. Ltd. v. Nanu Ram, (c) Ibrahim v. Raju."

37. Considering the fact that the injured had to visit the hospitals at Vadodara and Anand on regular basis for the purpose of treatment in a private vehicle and the injuries sustained by the claimant, we deem it proper to fix the amount of special diet and transportation charges at Rs.1000/per month, which comes to Rs.12,000/- per annum and after applying multiplier of 18, the total amount which the claimant is entitled to receive under the head of special diet and transportation charges, would come to Rs.2,16,000/- , however, the Tribunal has awarded Rs.75,000/- under the said head, which is required to be enhanced from Rs.75,000/- to Rs.2,16,000/-. The claimant is also entitled to get enhancement under the head of loss of marriage prospect. The Tribunal has awarded Rs.75,000/- which is quite meager and, therefore, which is required to be enhanced from Rs.75,000/- to Rs.3,00,000/-. We do not propose to enhance any amount of compensation under any other heads.

Heads of Compensation	Amount (in Rs.) awarded by the Tribunal	Enhanced amount (in Rs.) awarded by this Court	Total amount (In Rs.) after enhancement
Future loss of income	8,76,960/-	3,32,640/-	12,09,600/-
Special diet and transportation charges	75,000/-	1,41,000/-	2,16,000/-
Loss of marriage prospect	75,000/-	2,25,000/-	3,00,000/-
Attendant charges	8,40,000/-	8,40,000/-	16,80,000/-
	Total awarded amount by the Tribunal (In Rs.)	**Total enhanced amount by this Court (in Rs.)**	**Total amount to be paid after enhancement (in Rs.)**
	18,66,960/-	**15,38,640/-**	**34,05,600/-**

38. The claimant is not entitled to get any enhancement under the head of actual loss of income of Rs.3,68,300/- as this Court has considered and awarded compensation on the head of future loss of income considering 100% functional disability as a whole. The table showing the heads under which the amount is enhanced is as under;

We would also like to reproduce hereunder the amount awarded by the Tribunal under other heads in which we do not want to make any kind of enhancement;

Heads of Compensation	Amount (in Rs.) awarded by the Tribunal	Enhanced amount (in Rs.) awarded by this Court	Total amount (In Rs.) after enhancement
Pain, shock and suffering	3,00,000/-	-	-
Medical expenses	16,28,971/-	-	-
Actual loss of Income	3,68,300/-	-	-
Loss of expectation	2,00,000/-	-	-
Loss of amenities	3,00,000/-	-	-
Total	**27,97,271/-**		

Thus, the total amount of compensation after enhancement would be as below:

Awarded by the Tribunal = 46,64,231=00
(18,66,960+27,97,271)
Enhanced by this Court = 15,38,640=00

Total = 62,02,871=00
as against the compensation of Rs.46,64,231/- awarded by the Tribunal.

The judgment and award of the Tribunal is modified accordingly to the aforesaid extent.

39. Accordingly, the claimant becomes entitled to the additional compensation of Rs.15,38,640/- over and above awarded by the Tribunal.

40. The aforesaid amount of Rs.62,02,871/(Rs.46,64,231/- awarded by the Tribunal + Rs.15,38,640/enhanced by this Court) with interest @9% per annum shall be deposited before the Motor Accident Claims Tribunal in terms of the present judgment, after deducting the amount if already paid by the respondent-Company within a period of eight (08) weeks from the date of receipt of copy of this order. It is clarified that out of the aforesaid amount, the claimants are not entitled to get any interest upon the

amount under the head of attendant charges, i.e,. 16,80,000/- as per the ratio laid down by the Hon'ble Apex Court in the case of R.D. Hattangadiv (supra). The rest of the judgment and award passed by the Tribunal shall remain as it is.

41. Appeals are allowed to the aforesaid extent. No costs.