**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Mac App No. 22/2025

Reserved on: - 03.09.2026
Pronounced on: - 22.09.2026
Uploaded on: - 22 .09.2026

Whether the operative part or full judgment is pronounced: - full

Bajaj Allianz General Insurance Company,
Through its Legal Executive. Muneeb Ahmad Khan
Age 44 Years B/o Srinagar C/O City Mall near Poloview
Srinagar

……...Appellant(s)

Through:
Mr. Imtiyaz Ahmad, Advocate

Versus

1. Aijaz Ahmad Najar S/o Ghulam Mohi-ud-Din Najar
R/o Hayal Kreri Pattan, District Baramulla, Kashmir

2. Bashir Ahmad Bhat S/o Abdul Rehman Bhat
R/o Tapper Pattan, District Baramulla, Kashmir
(Driver of Tavera JK01R-6955)

3. Mohammad Sidiqq Harbool S/o Ghulam Hassan Harbool
R/o Syed Hamid Pora, Nawa Bazar, Srinagar, Kashmir
(Owner of Tavera JK01R-6955).

…..Respondent(s)

Through:
Mr. B. A. Tak, Advocate

***CORAM*:**
HON'BLE MR JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

01. This appeal has been directed against award dated 30.08.2025, passed by Motor Accident Claims Tribunal, Srinagar ["Tribunal" for short], whereby appellant Company has been directed to pay compensation to respondent No. 1, arising out of a claim petition titled *"Aijaz Ahmad Ahanger Vs. Bajaj Allianz General Insurance Company and Ors."*

02. Before a closer look at the grounds urged in the memo of appeal, some admitted facts of the case are required to be noticed, they are stated thus:

2.1. On 11.11.2016, a Motorcycle, which was being driven by cousin brother of respondent No. 1, who was riding pillion, when reached near Pothkha, was hit by a vehicle; Tavera bearing registration No. JK01R-6955, driven by respondent No. 2, Bashir Ahmad Bhat. Both of them were injured in the accident.

2.2 They preferred their respective claim petitions in the Tribunal, supported by the disability certificates, according to which cousin of respondent No. 1, driver of the Motorcycle sustained 50% permanent disability and respondent No. 1, who was riding pillion sustained 5% disability.

2.3 Learned tribunal, having regard to the facts and circumstances attending the case, in particular the disability certificates, issued by the Board of Doctors, awarded compensation to both the claimants, including an amount of Rs. 5.00 lacs each as non- pecuniary damages, on account of pain & sufferings and trauma. The award amount was directed to be paid by the appellant Company to the claimants with interest @ 9.5% per annum.

03. The challenge of the appellant Company to the impugned award is confined to non-pecuniary damages to the tune of Rs. 5.00 lacs on account of pain & sufferings and trauma, in favour of respondent No. 1, who as per the disability certificate issued by the Board of Doctors had sustained 5% disability and the rate of interest; 9.5% per annum, awarded by the Tribunal.

3.1 It is contention of the appellant Company that Section 168 Motor Vehicles Act enjoins upon the Tribunal to determine the amount of compensation, which is just and reasonable. According to the appellant, the compensation to be awarded by the Tribunal cannot be expected to be a windfall or a bonanza for the victim.

04. Having heard the rival contentions, I have gone through the impugned award as also the record.

05. True it is that determination of compensation in motor accident cases involves some guess work and hypothetical considerations along with an element of sympathy linked with the nature of disability, but these elements are required to be considered in an objective manner and sympathy for a victim should not come in the way of making correct assessment. When compensation is to be awarded on account of pain & sufferings and loss of amenity of life, the age of the victim, the percentage of disability suffered by him, the actual medical expenses incurred by him, the loss of earnings during the period of treatment and the loss of future earnings on account of permanent disability are some of the underlying factors, which are required to be taken into consideration by the Tribunals. Therefore, at the time of award of compensation, under the non-pecuniary damages, Tribunals are required to strike a balance between the inflated demands of the claimants and unreasonable claim of the Insurance Companies that nothing at all was payable. In other words, it should neither be a pittance or a windfall or a bonanza for the victim.

06. Hon'ble Supreme Court in ***Raj Kumar v. Ajay Kumar; (2011) 1 SCC 343,*** after surveying a large number of precedents rendered by it from time to time in relation to personal injury cases, laid down the following propositions:

"The provision of the motor Vehicles Act, 1988 ('the Act', for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

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

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

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

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

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

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

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

> ***(vi) Loss of expectation of life (shortening of normal longevity).***
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> ***In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."***

6.1. It is evident from the aforequoted principles enunciated by the Apex Court that broadly speaking, while determining the amount of compensation to a victim of an accident, the damages have to be assessed separately as pecuniary damages or special damages, which a victim has actually incurred and those are capable of being calculated in terms of money and non-pecuniary or general damages, which are incapable of being assessed by arithmetical calculations. In other words, pecuniary damages may include expenses incurred by the claimant on his treatment, medical attendance, loss of earnings during his treatment, loss of future earnings etc. Non-pecuniary damages, on the other hand may include damages on account of mental and physical shock, pain and sufferings suffered or likely to be suffered in future, loss of amenities of life, loss of expectation of life, on account of injury, inconvenience, hardship, discomfort, disappointment frustration and mental stress etc.

6.2. Therefore, though perfect compensation is hardly possible but one has to keep in mind that victim has done no wrong and since he has suffered at the hands of the wrongdoer, tribunals must take care to put him in the same position as he was in prior to the accident and make the loss good, as far as money can do, but in a fair and reasonable manner.

07. If the present case is approached in the light of aforesaid principles laid down by Hon'ble Supreme Court, I have no doubt in my mind that non-pecuniary damages and the rate of interest awarded by the Tribunal in the present case are exorbitant and required to be set aside.

08. The claimant/respondent No. 1, besides appearing himself as his own witness examined Dr. Nissar Ahmad Khan, who along with orthopedician and Chief Medical Officer of the Medical Board had examined him after the accident.

8.1 PW- Dr. Nisar Ahmad Khan, while admitting the disability certificate issued by the Board of Doctors, submitted in his Chief-examination that victim had sustained 5% permanent disability. He can continue his work as a Carpenter as his limbs are normal. In cross-examination the Medical Officer deposed that patient was fully treated at SKIMS, a Government Hospital. Pertinently, he categorically stated in the cross-examination that 5% disability suffered by the victim was curable, it was regarding the whole body and not permanent and it was not a kind of disability, which would affect the livelihood of the victim.

8.2. Pertinently the claimant/respondent No. 1, in his chief examination also admitted that after the accident, he was taken by the Police to Baramulla Hospital, which is a Government Hospital and he is able to walk.

8.3. It is evident from the statement of the Medical Officer, who examined respondent No. 1, after the accident that 5% disability sustained by him was neither permanent, nor it affects his livelihood. These circumstances, should have guided the Tribunal while awarding compensation to respondent No. 1 on account of pain & sufferings and loss of amenities of life.

09. Another aspect of the matter, which needs attention of this Court is that Tribunal has adopted the same yardstick in awarding Rs. 5.00 lacs as non-pecuniary damages on account of pain and sufferings in the case of both the claimants; the driver of the Motorcycle and the pillion rider, who respectively suffered 50% and 5% disabilities.

10. Hon'ble Supreme Court in ***Kavita Vs. Deepak and Ors.; AIR 2012 Supreme Court 2893***, where a 31 years old victim, who suffered 90% permanent disability and continued to be in vegetative state for quite some time and underwent a long treatment, awarded Rs. 3.00 lacs towards pain & sufferings and loss of amenities and the compensation was directed to be paid with interest @ 7.5% per annum.

11. Again Supreme Court in ***Raj Kumar Vs. Ajay Kumar*** (Supra), where injured had suffered 45% permanent disability, maintained Rs. 25,000/- only awarded by the Tribunal on account of pain and sufferings.

12. In a similar fact situation of the case, a full Bench of Hon'ble Supreme Court in ***Jagdish Vs. Mohan; AIR 2018 SC 1347***, where a 24 years old, skilled Carpenter who lost both of his hands in the accident, awarded Rs. 2.00 lacs towards pain & sufferings and loss of amenities and compensation was directed to be paid with 9% interest.

13. Again Hon'ble Supreme Court in ***N. Suresh Vs. Yusuf Shariff and Anr.; AIR 2012 SC 3431***, where a 32 years old victim suffered 90% permanent disability due to the accident, maintained Rs. 1.00 lac awarded by the High Court towards pain and sufferings and compensation was directed to be paid with interest @ 6% per annum.

14. Having regard to the aforesaid judicial precedents, it is evident that the compensation and also the rate of interest awarded by the Tribunal, in the present case on account of pain & sufferings and loss of amenities to respondent No. 1, is not only unfair and unreasonable but illegal and is required to be set aside.

15. For what has been observed, analysed and discussed above, present appeal is allowed and the impugned award is modified by providing that respondent No. 1/claimant is entitled to Rs. 50,000/- as non-pecuniary damages for pain & sufferings and loss of amenities and the entire compensation/award amount is to be paid by the appellant Company with interest @ 6% per annum from the date of filing of the claim petition till its realization.

***16*. Disposed of.**

(RAJESH SEKHRI)
JUDGE

Srinagar
22.09.2026
"Mohammad Yasin Dar"

Whether the Judgment is reportable: ***Yes***
Whether the Judgment is speaking: ***Yes***