

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **MAC. APP. No.14/2004**

% *Reserved on :04.04.2011*
Decided On: 08.04.2011

MASTER SAGAR GARG THRU HIS FATHER Appellant
Through: Mr. Navneet Goyal, Adv.

Versus

THE ORIENTAL INSURANCE CO. LTD. Respondent
Through: Mr. L.K. Tyagi, Adv.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

: **MOOL CHAND GARG,J.**

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1. By this appeal, the appellant seeks enhancement of compensation to ₹40,000,00/- with costs and interest for the injury received to the appellant Master Sagar at the age of 7 years in a road accident involving bus bearing No.DL-1P-2302 under DTC operations on 13.08.1999. As result of the accident, the front right tyre of the bus crushed the right leg of the appellant and also caused other injuries on his body. In addition to crush injuries on the right foot, there was also a lacerated wound between the toes of the left foot, immediately after the accident, the appellant was taken to Sarvodaya Hospital where he remained as indoor patient for 21 days and was discharged on 02.09.1999. On 13.08.1999, amputation of right leg was done and thereafter skin-grafting of the amputated stump was also done in the hospital.

2. It is submitted that the appellant suffered extreme mental pain and agony on account of injuries sustained beside losing limb in the life. The appellant was a student of second standard and was an excellent in studies. He was also declared permanently disable to the extent of 65% by the doctors of Hindu Rao Hospital. The appellant

wants to get artificial limb fitted in his right leg which will have to be changed at the age of 18 years because of the growth of the body every year. The appellant claimed a sum of ₹30,000/- as costs of the artificial limbs till the age of 18 years and also claimed compensation for subsequent period.

3. The Tribunal vide impugned order awarded a sum of ₹4,000,00/- as compensation in favour of the appellant on account of pain and suffering but did not award any compensation on any other account though interest was awarded @9% p.a. Directions were given to keep a substantial amount in fixed deposit.

4. It is against this judgment, the appellants have come in appeal. According to the appellant, the disability of the appellant has been assessed more than 40% permanent and the appellant was declared as medically handicapped person. The certificate of disability has been proved by Dr. Sudhir Kapoor, Associate Professor, Orthopaedics, Maulana Azad College and LNJP (Irwin), PW-2 as Exhibit P.A.. PW-2 also testified that because of the below knee amputation of right leg of the appellant, he has to face number of problems in his future life. His day-to-day movement is adversely affected. It is submitted that these aspects have not been considered by the Motor Accident Claims Tribunal in his judgment. In fact, the compensation has been awarded only towards pain and suffering and loss of amenities of life only but the evaluation of monetary aspect involved and the economic losses which the appellant will suffer on account of having been made a disabled and a handicapped person due to the rash, reckless and negligent driving of the bus by its driver has not been considered. It is submitted that the respondents are liable to pay compensation by taking into consideration the following aspects.

- i) The costs of artificial limb which as per M/s Endolite Company which is marketing the better artificial limbs and which can be fitted after the appellant attains an age of 12 years which will cost ₹1,50,000/- and will last for 2 years and, therefore, additional expense will have to be made on its maintenance. On attaining the age of 20-22 years, the appellant will have to get 4 to 5 artificial limbs which shall

be costing ₹1,50,000/- each and therefore, the claim has been made of ₹7,50,000/-. Considering the span of another 50 years in the life, the appellant claims a sum of ₹20 lacs to ₹25 lacs on this head.

- ii) The appellant also claims compensation on account of the appellant having been declared as a permanent disable person to the extent of 40%. It is submitted that the economic loss which has been caused to the appellant because of his disability has not been considered by the Tribunal at all. The father of the appellant being a class-I gazetted officer was getting a salary of ₹26,000/- per month along with other perks. Even if the appellant would have been earning at the start of his career as ₹30,000/- per month and even by taking permanent disability to the extent of 50%, the earning capacity would have been around ₹10,000/- per month and in this matter if the life expectancy is taken as 50 years, the appellant would be entitled to ₹60 lacs. The appellant also submits that while granting compensation the MACT ought to have considered the second Schedule of the Motor Vehicle Act, 1988 for the purpose of deciding compensation in the case of the appellant in view of the permanent disability caused to him in this accident and which also led to amputation of his right limb.
- iii) It is submitted that the compensation ought to have been awarded considering the amputation below knee 3 and ½ inches, the percentage of loss of earning capacity is 50%. This aspect has been completely ignored by the Tribunal.
- iv) Besides that, the Tribunal should have also to consider that there was a need by the appellant for a driver-driven four wheeler conveyance for which he has claimed ₹10,000/- per month for 12 months and by multiplying it with 50, the claimant is entitled to further sum of ₹60 lacs in this head also. The expenses towards medical treatment which are

claimed as ₹97,000/-. The compensation is claimed on other heads also.

5. Factually, there are no disputes to the extent that the appellant had to undergo amputation of his right leg below his knee. He has been declared as permanently disabled to the extent of 40% even by the hospital. The Tribunal while awarding the compensation has not considered the impact of financial loss on account of disability of the person but has granted relief of ₹4,00,000/- without specifying as to under what heads those compensation are being granted. The relevant portion of the award given by the Tribunal is reproduced hereunder for the sake of reference:

“14. N.K. Gupta, father of injured petitioner claimed that his son was taking part in number of sports including Juddo and Caratay. To this affect he proved a certificate Ex.PW3/A stated to have been issued by the Principal of the school where Master Garg happened to be a student. In all fairness Mr. Gupta should have examined the Principal concerned so that he could have stood the test of cross examination. Admittedly, age of Master Garg at the time he suffered injuries in the road accident was merely 7 years and it is difficult to expect at this tender age that he should have been skilled in skating, Judo, Caratay, excellence in gymnastics and a participant in cultural activities which all finds reference in certificate Ex.PW3/A. During cross-examination Sh. N.K. Gupta admitted that he was not in possession of any certificate or Medal won by his son in any sport.

15. It was also claimed by N.K. Gupta that yearly expenditure on account of weekly physiotherapy treatment, conveyance, special diet and medication has to be incurred to the extent of ₹84,000/- to 85,000/- and that this expenditure he has to incur till his son qualifies Senior Secondary Examination. To what kind of physiotherapy Sagar Garg is being subjected to and what kind of special diet has to be provided to him to make the annual cost to the above extent could not be specified by him during his statement. During cross examination he admitted that he was not in possession of any bills for the above alleged expenditure being incurred on Sagar Garg. Mere averment of Mr. Gupta without supporting his claim by necessary evidence can be of no help for grant of compensation to the petitioner on these counts.

16. It was also claimed that tutor has to be provided to Mr. Sagar Garg who is being paid ₹1,500/- p.m. and that an expenditure of ₹2,500/- p.m. is being incurred as Sagar Garg has to be sent in Taxi while earlier he used to go to the

school in school bus. During cross examination it was admitted by the witness that he was not in possession of any receipt obtained for the payment made to any tutor and that he was also not in possession of any receipt for the amount paid to the Taxi or the driver hired for sending Sagar Garg to the school in his own car. N.K. Gupta was required to produce necessary documents or the persons to whom the payments were made on the above counts to make the claim reliable.

17. On the point of future prospects of earning of petitioner on attaining majority it is difficult to record a finding at this stage. Mr. M. Awasthi appearing on behalf of Oriental Insurance Co. pressed that in higher studies and employment, a handicap person is given preference/reservation and that Sagar Garg may not suffer any loss of income on being capable of joining some profession. N.K. Gupta, however, denied the suggestion that in higher studies a handicap student is given fee concession and other facilities. Dr. Anil Aggarwal PW3 was asked by the petitioner whether Master Sagar Garg after having grown up would be able to drive a vehicle or not and his reply to the question has been as under:-

“It depends on prophasis to be used whether Sagar Garg after having grown up would be able to drive a vehicle or not as number of processes are available in the market.”

For the reasons aforesaid, it is not feasible to work out loss of earning, if any, to be suffered by the petitioner after having grown up.

18. To sum up, the petitioner is held entitled for grant of compensation of ₹ Four Lacs in view of my findings recorded above which amount is inclusive of interim award of ₹25,000/- which has already been granted to the petitioner vide orders dated 27.09.2001. All the respondents are jointly and severally liable to pay this compensation to the petitioner. Issue No.2 is accordingly decided in favour of the petitioner and against the respondents.”

6. The observation of the Tribunal shows that no provision has been made towards fixations of the artificial limb, towards future prospects, loss of earning capacity, expenses towards treatment.

7. In the case of R.D. Hatangadi Vs. Pest Control (India) Pvt. Ltd. & Ors. 1995 ACJ 366 which is a judgment dealing with the principle of compensation regarding claim for pain and suffering and for loss of amenities of life in a case where permanent disability has been incurred

by the incumbent, the Court has derived some principles in paragraph 16 and 17 which reads as under:-

“16. During the hearing of the appeal a chart was circulated showing the amounts claimed on behalf of the appellant under different heads and the amounts allowed or rejected by the High Court under those heads. So far, the amount mentioned against SI. No. 1 is concerned, the High Court has allowed the whole claim of ₹47,652 and there is no dispute on that account. Against SI. Nos. 2 to 6 the appellant had claimed ₹37,688 for Ayurvedic treatment against which an amount of ₹4000 has been allowed by the High Court. According to us, this part of the judgment of the High Court does not require any interference. Against SI. No. 7 the appellant has claimed for Fowler's Bed, ₹21,000 for the present and ₹21,000 for the future which has not been allowed. Same is the position in respect of electric wheelchair against SI. No. 8 which has been claimed at the rate of ₹50,000 for the present and ₹50,000 for the future which has been rejected by the High Court. According to us, when admittedly because of the injuries suffered during the accident, the appellant has become paraplegic, the aforesaid amounts should have been allowed by the High Court. Accordingly, we allow the said claim for ₹1,42,000 under SI. Nos. 7 and 8. So far claim for Air-Inflated Bed at SI. No. 9 is concerned, the appellant has claimed ₹5,000 for the present and ₹5000 for the future. The High Court has allowed only ₹5000 for the present. According to us, the remaining amount of ₹5000 also should have been allowed by the High Court. Coming to the claim for home attendants against SI. No. 9A, the appellant has claimed ₹55,450 for the present and ₹1,87,200 for the future. The High Court has allowed ₹36,000 and ₹72,000 respectively. We feel that there was no occasion for the High Court to be so mathematical on this question. Under the circumstances prevailing in the society in respect of home attendants, the High Court should have allowed the amount as claimed by the appellant. We accordingly allow the same. For Drugs and Tablets (Allopathic), claim has been made for ₹ 9000 for the present and ₹18,000 for the future. The High Court has allowed ₹5400 and ₹10,800 respectively under that head as detailed against SI. No. 10. The claim under this head appears to be reasonable and should have been allowed, we allow the same. Against SI. No. 11 the appellant has claimed for Ayurvedic treatment ₹7800 for the present and ₹37,440 for the future. The High Court has allowed ₹7200 and ₹12,000 respectively. According to us this part does not require any interference. Under SI. No. 12 (i) bedsore dressing charges for the present and future have been claimed respectively at ₹72,900 and ₹1,29,600 against which the High Court has allowed ₹20,000 and ₹10,000 respectively. In normal course

for bed sore the claim for ₹72,900 for the present and ₹1,29,600 for the future appears to be exorbitant. The High Court has rightly directed payment of ₹20,000 and ₹10,000. As such this part of the finding of the High Court does not require interference. Under SI. No. 12 (ii) claim has been made for catheterization charges at ₹1,29,600 for the present and ₹2,59,200 for the future. The High Court has allowed ₹10,000 and ₹5000 respectively. We are of the opinion that the amount awarded by the High Court under this head does not require any interference. So far the order of the High Court in respect of bladder-wash charges and enema charges is concerned, it also does not require any interference. Under SI. No. 13 ₹20,100 has been claimed as charges for consulting surgeons for the present and ₹14,400 has been claimed for the future. The High Court has allowed ₹5000 for the present and the same amount for future. We feel that this part of the finding of the High Court does not require any interference. For physiotherapy under SI. No. 14, ₹34,200 has been claimed for the present and ₹1,87,200 for the future. The High Court has allowed ₹12,000 for the present and ₹12,000 for the future. It is well known that for victims of road accidents, physiotherapy is one of the acknowledged mode of treatment which requires to be pursued for a long duration. The High Court should have allowed ₹34,200 as claimed by the appellant for the present and at least ₹50,000 for the future. However we allow the same. In respect of loss of earnings under SI. No. 15 claim has been made for ₹1,80,000, the High Court has allowed ₹1,44,000. The High Court should have allowed the whole claim. We allow the same. For loss of future earnings, claim has been made at ₹3,60,000. The High Court has allowed ₹1,62,000 in respect of loss of future earnings. This part of the award does not require any interference because an amount of ₹1,62,000 can be held to be a reasonable amount to be awarded taking all facts and circumstances in respect of the future earnings of the appellant.

17. The claim under SI. No. 16 for pain and suffering and for loss of amenities of life under SI. No. 17, are claims for non-pecuniary loss. The appellant has claimed lump sum amount of ₹3,00,000 each under the two heads. The High Court has allowed ₹1,00,000 against the claims of ₹6,00,000. When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration. According to us, as the appellant was an advocate having good practice in different courts and as because of the accident he has been crippled and can move only on

wheelchair, the High Court should have allowed an amount of ₹1,50,000 in respect of claim for pain and suffering and ₹1,50,000 in respect of loss of amenities of life. We direct payment of ₹3,00,000 (Rupees three lakhs only) against the claim of ₹6,00,000 under the heads "Pain and Suffering" and "Loss of amenities of life".

8. In another case delivered by the Supreme Court in the case of Raj Kumar Vs. Ajay Kumar & Anr. IV (2010) ACC 815 (SC) while assessing damages for future loss of earning due to permanent disability, the Apex Court has been pleased to lay down following general principles:

“General principles relating to compensation in injury cases

4. The provision of the Motor Vehicles Act, 1988 ('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 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. (See C.K. Subramonia Iyer v. T. Kunhikuttan Nair: AIR 1970 SC 376, R.D. Hattangadi v. Pest Control (India) Ltd.: 1995 (1) SCC 551 and Baker v. Willoughby 1970 AC 467.)

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

Pecuniary damages (Special Damages)

- (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.
- (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:
 - (a) Loss of earning during the period of treatment;
 - (b) Loss of future earnings on account of permanent disability.
- (iii) Future medical expenses.

Non-pecuniary damages (General Damages)

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

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

9. The Apex Court has further discussed the basis of sustaining future loss of earning due to permanent disability and has been pleased to observe as under:-

“6. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the

duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('Disabilities Act' for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

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

8. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent

(percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this Court in *Arvind Kumar Mishra v. New India Assurance Co. Ltd.*: 2010(10) SCALE 298 and *Yadava Kumar v. D.M., National Insurance Co. Ltd.* 2010 (8) SCALE 567.

10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of

amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.”

10. Principles have been summarized by the Court as follows:

“13. We may now summarize the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

14. The assessment of loss of future earnings is explained below with reference to the following illustrations:

Illustration 'A': The injured, a workman, was aged 30 years and earning Rs. 3000/- per month at the time of accident. As per Doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the

consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows:

- a) Annual income before the accident : Rs. 36,000/-.
- b) Loss of future earning per annum (15% of the prior annual income) : Rs. 5400/-.
- c) Multiplier applicable with reference to age : 17
- d) Loss of future earnings : (5400 x 17) : Rs. 91,800/-

Illustration 'B': The injured was a driver aged 30 years, earning Rs. 3000/-per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows:

- a) Annual income prior to the accident : Rs. 36,000/-.
- b) Loss of future earning per annum (75% of the prior annual income) : Rs. 27000/-.
- c) Multiplier applicable with reference to age : 17
- d) Loss of future earnings: (27000 x 17) : Rs. 4,59,000/-

Illustration 'C': The injured was 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows:

- a) Minimum annual income he would have got if had been employed as an Engineer : Rs. 60,000/-
- b) Loss of future earning per annum (70% of the expected annual income) : Rs. 42000/-
- c) Multiplier applicable (25 years) : 18
- d) Loss of future earnings: (42000 x 18) : Rs. 7,56,000/-

[Note: The figures adopted in illustrations (A) and (B) are hypothetical. The figures in Illustration (C) however are

based on actuals taken from the decision in Arvind Kumar Mishra (supra)].

11. The judgment delivered by the Tribunal does not show application of mind in having bifurcated pecuniary damages and non-pecuniary damages. The judgment also does not make any reference to head-wise claim available to the appellant. There is also lacuna on the part of the appellant in having not led any evidence to the appellant regarding the expenses to be incurred for fixation of limb. He has simply followed the estimate of M/s Endolite Company, that cannot be considered without the evidence having been led on record and the respondents given a chance to rebut the claim.

12. In these circumstances, while not disbursing the compensation already awarded, which, of course, will not be returned by the appellant to the respondent and will be adjusted towards any award made by the Tribunal now which would certainly not be less than ₹4 lakhs already awarded, the matter is remanded to the trial court to decide the matter within a period of one year in accordance with the principles as stated above after permitting the appellant to lead additional evidence in rebuttal by the respondents.

13. With these directions, the appeal stands disposed of with no orders as to costs. Parties to appear before the trial court on 26.04.2011. A copy of the order be sent to the MACT along with TCR.

MOOL CHAND GARG,J

APRIL 08, 2011

'anb'