

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

Reserved on: 16th November, 2011

Pronounced on: 3rd January, 2012

+ **MAC.APP. 264/2005**

UTTARANCHAL TRANSPORT CORPORATION

..... Appellant

Through: Mr. R.K. Kapoor Advocate with
Ms. Reetu Sharma Advocate.

versus

NAVNEET JERATH

.... Respondent

Through: Mr. Rajat Aneja Advocate with
Ms. Shweta Singh Advocate,
Mr. Vaibhav Jairaj Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. This Appeal is directed against the judgment dated 17.05.2004 passed by the Motor Accident Claims Tribunal (the Tribunal) whereby a compensation of ₹ 11,71,000/- was awarded in favour of the First Respondent for having suffered amputation of right hand above elbow and other injuries in an accident which took place on 20.05.1995. He suffered permanent disability in respect of his right upper limb to the extent of 85%.
2. The grounds of challenge are that the accident took place on account of rash and negligent driving of the truck driver who came from the opposite direction and struck against bus number

UP-02B-6972 driven by the Appellant's (Corporation) driver. The First Respondent also contributed to the accident as he held his arm outside the window. It is averred that the compensation awarded is exorbitant and excessive.

3. The First Respondent filed cross objections on the ground that the compensation awarded is too low and meager and cannot be said to be just and proper as envisaged under Section 168 of the Motor Vehicles Act, 1988 (the M.V. Act).

NEGLIGENCE

4. The accident took place on 20.05.1995 when First Respondent (Navneet Jerath) was travelling in bus number UP-02B-6972 from Nainital to Delhi. First Respondent entered the witness box as PW-10 and deposed that at about 1:30/1:45 A.M. (in the night) the bus reached near Gajrola U.P. His son aged about 4½ years was sleeping in his lap. He was sitting on the window side on the right side of the bus. The witness deposed that the bus was being driven at a high speed. He noticed a huge impact and something came scratching from the right side of the bus. He found his right arm missing and felt tremendous pain. The bus stopped after a distance of 400-500 meters. A few people went to the spot in search of his missing arm but it could not be traced.
5. PW-9 Vinay Kumar corroborated PW-10's testimony. He deposed that at about 1;00/1:30 A.M. he was occupying a seat

in the rear side of the bus. The bus was being driven at a fast speed when the collision took place. Even after the accident, the bus stopped at a distance of about half a km. He deposed that the claimant pointed out that his right arm was missing. The bus was reversed to the place of the accident. With the help of some torches the Claimant's right arm was tried to be traced but the same was not found.

6. The Tribunal by the impugned judgment held that the driver of the offending bus was not produced. There was no reason to disbelieve PW-8 and PW-10's testimonies. The Tribunal applied the principle of *res ipsa loquitur* and held that the accident took place on account of rash and negligent driving by the bus driver. It is urged by the learned counsel for the Appellant that the accident occurred on account of rash and negligent driving of the truck coming from the opposite direction. The driver and the owner of the truck have not been impleaded in the petition. In any case, the driver and owner of the truck were equally responsible and without them being impleaded, compensation could not have been awarded against the Appellant.
7. The second limb of argument on negligence is that since the First Respondent kept his arm outside the window, he was equally at fault and the compensation awarded to be reduced on account of First Respondent's contributory negligence. I see no reason to disagree with the conclusion reached by the Tribunal

with regard to the negligence of the driver of bus number UP-02B-6972 for more than one reason.

8. Firstly, there was no negligence on First Respondent's part in placing his elbow/arm on window sill which I would deal in detail a little later. The driver of the bus was not produced by the Appellant Corporation to prove the manner of the accident. Thus, it could not be said that there was no negligence on the part of the bus driver or that the truck driver was at fault. Assuming that the driver of the bus number UP-02B-6972 and the truck driver were equally responsible, this would be a case of composite negligence. In such cases, it is for the victim to elect as to against which of the two tortfeasors he would proceed to claim the compensation. In this connection, I am supported by a judgment of the Supreme Court in *T.O. Anthony v. Karvarnan & Ors.*, (2008) 3 SCC 748, it was held as under :-

“6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the

other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.”

9. As far as the First Respondent’s plea of placing his arm / elbow on window sill is concerned, it is important to note that the Appellant Corporation’s bus was running on night service. It is no where the Appellant’s case that First Respondent had flung his arm outside the window. Most of the passengers do sleep while travelling in a bus running in the dead of night. It was Appellant’s duty to ensure that the passengers are carried to their destination with adequate care and safety. It was expected of the Appellant’s driver to have taken care that his bus would not come too close to any vehicle coming from the opposite direction in order to avoid any danger to the safety of the passengers in which the Appellant’s driver utterly failed.
10. In *Delhi Transport Undertaking v. Krishnawanti*, 1972 ACJ 423, an accident took place while a passenger was travelling in a bus resting her elbow on the window. The driver suddenly overtook a cart carrying logs of wood which were protruding. A passenger’s elbow struck against a log and she was injured.

This Court held that there was no contributory negligence on the part of the passenger and the accident took place because of the negligent driving of the bus driver. Para 10 of the report is extracted hereunder:-

“10. It is the duty of the driver of the public buses to take all steps, which a person of ordinary prudence would take, to ensure the safety of the passengers. The driver of the bus in question cannot be said to be unaware of the fact that the passengers were in the habit of putting their hands outside the bus. He could thus foresee that while overtaking a moving cart if he would not leave sufficient space between the cart and the bus, there was a likelihood of the passengers’ arms being injured. The respondent had elbow on the window while sitting in the bus. This cannot be said to be negligent way of sitting. On the other hand it may be called a slightly more comfortable way of sitting. The driver having noted the protruding wooden logs should have ensured a sufficient space between the bus and the cart while overtaking it. In case, he found that the oncoming traffic did not permit him of that much space, it was his duty not to risk overtaking the cart. The driver thus was rightly held negligent in overtaking the cart which resulted in injuries to the respondent.”

11. The Delhi High Court in *Krishnawanti (supra)* relied on a judgment of Punjab High Court in *The State of Punjab & Anr. v. Guranwanti, 1960 PLR 571*, where it was held as under:-

"It is well known that often passengers travel with their elbows resting on the window of the car. There is no prohibition against it. The plaintiff at

that time of the morning considering the state of traffic cannot be said to have failed to use reasonable care for her safety by resting her below on the window."

12. In *Ramesh Kumar Awasthi v. The Collector, Saharanpur & Ors.*, AIR 1982 Allahabad 425, a similar question came before the Division Bench of Allahabad High Court. The Division Bench relied on *Krishnawanti (supra)* and held as under:-

"6. On the perusal of the evidence we are satisfied that the appellant had kept his elbow on the window sill when the accident occurred. It was the duty of both the drivers to ensure safety of the passengers and for that purpose they should have taken care to leave sufficient space between the two vehicles at the time of crossing each other. The story introduced by Satvir Singh (DW2) that the accident occurred as the driver of the bus coming from the opposite direction wanted to save a cow is a cock and bull story. No evidence has been produced to prove that story. The driver's evidence would have been the best evidence to prove the circumstances which led to the accident but he was not produced. The drivers of the two buses were employees of the Corporation and they were best persons to state the truth about the accident but they were not produced for the reasons best known to the Corporation. The two drivers had special knowledge of the manner in which the accident took place and the reason for the two buses crossing each other with such closeness as to cause the accident. The Corporation did not produce them. Consequently, the irresistible conclusion is that if they had been produced their testimony would have gone against the case set up by the Corporation. It is well settled that if a

witness having special knowledge of the facts is withheld it is legitimate to draw an adverse inference against that party. In our opinion, the two drivers were best persons to explain the circumstances which led to the accident and since the Corporation did not produce them we have to proceed on the assumption that the accident occurred on account of their negligence. Moreover, the fact that the two buses plying on a wide road, crossed each other so closely without there being any justification for the same itself proves the negligence of the two drivers.

9. It is a matter of common knowledge that passengers sitting near the window rest their hand on the window sill specially when on a long journey in the country-side. The driver of a bus carrying passengers on long journeys is expected to have knowledge of this fact. The drivers of the two buses were bound to take precaution against the possibility that while grazing each other some person might be placing his hand or elbow on the window sill. Since the two vehicles came too close to each other resulting into accident without there being justification for the same it has to be presumed that the drivers had failed to take reasonable care for the safety of passengers and therefore they were negligent. In *Jamnagar Motor Transport Union v. Gokaldas Pitambar's L.Rs.* (1966 ACJ 42) the Supreme Court in a similar situation where the two buses grazed while crossing each other held that both the drivers were negligent. The view that we are taking has been taken by various High Courts in a number of cases. Reference may be made to *State of Punjab v. Smt. Guranwanti* (AIR 1960 Punj.490), *Sushma Mitra v. M.P.S.R.T.C.* (1974 ACJ 87), *Delhi Transport Undertaking v. Krishnawanti* (1972 ACJ

423) and *General Manager State Road Transport Corpn. v. Krishnan* (1981 ACJ 273).

10. We are then faced with the question as to whether the appellant was guilty of contributory negligence as his right hand elbow was protruding out of the bus and for that reason he was not entitled to any compensation. On the evidence on record it is well established that the appellant was resting his right elbow on the window sill at the time when the accident occurred. Bool Chand, Conductor of the bus has stated that a portion of 2 1/2" of the appellant's right elbow was protruding outside the bus. His statement thus makes it amply clear that the appellant had not taken his arm out of the window, in-stead while resting his hand on the window sill a small portion of his hand 2 1/2" was protruding out of the bus. This is a normal for a passenger who sits on the seat near the window to rest his hand on the window sill. There is no law prohibiting resting of hand on the window sill or protruding small part of the body outside the bus. There is further no evidence on record to show that any signboard was placed in the bus warning the passengers from placing their elbows or hands on the window sill. The conductor also did not state that on seeing the bus coming from the opposite direction he had warned the appellant to keep his elbow inside the bus. In *Sushma Mitra v. M. P. State Road Transport Corporation* (1974 ACJ 87) it was held that the appellant was not guilty of contributory negligence in keeping his elbow on the window sill because it is common practice for the passengers who sit near the window to rest their arm on the window and there was no evidence that the passengers were cautioned not to do so. The Court held that the passenger was not guilty of any contributory negligence. We would like to emphasize that the

evidence on record shows that the place where the accident occurred was outside the town and the traffic was not heavy and there was ample space for the two vehicles to pass each other without coming close. If the drivers had taken adequate care for the safety of the passengers the accident could not have occurred in the manner it has happened in the present case. There is also no evidence that the bus coming from the opposite direction blew its horn or that the appellant was cautioned by the conductor or the driver on seeing the bus coming from the opposite direction to remove his hand from the window sill. The appellant was going on a long journey from Meerut to Rishikesh and in that" process it was quite natural for him to rest his hand on the window sill. It appears that two vehicles were being driven with excessive speed as merely by the impact the appellant's fore-arm was slit and severed instantaneously leaving no time for the appellant to withdraw his hand. These circumstances show that the appellant was not guilty of negligence by placing his elbow on the window sill."

13. Simply because the First Respondent was resting the elbow on window sill and even if his elbow was protruding by a few inches, it was the duty of Appellant's driver to drive the bus in such a manner that there is safe distance between the two vehicles. That having not been done, it has to be held that the accident took place on account of rash and negligent driving of driver of bus number UP-02B-6972 owned by the Appellant.

QUANTUM OF COMPENSATION

14. The First Respondent was aged about 35 years on the date of the accident and was a successful Chartered Accountant (CA) paying income tax on the date of the accident and even much before that. Because of the injuries suffered by him, the First Respondent remained admitted in Sir Ganga Ram Hospital from 21.05.1995 to 27.05.1995 for traumatic amputation of right arm. He was operated upon for debridement and closure of stump. The First Respondent was then admitted in Vohra Nursing Home, Rajouri Garden where he remained admitted till 02.06.1995. The Tribunal awarded the compensation under various heads which can be extracted from Para 30 of the judgment in a tabulated form:-

1.	Reimbursement of medical expenses	₹ 30,000/-
2.	Permanent disability/loss of future earning	₹ 5,76,000/-
3.	Pain, sufferings and loss of enjoyment of amenities of life	₹ 2,00,000/-
4.	Provision of artificial limb	₹ 3,15,000/-
5.	Special diet/conveyance/other assistant	₹ 50,000/-
	TOTAL COMEPNSATION	₹ 11,71,000/-

15. In the Claim Petition filed before the Tribunal a compensation of ₹ 75 lacs was claimed. It was averred that the First Respondent would have to visit UK or USA to get artificial

limb and would have to arrange a sum of ₹ 6 to 7 lacs for the same. Considering his visits for replacement of the artificial limbs 7-8 times, the expenses under that head were assessed to be ₹ 42 to 45 lacs. It was stated that the First Respondent had already spent a sum of ₹ 75,000/- on his treatment, special diet and conveyance.

16. The First Respondent averred (in the Claim Petition) that he possessed a handsome personality, quick movement, sharpness and was of jovial nature. He had to attend various offices i.e. Income Tax, Sales Tax, Registrar of Companies on behalf of his clients and loss of the right arm would always be a handicap to him. He was a Treasurer of Lion's Club Delhi. As a CA he had a very bright future and his earning capacity was affected to the extent of 85%.
17. In the written submissions filed before the Tribunal on 04.04.2004 and in this Appeal more details were filed and a compensation of ₹ 89,23,000/- was claimed which is extracted as under:-

	Particulars	Average span of Active Professional Practice upto	Amount (in ₹)
(i)	Cost of Artificial limb every 7/8 years (Average life of Artificial Limb). The Petitioner could not	35 years	15,00,000/-

	opt for it because of paucity of funds, since cost is ₹ 4 to 5 lacs the average is taken for computation. As per Endolite (PW11, Ex.PW11/A & Ex.PW11/B), it will require a change after every 7 years.		
(ii)	Cost for automatic designed car ₹ 6,25,000/- meant for disabled persons as the Petitioner has lost his right arm (3 cars in 20 years would be required during this remaining spend of life).	35 years	18,75,000/-
(iii)	Salary to Attendant for minimum 20 years @ ₹ 4,000/- x 12 months x 20 years on an average, though, in future the salary of the Attendant would also increase.	35 years	9,60,000/-
(iv)	Salary to Driver ₹ 3,500 x 12 months x 20 years on an average, though, in future the salary of the Driver would also increase.	35 years	8,40,000/-
(v)	Cost of medicines, special diabetic diet etc. ₹ 1,500 per month x 12 months x 20 years	35 years	3,60,000/-
(vi)	Physiotherapy present cost ₹ 1,200 x 12 months x 20 years and conveyance, which will increase in future.	35 years	2,88,000/-
(vii)	For pain, agony and suffering and loss amenities of life, loss of society, social status, marital life etc. etc., which will also increase in future. With 85% disability all around social status will fact not only his future prospects but also	---	1,00,000/-

	his life span and that of his wife, who has already grown in appearance and for prospects of education and marriage of children.		
(viii)	Disfigurement deformity at 85%	---	15,00,000/-
(ix)	To loss of income from 21.05.1995: (a) One year total disablement; (b) Loss of earnings; and (c) Future prospects of loss of income with the increased income.	35 years	15,00,000/-
	TOTAL AMOUNT		89,23,000/-

18. The principle governing grant of compensation in injury and death cases is to place the claimant in almost the same financial position as they were in before the accident. In *Concord of India Insurance Co. Ltd. v. Smt. Nirmala Devi & Ors.*, 1979 (4) SCC 365, the Supreme Court observed that the determination of compensation must be liberal, not niggardly since the law values life and limb in a free country in generous scales.

19. In *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Mrs. Susamma Thomas & Ors.*, 1994 ACJ 1, the Supreme Court held as under:-

“5.....The determination of the quantum must answer what contemporary society "would deem to

be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the law values life and limb in a free society in generous scales'. All this means that the sum awarded must be fair and reasonable by accepted legal standards."

20. In *Oriental Insurance Co. Ltd. v. Ram Prasad Varma & Ors.*, 2009 (2) SCC 712, the Supreme Court held that the expression 'just' must be given its logical meaning. Though, the compensation awarded cannot be a bonanza or a source of profit but in considering as to what would be just and equitable, all facts and circumstances must be taken into consideration.
21. As per the disability certificate Ex.PW-1/A, the First Respondent suffered amputation of right arm above elbow. He suffered 85% permanent physical impairment in relation to his right upper limb. The question of grant of compensation in respect of permanent disability, particularly, with reference to loss on earning capacity came up for consideration before the Supreme Court in *Raj Kumar V. Ajay Kumar & Anr.*, 2011 (1) SCC 343, the Supreme Court held as under:-

"5. 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 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) (P) Ltd., 1995 (1) SCC 551 and Baker v. Willoughby, 1970 AC 467.

6. 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.

7. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) - depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) - involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. 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.

Assessment of future loss of earnings due to permanent disability

8. *Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent 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 ('the Disabilities Act' for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.*

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

10. *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.

11. What requires to be assessed by the Tribunal is the effect of the permanent 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) SCC 254 and Yadava Kumar v. D.M., National Insurance Co. Ltd. 2010 (10) SCC 341.

12. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary;

(ii) if the disablement is permanent, whether it is permanent total

disablement or permanent partial disablement,

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

13. 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.

14. 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."

22. The Appellant's grievance is that the amount of compensation awarded is exorbitant and excessive whereas the First Respondent's contention is that although he could never be

placed in the position in which he was before he lost his right arm but he has to be awarded compensation to be placed in the same financial position. On behalf of the First Respondent, it is contended that he wanted to have the latest artificial limb manufactured by Endolite and cost of one such limb would be ₹ 11 to 13 lacs.

23. It is urged that the compensation awarded towards loss of earning capacity was on the lower side. The First Respondent being a CA would use his right hand in his day to day activities; the Tribunal fell into error in reducing 85% disability in respect of the right upper limb to be 50% with respect to the whole body. It is argued that no compensation has been awarded for future medical expenditure / physiotherapy; for arrangement of a driver; for arrangement of an attendant and for purchase of a automatic vehicle.
24. On the other hand, it is urged on Appellant's behalf that the First Respondent had not purchased any artificial limb (as per his own showing) till the arguments in the Appeal were heard which would show that the First Respondent really did not need the artificial prosthesis. It is averred that the Tribunal was benevolent in granting 50% of future income towards the loss of earning capacity when the disability of 85% was only with respect to the right upper limb.

LOSS OF FUTURE EARNING CAPACITY

25. First Respondent's income tax returns were placed on record since Assessment Year (AY) 1994-95 when the Respondent returned the income of ₹ 32,300/-. In the next year, the First Respondent had taxable income of ₹ 62,200/-; in the next AY 1996-97, although, the gross receipts had increased but the taxable income was almost at the same level i.e. ₹ 62,200/-. The Tribunal, therefore, took the First Respondent's monthly income to be ₹ 6,000/- per month, estimated the loss of earning capacity to be 50% and applied the multiplier of 16 to compute the loss of future earning capacity as ₹ 5,76,000/-.
26. Considering the First Respondent's job who was to carry out the writing work would also use the Desktop and Laptop in the present day, the Tribunal was right in assessing the loss of earning capacity in view of *Raj Kumar (supra)* as 50%. The three income tax returns placed on record including the two previous Assessment Year would show that the First Respondent's income gradually increased from AY-1994-95 to AY-1996-97. The First Respondent was entitled to be given an addition of 50% of the income towards future prospects. The compensation for loss of earning capacity at the rate of ₹ 6,000/- would come to ₹ 7,72,800/- (₹ 6,000/- x 12 – 7600/- (income tax) + 50% x 16 x 50%).

FUTURE MEDICAL EXPENSES/IMPLANTATION OF ARTITIFICIAL LIMB.

27. The First Respondent as PW-1 deposed that he would feel pain in his right limb and had to go for physiotherapy periodically. He deposed that he would spent ₹ 1200/- to ₹ 1500/- for taking medicines for diabetes and other health problems like high Cholesterol level. First Respondent did not lead any evidence to prove that he suffered diabetes and high level of Cholesterol because of the accident. The Tribunal rightly declined to grant any compensation for the same. At the same time, considering the nature of injuries suffered, it can be inferred that the First Respondent would require physiotherapy from time to time. I award lump sum compensation of ₹ 15,000/- towards future medical expenses/physiotherapy.
28. The bone of contention between the parties is with regard to the purchase of artificial prosthesis. During inquiry before the Tribunal, the First Respondent himself proved the quotation Ex.PW-11/A and PW-11/B to show the price of the prosthesis as ₹ 2,98,100/-. PW-11 Rajender Kumar examined by the First Respondent deposed that artificial limb had been provided to about 900 patients with 100% success rate. The maintenance cost for a period of five years was given by him to be ₹15,000/-. At the time of the Appeal, quotation of another version of that very company was placed on record whose costs is quoted as ₹ 11,13,000/-. It is urged by the learned counsel for the First

Respondent that since he (the First Respondent) was a professional CA he was expected to have meetings with his high ranking clients and attend various conferences and therefore, needed the latest prosthesis as was mentioned in the quotation dated 04.04.2011. It is submitted that one prosthesis may last from 7-8 years and therefore, the First Respondent would need five prosthesis considering his life expectancy to be 75 years.

29. On the other hand, it is submitted by the learned counsel for the Appellant that the fact that the First Respondent did not go for purchase of any prosthesis till hearing of the appeal would speak volume that he really did not need any artificial limb or he might have purchased a cheaper version.
30. It was the First Respondent himself who wanted an artificial limb from Endolite and proved its quotation through PW-11 for ₹ 2,98,000/-. It is contended on First Respondent's behalf that the artificial limb could not be purchased because of non-release of the compensation. I would not agree. The compensation was released to the First Respondent as and when he applied for the same during pendency of the appeal. Considering that the First Respondent was a professional CA and would need an artificial limb to carry out day to day activities to the extent possible, I would grant the cost of two artificial limbs and the compensation of ₹ 3,15,000/- is increased to ₹ 6,30,000/- including the cost of maintenance as ₹ 30,000/-.

PROVISION OF AN ATTENDANT/DRIVER

31. First Respondent examined PW-9 Rohit Kumar who deposed that he was working as Assistant with First Respondent since 1995. He was initially getting a salary of ₹ 1200/- per month which was subsequently raised to ₹ 2500/- per month. In cross-examination the witness deposed that in the year 1995 when he joined the services of the First Respondent six employees were working with him. Even in those days, he (First Respondent) would take some officials with him during his visits to the ITO. Once the First Respondent was granted compensation towards loss of earning capacity, he was not entitled to any compensation for engaging office assistance. At the same time, considering First Respondent's status he would need help of a driver in driving his motor car who can also double up as his personal attendant.
32. The Tribunal granted a sum of ₹ 50,000/- as lump sum compensation towards special diet, conveyance and attendant. The minimum wages of a skilled worker on the date of the accident were ₹ 1919/- per month. If a young driver between the age of 25-35 was employed by him, he would help in ferrying the First Respondent from one place to another place and would also help him in carrying his day to day activities. I would apply the multiplier of 16 to the salary of a driver and would award him a compensation of ₹ 2,000/- x 12 x 16 = ₹ 3,84,000/-. In view of provision made for a driver, the First

Respondent would not be entitled to any compensation for purchase of an automatic motor car.

33. I would further award him a sum of ₹ 10,000/- towards special diet and ₹ 5,000/- for conveyance for attending to the doctor.

PAIN AND SUFFERING / LOSS OF AMENITIES / DISFIGUREMENT

34. A compensation of ₹ 2,00,000/- was granted to the First Respondent for pain and suffering, loss of amenities of life and loss of expectancy. In the case of *Raj Kumar (supra)* it was held that where compensation of more than 50% of loss of earning capacity is granted, the compensation for loss of amenities in life should be nominal.
35. In this case, I have granted a compensation of 50% towards the loss of earning capacity. There are a catena of judgments where compensation of ₹ 3,00,000/- was awarded towards loss of one limb above elbow or above knee. In *S.Achuthan v. M. Gopal, 3 (2003) ACC 765 (DB)*, a compensation of ₹ 3,00,000/- was granted towards pain and suffering in the case of fracture Tibia/Fibula left leg and neurological injuries. In the case of *Oriental Insurance Company Limited v. Vijay Kumar Mittal & Ors. 2008 ACJ 1300* after referring to a number of decision, this Court awarded a sum of ₹ 2.5 lacs towards non pecuniary damages for the loss of right leg below knee i.e. 60% permanent disability.

36. In the circumstances, I would award a sum of ₹ 1,00,000/- each towards pain and suffering, towards loss of amenities in life and towards disfigurement.

REIMBURSEMENT OF MEDICAL EXPENSES

37. The First Respondent placed on record bills for purchase of medicines for ₹ 8,000/- and paid ₹ 20,945/- towards treatment in Sir Ganga Ram Hospital. Grant of compensation of ₹ 30,000/- under this head cannot be faulted.
38. The overall compensation granted by the Tribunal and by this Court is extracted in the tabulated form as under:-

	Head of Compensation	Granted by the Tribunal	Granted by High Court
1.	Reimbursement of medical expenses	₹ 30,000/-	₹ 30,000/-
2.	Permanent disability/loss of future earning	₹ 5,76,000/-	₹ 7,72,800/-
3.	Pain, sufferings and loss of enjoyment of amenities of life	₹ 2,00,000/-	₹ 3,00,000/-
4.	Provision of artificial limb	₹ 3,15,000/-	₹ 6,30,000/-
5.	Special diet/conveyance/other assistant	₹ 50,000/-	
6.	Future medical expenses/ Future Physiotherapy	--	₹ 15,000/-
7.	Provision of a driver-cum-attendant		₹ 3,84,000/-
8.	Special Diet and conveyance for attending to the doctor		₹ 15,000/-

	TOTAL	11,71,000/-	21,46,800/-
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39. The Tribunal awarded interest @ 6% per annum from the date of filing of the petition till the date of payment. The interest rates were quite low at the beginning of this century which impelled the Tribunal to award interest at the rate of 6% per annum. The accident took place in the year 1995. The interest rates were very high at that time. Again there is rise in the interest rate on account of inflation being in double digits. In the circumstances, the First Respondent would be entitled to interest @ 7.5 % per annum throughout.
40. 75% of the enhanced amount along with its interest shall be held in FDR in UCO Bank, Delhi High Court Branch for a period of seven years, on which First Respondent would be entitled to payment of interest on quarterly basis. Rest of the amount along with interest shall be released to the First Respondent forthwith.
41. In the result, MAC APP.264/2005 filed by the Appellant Corporation is dismissed and the cross objections filed by the First Respondent are allowed in above terms. No costs.
42. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 03, 2012

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