



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

MISCELLANEOUS FIRST APPEAL NO.4195/2016 (MV-I)

BETWEEN:

SRI. KORGU NAYKA
AGED ABOUT 57 YEARS
S/O BACHA NAYKA.

APPELLANT IS REP. BY HIS
GUARDIAN WIFE SMT. LAKSHMI
AGED ABOUT 59 YEARS.

R/AT HUNSEMAKKI
POST HOMBADI, MANDADI VILLAGE
KUNDAPURA TALUK
UDUPI DISTRICT-576 222.

...APPELLANT

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA

(BY SRI. NAGARAJA HEGDE, ADV.,)

AND:

1. SRI .K. RAGHAVENDRA RAJU
MAJOR
S/O KRISHNA RAJU
R/AT BUILDING NO.222
MIG GROUP-I, KHB COLONY
HOOTAGALLI, MYSORE-570 018.

2. THE NATIONAL INSURANCE CO. LTD
DIVISIONAL OFFICE, NEAR HPO



UDUPI-576 101
REP. BY ITS DIVISIONAL MANAGER.

...RESPONDENTS

(BY SRI. A.N. KRISHNA SWAMY, ADV., FOR R2 (ABSENT)
SRI. REVANASIDDAPPA H.K. ADV., FOR R1) (ABSENT)

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THIS MFA IS FILED U/S 173(1) OF MV ACT, PRAYING TO ENHANCE THE COMPENSATION TO RS.28,55,000/- FROM RS.5,69,200/- AND MODIFY THE JUDGMENT AND AWARD DATED 04.03.2016 PASSED BY THE COURT OF ADDITIONAL DISTRICT & SESSIONS JUDGE AND MMCT, UDUPI, (SITTING AT KUNDAPURA), KUNDAPURA, IN MVC NO.651/2014, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL)

This appeal is filed challenging the judgment and award dated 04.03.2016 passed in MVC No.651/2014 by the Additional District and Sessions Judge and MACT, Udupi (sitting at Kundapura) (for short, 'Tribunal').



2. Though this appeal is listed for admission, with consent of the learned counsel for the parties, it is taken up for final disposal.

3. The brief facts leading to the filing of this appeal are that the appellant filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation for the injuries suffered by him in a road traffic accident that occurred on 09.05.2014. It is averred that the appellant was proceeding as a pillion rider in a motorcycle bearing registration No.KA-55-H-129 from Bhogadi to Nanjangud and one Santosh Naik was riding the motorcycle in a rash and negligent manner and when they reached near Maramma Temple on Ring Road, Mysuru, the rider lost control over the motorcycle which resulted in the accident and the pillion rider sustained injuries all over the body including a head injury. It is further averred that the appellant was shifted to Panacea Hospital, Mysuru, he was provided treatment for the injuries suffered, underwent surgery to the head injury. It



is also averred that the appellant has suffered physical disablement due to the accidental injuries and is unable to carry out his vocation of driving the heavy vehicle and hence, sought for damages from the Insurance Company.

4. The respondent No.2 filed written statement denying the claim averments, the aspect of negligence, income and vocation of the appellant and sought for dismissal of the claim petition.

5. The Tribunal framed the issues, recorded the evidence. The claimant's wife examined herself as PW-1, Dr.Jaspreeth Singh Dil as PW-2 and got marked Exs.P1 to P16. The respondent did not adduce any evidence. The Tribunal awarded total compensation of Rs.5,69,200/- with interest @ 8% p.a. from the date of petition till its realization. Being aggrieved, the claimant is in appeal seeking for higher compensation.

6. Sri.Nagaraja Hegde, learned counsel for the appellant submits that the Tribunal has committed a grave



error in assessing the income as well as the disability of the injured. It is submitted that the evidence of the Doctor clearly indicates that the appellant is unable to continue his driving and to do any work due to his disability caused by the road accident and hence, the functional disability is required to be assessed at 100%. It is further submitted that the appellant is in a vegetative state and an attendant is required to attend his daily activities and considering the said aspect, the compensation awarded by the Tribunal under the heads of pain and suffering, loss of amenities and future attendant charges are required to be enhanced appropriately by allowing the appeal.

7. There is no representation for the respondents. On 06.07.2026, it was recorded that there was no appearance for the respondents and the matter was adjourned to today with an understanding that if the learned counsel for the respondents are not present, the matter would be heard in their absence.



8. We have heard the arguments of the learned counsel appearing for the appellant and meticulously perused the material available on record.

9. The only point that would arise for consideration in this appeal is:

"Whether the impugned judgment and award passed by the Tribunal calls for any interference?"

10. The aforesaid point is answered in the affirmative for the following reasons:

a) The material on record indicates that the appellant was proceeding as a pillion rider in a motor cycle bearing registration No.KA-55 H-129 from Bhogadi to Nanjangud and one Santosh Naik was riding the motorcycle in a rash and negligent manner and when they reached near Maramma Temple on Ring Road, Mysuru, the rider lost control over the motorcycle which resulted in the accident and the pillion rider sustained injuries all over the



body including head injury. The appellant was provided treatment at Panacea Hospital, Mysuru, for the injuries suffered and underwent surgery to the head injury. The records further indicate that the appellant was hospitalized as an inpatient from 09.05.2014 to 17.05.2014, again admitted in Adarsha Hospital, Udupi, from 17.05.2014 to 26.05.2014, re-admitted from 23.06.2014 to 25.06.2014 and again from 11.11.2014 to 15.11.2014. Thereafter, he has received treatment as an outpatient for more than 10 months.

b) The appellant contended that he was hale and healthy prior to the accident and by vocation as a lorry driver and used to earn Rs.22,000/- p.m. and due to the disability, he is unable to continue his vocation. To substantiate the vocation, the appellant has produced driving licence at Ex.P13. However, no documentary evidence was placed before the Tribunal with regard to the income and in the absence of any such evidence, the assertion that the injured was earning Rs.22,000/- p.m.



cannot be accepted. It is required to be noticed that the notional income assessed by the Karnataka State Legal Services Authority for the year 2014 for an unskilled labourer is Rs.8,500/- p.m. Hence, considering the said assessment of income and the vocation of the injured as a lorry driver, we are of the view that it would be just and appropriate to assess the income of the injured at Rs.10,000/- p.m. Admittedly, the injured was aged about 55 years as per the claim petition. Hence, there would be addition of 10% of the assessed income under the head of loss of future prospects of the injured as the disability assessed is above 50% by the Tribunal.

c) Insofar as the assessment of disability is concerned, the disability certificate Ex.P15 issued by PW-2 indicates that he has assessed the neurological disability at 65%. The Tribunal, considering the same has assessed the disability at 40% to the whole body and awarded the compensation. The wife of the claimant has been examined as PW-1 before the Tribunal. The evidence of



PW-1 is the reiteration of the averments made in the claim petition. The evidence of PW-2, the Doctor who treated the injured, indicates the nature of the injuries suffered by the appellant, treatment provided and the disability. The evidence of the said Doctor clearly indicates that on clinically examining the appellant, he found that the appellant has loss of memory, loss of power of recall, loss of power to respond to commands, reduced body balance, has weakness and reduced mobility of left upper limb. The said evidence of the Doctor makes it further clear that due to the disability suffered by the appellant, the appellant is unable to do the work of driver or other kind of labour activities. The oral evidence of PW-2, wound certificate at Ex.P4, discharge summaries at Exs.P7 to P10, disability certificate at Ex.P15 and other medical evidence on record clearly indicate that the appellant sustained grievous head injury, underwent brain surgery as there were clots in the brain and sustained neurological disability. The aforesaid evidence of PW-2 and documentary evidence speak with



regard to the physical disablement of the appellant. However, the later part of the evidence of PW-2 clearly indicates that the appellant would neither be able to continue his driving vocation nor be able to do Coolie work and the said evidence makes it very clear that the appellant has sustained 100% functional disability due to the road traffic accident. Hence, considering the oral and documentary evidence, we are of the view that the functional disability of the appellant is required to be assessed at 100% for the purpose of determination of compensation. The evidence on record makes it clear that the appellant needs a regular attendant to do his daily activities which makes it further clear that the appellant is unable to do any work by which he can earn any income.

d) The order sheet of the Tribunal indicates that the Presiding Officer had put forth certain questions to the injured appellant, the appellant could not answer any of the questions, he was disintegrating and did not respond to the orientation. Hence, the Tribunal permitted the



appellant's wife to give evidence on behalf of the injured appellant. The said order of the Tribunal makes it clear that the appellant is unable to do any physical work as his mental faculty is not in proper order.

e) It would be useful to refer to the decision of the Hon'ble Supreme Court in the case of **CHANAPPA NAGAPPA MUCHALAGODA Vs. DIVISIONAL MANAGER, NEW INDIA INSURANCE COMPANY LIMITED¹** and the relevant paragraphs are extracted hereinbelow:

"11. *This Court in Raj Kumar v. Ajay Kumar [Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161] held that: (SCC pp. 350-51, paras 13-15)*

"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

¹ (2020) 1 SCC 796



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 per cent, 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 be 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.



15. 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."

(emphasis supplied)

12. *In K. Janardhan v. United India Insurance Co. Ltd. [K. Janardhan v. United India Insurance Co. Ltd., (2008) 8 SCC 518 : (2008) 2 SCC (L&S) 733] this Court examined the loss of earning capacity in the case of a tanker driver who had met with an accident, and lost one of his legs due to amputation. The Commissioner for Workmen's Compensation assessed the functional disability of the tanker driver as 100% and awarded compensation on that basis. The High Court, however, referred [United India Insurance Co. Ltd. v. K. Janardhan, 2001 SCC OnLine Kar 841] to Schedule I to the Workmen's Compensation Act, 1923, and held that loss of a leg on amputation resulted in only 60% loss of earning capacity. This Court set aside the judgment [United India Insurance Co. Ltd. v. K. Janardhan, 2001 SCC OnLine Kar 841] of the High Court, and held that since the workman could no longer earn his living as*



a tanker driver due to loss of one leg, the functional disability had to be assessed as 100%.

13. *In S. Suresh v. Oriental Insurance Co. Ltd. [S. Suresh v. Oriental Insurance Co. Ltd., (2010) 13 SCC 777 : (2011) 1 SCC (Civ) 807 : (2011) 2 SCC (Cri) 423] this Court held that: (SCC p. 780, para 9)*

"9. We are of the opinion that on account of amputation of his right leg below knee, he is rendered unfit for the work of a driver, which he was performing at the time of the accident resulting in the said disablement. Therefore, he has lost 100% of his earning capacity as a lorry driver, more so, when he is disqualified from even getting a driving licence under the Motor Vehicles Act, 1988."
(emphasis supplied)

14. *The aforesaid judgments are instructive for assessing the compensation payable to the appellant in the present case. As a consequence of the accident, the appellant has been incapacitated for life, since he can walk only with the help of a walking stick. He has lost the ability to work as a driver, as he would be disqualified from even getting a driving licence. The prospect of securing any other manual labour job is not possible, since he would require the assistance of a person to ensure his mobility and manage his discomfort. As a consequence, the functional disability suffered by the appellant must be assessed as 100%."*



f) It is further useful to refer to the decision of the Hon'ble Supreme Court in the case of **SIDRAM Vs. DIVISIONAL MANAGER, UNITED INDIA INSURANCE COMPANY LIMITED AND ANOTHER²** and the relevant paragraphs are extracted hereinbelow:

"40. *In Raj Kumar [Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161] this Court has explained in the following terms the general principles relating to compensation in injury cases and assessment of future loss of earnings due to permanent disability : (SCC pp. 347-52, paras 5-19)*

"General principles relating to compensation in injury cases

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 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

² (2023) 3 SCC 439



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. Subramania Iyer v. T. Kunhikuttan Nair [C.K. Subramania Iyer v. T. Kunhikuttan Nair, (1969) 3 SCC 64] , R.D. Hattangadi v. Pest Control (India) (P) Ltd. [R.D. Hattangadi v. Pest Control (India) (P) Ltd., (1995) 1 SCC 551 : 1995 SCC (Cri) 250] and Baker v. Willoughby [Baker v. Willoughby, 1970 AC 467 : (1970) 2 WLR 50 (HL)] .]

6. 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).

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. Decisions of this Court and the 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 accident 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, the 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 the 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. [Arvind Kumar Mishra v. New India Assurance Co. Ltd., (2010) 10 SCC 254 : (2010) 4 SCC (Civ) 153 :



(2010) 3 SCC (Cri) 1258] and *Yadava Kumar v. National Insurance Co. Ltd.* [*Yadava Kumar v. National Insurance Co. Ltd.*, (2010) 10 SCC 341 : (2010) 4 SCC (Civ) 168 : (2010) 3 SCC (Cri) 1285])

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 disability (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 per cent, if he is neither able to drive nor 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 be 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.



15. 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.

16. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular, the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to "hold an enquiry into the claim" for determining the "just compensation". The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the "just compensation". While dealing with personal injury cases, the Tribunal should preferably equip itself with a medical dictionary and a handbook for evaluation of permanent physical impairment (for example, Manual for Evaluation of Permanent Physical Impairment for Orthopaedic Surgeons, prepared by American Academy of Orthopaedic Surgeons or its Indian equivalent or other authorised texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the First Schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen.

17. If a doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in



addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and, if so, the percentage.

18. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give "ready to use" disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily give liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or discharge certificate will not be proof of the extent of disability stated therein unless the doctor who treated the claimant or who medically examined and assessed the extent of disability of the claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local hospitals/medical colleges) and refer the claimant to such Medical Board for assessment of the disability.



19. We may now summarise 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 the percentage of loss of earning capacity is the same as the 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 to 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."

41. Later, in another judgment i.e. *Jakir Hussein v. Sabir* [*Jakir Hussein v. Sabir*, (2015) 7 SCC 252 : (2015) 3 SCC (Civ) 584 : (2015) 3 SCC (Cri) 72 : (2015) 2 SCC (L&S) 427] , this Court had to consider the correctness of a compensation assessment based on the High Court's analysis of the injury to the victim (a driver who suffered permanent injury to his arm, impairing movement as well as the wrist, which rendered him incapable of driving any



vehicle). The High Court had assessed permanent disablement at 30%, even though the doctor had certified it to be 55%. This Court, reversing the High Court order [Jakir Hussain v. Sabir Misc. Appeal No. 3414 of 2010, order dated 24-1-2013 (MP)] , observed inter alia that : (Jakir Hussein case [Jakir Hussein v. Sabir, (2015) 7 SCC 252 : (2015) 3 SCC (Civ) 584 : (2015) 3 SCC (Cri) 72 : (2015) 2 SCC (L&S) 427] , SCC p. 260, paras 15-16)

"15. ... Due to this injury, the doctor has stated that the appellant had great difficulty to move his shoulder, wrist and elbow and pus was coming out of the injury even two years after the accident and the treatment was taken by him. The doctor further stated in his evidence that the appellant got delayed joined fracture in the humerus bone of his right hand with wiring and nailing and that he had suffered 55% disability and cannot drive any motor vehicle in future due to the same. He was once again operated upon during the pendency of the appeal before the High Court and he was hospitalised for 10 days. The appellant was present in person in the High Court and it was observed and noticed by the High Court that the right hand of the appellant was completely crushed and deformed. In view of the doctor's evidence in this case, the Tribunal and the High Court have erroneously taken the extent of permanent disability at 30% and 55%, respectively for the calculation of amount towards the loss of future earning capacity. No doubt, the doctor has assessed the permanent disability of the appellant at 55%. However, it is important to consider the relevant fact, namely, that the appellant is a driver and driving the motor vehicle is the only means of livelihood for himself as well as the members of his



family. Further, it is very crucial to note that the High Court has clearly observed that his right hand was completely crushed and deformed.

16. In Raj Kumar v. Ajay Kumar [Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161] , this Court specifically gave the illustration of a driver who has permanent disablement of hand and stated that the loss of future earnings capacity would be virtually 100%. Therefore, clearly when it comes to loss of earning due to permanent disability, the same may be treated as 100% loss caused to the appellant since he will never be able to work as a driver again. The contention of the respondent Insurance Company that the appellant could take up any other alternative employment is no justification to avoid their vicarious liability. Hence, the loss of earning is determined by us at Rs 54,000 p.a. Thus, by applying the appropriate multiplier as per the principles laid down by this Court in Sarla Verma v. DTC [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] , the total loss of future earnings of the appellant will be at Rs 54,000 × 16 = Rs 8,64,000."

42. *In Anthony v. Karnataka SRTC [Anthony v. Karnataka SRTC, (2020) 7 SCC 161 : (2020) 4 SCC (Civ) 93 : (2020) 3 SCC (Cri) 129] , where the victim was a painter by profession, a three-Judge Bench had followed Raj Kumar [Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161] and Nagarajappa v. Oriental Insurance Co. Ltd. [Nagarajappa v. Oriental Insurance Co. Ltd., (2011) 13 SCC 323 : (2012) 3 SCC (Civ) 553 : (2012) 2 SCC (Cri) 624] The High*



Court [Karnataka SRTC v. Anthony, 2016 SCC OnLine Kar 6207] had assessed the injury to be 25% permanent disability, although the treating doctor had said that the injury incurred by the bus passenger (who was earning Rs 9000 per month) was 75% of the left leg and 37.5% for the whole body. In Raj Kumar [Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161] , the physical disability of the upper limb was determined as 68% in proportion to 22-23% of the whole body. The High Court had assessed the injury as 25% and granted compensation. However, this Court assessed the injury on the basis that the disability was 75%, stating as follows : (Anthony case [Anthony v. Karnataka SRTC, (2020) 7 SCC 161 : (2020) 4 SCC (Civ) 93 : (2020) 3 SCC (Cri) 129] , SCC pp. 163-64, para 8)

"8. PW 3 had assessed the physical functional disability of the left leg of the appellant at 75% and total body disability at 37.5%. The High Court has considered it proper to assess the physical disability at 25% of the whole body only. There is no discussion for this reduction in percentage, much less any consideration of the nature of permanent functional disability suffered by the appellant. The extent of physical functional disability, in the facts of the case has to be considered in a manner so as to grant just and proper compensation to the appellant towards loss of future earning. The earning capacity of the appellant as on the date of the accident stands completely negated and not reduced. He has been



rendered permanently incapable of working as a painter or do any manual work. Compensation for loss of future earning, therefore has to be proper and just to enable him to live a life of dignity and not compensation which is elusive. If the 75% physical disability has rendered the appellant permanently disabled from pursuing his normal vocation or any similar work, it is difficult to comprehend the grant of compensation to him in ratio to the disability to the whole body. The appellant is therefore held entitled to compensation for loss of future earning based on his 75% permanent physical functional disability recalculated with the salary of Rs 5500 with multiplier of 14 at Rs 6,93,000."

43. *The question of amount of compensation payable to one suffering injury as a result of motor vehicle accident was considered in Syed Sadiq v. United India Insurance Co. Ltd. [Syed Sadiq v. United India Insurance Co. Ltd., (2014) 2 SCC 735 : (2014) 2 SCC (Civ) 192 : (2014) 4 SCC (Cri) 607] , when this Court had to apply the correct standard for awarding compensation for loss of future prospects for a vegetable vendor, whose right leg had to be amputated, as a result of a motor accident. The High Court had considered [Syed Sadiq v. G. Thippaiah, 2011 SCC OnLine Kar 3937] the disability to be 65%. This Court held as follows : (Syed Sadiq case [Syed Sadiq v. United India Insurance Co. Ltd., (2014) 2 SCC 735 : (2014) 2 SCC (Civ) 192 : (2014) 4 SCC (Cri) 607] , SCC pp. 740-41, paras 7-8)*



"7. Further, the appellant claims that he was working as a vegetable vendor. It is true that a vegetable vendor might not require mobility to the extent that he sells vegetables at one place. However, the occupation of vegetable vending is not confined to selling vegetables from a particular location. It rather involves procuring vegetables from the wholesale market or the farmers and then selling it off in the retail market. This often involves selling vegetables in the cart which requires 100% mobility. But even by conservative approach, if we presume that the vegetable vending by the appellant claimant involved selling vegetables from one place, the claimant would require assistance with his mobility in bringing vegetables to the marketplace which otherwise would be extremely difficult for him with an amputated leg. We are required to be sensitive while dealing with manual labour cases where loss of limb is often equivalent to loss of livelihood. Yet, considering that the appellant claimant is still capable to fend for his livelihood once he is brought in the marketplace, we determine the disability at 85% to determine the loss of income.

8. The appellant claimant in his appeal further claimed that he had been earning Rs 10,000 p.m. by doing vegetable vending work. The High Court however, considered the loss of income at Rs 3500 p.m. considering that the claimant did not produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganised sector doing his own business is expected to produce documents to prove his monthly income."

44. *In Arvind Kumar Mishra [Arvind Kumar Mishra v. New India Assurance Co. Ltd., (2010) 10 SCC 254 : (2010) 4 SCC (Civ) 153 : (2010) 3 SCC (Cri) 1258] , the appellant at the time of accident*



was a final year engineering (Mechanical) degree student in a reputed college. He was a brilliant student and had passed all his semester examinations with distinction. He suffered grievous injuries and remained in a coma for about two months; his studies were disrupted as he was moved to different hospitals for surgeries. For many months, his condition remained serious; his right hand was amputated and vision seriously affected. This Court accepted his claim and held that he was permanently disabled to the extent of 70%. In Mohan Soni v. Ram Avtar Tomar [Mohan Soni v. Ram Avtar Tomar, (2012) 2 SCC 267 : (2012) 1 SCC (Civ) 747 : (2012) 1 SCC (Cri) 641] , SCC at p. 272 in a case of injury entailing loss of a leg, this Court held that medical evidence of the extent of disability should not be mechanically scaled down : (Mohan Soni case [Mohan Soni v. Ram Avtar Tomar, (2012) 2 SCC 267 : (2012) 1 SCC (Civ) 747 : (2012) 1 SCC (Cri) 641] , SCC pp. 270-73, paras 8, 10 & 13-14)

"8. On hearing the counsel for the parties and on going through the materials on record, we are of the view that both the Tribunal and the High Court were in error in pegging down the disability of the appellant to 50% with reference to Schedule I of the Workmen's Compensation Act, 1923. In the context of loss of future earning, any physical disability resulting from an accident has to be judged with reference to the nature of work being performed by the person suffering the disability. This is the basic premise and once that is grasped, it clearly follows



that the same injury or loss may affect two different persons in different ways. Take the case of a marginal farmer who does his cultivation work himself and ploughs his land with his own two hands; or the puller of a cycle-rickshaw, one of the main means of transport in hundreds of small towns all over the country. The loss of one of the legs either to the marginal farmer or the cycle-rickshaw-puller would be the end of the road insofar as their earning capacity is concerned. But in case of a person engaged in some kind of desk work in an office, the loss of a leg may not have the same effect. The loss of a leg (or for that matter the loss of any limb) to anyone is bound to have very traumatic effects on one's personal, family or social life but the loss of one of the legs to a person working in the office would not interfere with his work/earning capacity in the same degree as in the case of a marginal farmer or a cycle-rickshaw-puller.

10. This Court in *K. Janardhan* case [*K. Janardhan v. United India Insurance Co. Ltd.*, (2008) 8 SCC 518 : (2008) 2 SCC (L&S) 733], set aside the High Court judgment and held that the tanker driver had suffered 100% disability and incapacity in earning his keep as a tanker driver as his right leg was amputated from the knee and, accordingly, restored the order passed by the Commissioner of Workmen's Compensation. In *K. Janardhan* [*K. Janardhan v. United India Insurance Co. Ltd.*, (2008) 8 SCC 518 : (2008) 2 SCC (L&S) 733] this Court also referred to and relied upon an earlier decision of the Court in *Pratap Narain Singh Deo v. Srinivas Sabata* [*Pratap Narain Singh Deo v. Srinivas Sabata*, (1976) 1 SCC 289 : 1976 SCC (L&S) 52] in which a carpenter who suffered an amputation of his left arm from the elbow was held to have suffered complete loss of his earning capacity.



13. Any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim could make up for the loss of income by changing his vocation or by adopting another means of livelihood. The party advocating for a lower amount of compensation for that reason must plead and show before the Tribunal that the victim enjoyed some legal protection [as in the case of persons covered by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995] or in case of the vast multitude who earn their livelihood in the unorganised sector by leading cogent evidence that the victim had in fact changed his vocation or the means of his livelihood and by virtue of such change he was deriving a certain income.

14. The loss of earning capacity of the appellant, according to us, may be as high as 100% but in no case it would be less than 90%. We, accordingly, find and hold that the compensation for the loss of the appellant's future earnings must be computed on that basis. On calculation on that basis, the amount of compensation would come to Rs 3,56,400 and after addition of a sum of Rs 30,000 and Rs 15,000 the total amount would be Rs 4,01,400. The additional compensation amount would carry interest @ of 9% p.a. from the date of filing of the claim petition till the date of payment. The additional amount of compensation along with interest should be paid to the appellant without delay and not later than three months from today."

g) It is also useful to refer to the decision of the Hon'ble Supreme court in the case of **RAJ KUMAR Vs.**



AJAY KUMAR AND ANOTHER³ and the relevant paragraphs are extracted hereinbelow:

"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 disability (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

³ (2011) 1 Supreme Court Cases 343



claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, 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 be 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.

15. *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."

h) Keeping in mind the enunciation of law laid down in the aforesaid decisions and considering the material on record, we are of the view that the appellant has suffered 100% functional disability. Hence, the compensation is required to be re-assessed appropriately.

i) The evidence on record indicates that the appellant was provided treatment at Panacea Hospital, Mysuru, and later at Adarsha Hospital, Udupi, as an inpatient for substantial number of days which can be noticed from the oral evidence of PW-2 and the discharge summaries on record. He was also provided treatment as an outpatient for more than 10 days for the disability



suffered and continued the treatment. Hence, the award of compensation by the Tribunal under the heads of pain and suffering, loss of amenities, attendant charges is on the lower side which is required to be enhanced appropriately.

HEADS	AMOUNT (in Rs.)
Pain and suffering	1,00,000/-
Loss of income during treatment period	60,000/-
Medical expenses	1,15,000/-
Loss of future earning due to disability (10,000 + 10% = 11,000 x 12 x 11 x 100%)	14,52,000/-
Loss of amenities	1,00,000/-
Future attendant charges and future medical expenses	1,50,000/-
Food, conveyance and attendant charges in the hospital	30,000/-
Total	20,07,000/-

Thus, the appellant-claimant shall be entitled to a total compensation of **Rs.20,07,000/-** as against Rs.5,69,200/- awarded by the Tribunal.

11. In the result, this Court proceeds to pass the following:



ORDER

- a) The appeal is ***allowed-in-part***.
- b) The impugned judgment and award dated 04.03.2016 passed by the Tribunal in M.V.C.No.651/2014 is modified to an extent that the appellant-claimant would be entitled to total compensation of **Rs.20,07,000/-** as against Rs.5,69,200/- awarded by the Tribunal.
- c) The enhanced compensation shall carry interest at the rate of 8% p.a. from the date of petition till realisation.
- d) The respondent-Insurance Company shall deposit the enhanced compensation amount with accrued interest before the Tribunal within a period of six weeks from the date of receipt of the certified copy of this judgment.
- e) The rest of the judgment and award of the Tribunal with respect to apportionment, deposit and release shall remain unaltered.



NC: 2026:KHC:35935-DB
M.F.A. No.4195/2016

f) Registry shall transmit the records to the
Tribunal forthwith.

Draw the modified award accordingly.

Sd/-
(JAYANT BANERJI)
JUDGE

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

RV
List No.: 1 Sl No.: 9