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

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***Reserved on: 02.09.2022
Pronounced on: 31.10.2022***

+ MAC.APP. 290/2013 and C.M. No. 30278/2018

KUMAR SATRUGHANA Appellant
Through: Ms. Pragnya Routary,
Advocate

versus

R.S. GREWAL & ORS. Respondents
Through: Mr. J. P. N. Shahi and
Ms.Kiran, Advocates.

**CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH**

J U D G M E N T

GAURANG KANTH, J.

1. The Appellant in the present Appeal is assailing the Award dated 30.08.2012 passed by the learned Presiding Officer, MACT South-1, Saket Dist Court, New Delhi in Suit No. 380/2005 titled as *Sh. Kumar Satrughana v. Sh. R.S Grewal & Anr* (“**Impugned Award**”), whereby the learned Motor Accident Claims Tribunal awarded an amount of Rs. 7,84,193/- as compensation to the Appellant with interest @ 7.5% per annum, from the date of filing the suit, i.e. 04.10.2005, till its realization. In the present Appeal, the Appellant is seeking an enhancement of the compensation.

2. The facts germane to the present appeal as noted by the learned Claims Tribunal are that on 15.05.2005 at about 8:15 p.m. the appellant was going from his house towards Priyadarshani Vihar on his bike and stopped at red signal and on the signal being green for right side, he started his motorcycle for taking right turn, when suddenly a grey coloured Opel Astra bearing registration no. HR-26L-9457 being driven in rash and negligent manner by its driver hit against his motorcycle resultantly causing injuries on his person. The aforesaid vehicle was driven and owned by Sh. K.S Grewal (respondent no.1) and insured with Oriental Insurance Company (respondent no.2).
3. Pursuantly, he was taken to *RML Hospital* for treatment. Thereafter, the Appellant took treatment from *Sir Ganga Ram Hospital* where he stayed for almost 26 days and was later discharged on 11.06.2005. Pertinently, the discharge summary of the Appellant states that he was diagnosed with crush injury foot left with fracture both bones left. As a result of the injury, on 28.05.2005, the Appellant had undergone surgery in his left leg such as unreamed internal nailing left tibia, debridement and amputation of toe left foot with local flap. The Board of Doctors at AIIMS assessed the disability of the Appellant and issued a certificate dated 18.08.2006, wherein the disability was reported to be 50% in relation to the lower limb. It is also relevant to mention here that the medical records also show that the Appellant also took another round of treatment after 6 years of the accident from *Medanta Global Health Pvt. Ltd.* for non-

healing of ulcer over forefoot. During the pendency of the present Appeal, the Appellant also undergone surgery twice on 17.12.2012 and 29.10.2016.

4. Subsequently, the Appellant preferred an application under Sections 166 and 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as the “Act”) praying for compensation of Rs.32,00,000/- on various counts @18 % per annum from the date of the accident till its realization before the learned Claims Tribunal.
5. Learned Claims Tribunal decided the issues in favor of the Appellant by holding that he is entitled to get the following compensation from Respondent No.3/Insurance Company:

S.No.	Head	Compensation awarded
Pecuniary Damages		
1.	Loss of future earning	Rs. 1,38,240/-
2.	Medical expenses	Rs. 5,25,953/-
3.	Special diet and travelling expense	Rs. 30,000/-
Non- Pecuniary Damages		
4.	Pain, suffering damages	Rs. 50,000/-
5.	Loss of amenities and discomfort	Rs. 40,000/-
Total Compensation		Rs. 7,84,193/-

6. Aggrieved by the order of the learned Claims Tribunal, the Appellant herein preferred an appeal under Section 173 of the MAC.APP. 290/2013

Act, before this Court praying for enhancement of the compensation awarded to him.

SUBMISSIONS OF THE APPELLANT

7. Ms. Pragnya Routary, learned counsel for the Appellant initiated her arguments by submitting that the compensation granted by the learned Claims Tribunal is on the lower side and as per the facts and documents placed on record, there is a need to enhance the compensation granted by the learned Claims Tribunal to do complete justice to the Appellant.
8. It is the contention of the Appellant that at the time of the accident the Appellant was aged 32 years. He is an MBA by profession and was earning a salary of Rs. 2.42 lacs per annum, which is clearly proved by the salary certificate placed on record.
9. Learned counsel for the Appellant again submitted that on account of the accident, the Appellant was hospitalized for a period of 26 days i.e. from 16.05.2005 to 11.06.2005 and was further confined to bed for about 7 months. She further submitted that during the entire period of seven months no medical assistance was given to him by his employer. This fact is also substantiated by the report submitted by the investigator of Insurance Company.
10. Ms. Routary submitted that as a result of the accident, the Appellant sustained crushed injuries on his foot, fracture of bones and amputation of his toes. He also suffered a permanent

disability to the tune of 50% qua the left limb. She further submitted that the Appellant had undergone multiple operations after his accident as he had developed a non-healing ulcer over foot. Furthermore, on 17.12.2012, the Appellant was hospitalized, and excision of ulcer with removal of distal part of first metatarsal bone of left foot was done. Thereafter, on 29.10.2016, the Appellant underwent another operation as the ulcer had developed again on his left foot, for which he incurred a cost of Rs. 1.55 lacs and the cost of the medicines were Rs.15,000/-.

11. In this backdrop, the Appellant submitted that even after 17 years of the accident, the Appellant is still not able to lead a normal life as his foot has become so sensitive that he is not able to walk properly. It is due to the disability that he could not progress in his career as he could not move or walk comfortably. He had to take up jobs with much less salary and future career prospects. Learned counsel for the Appellant submitted that even small amount of exertion like walking leads to abrasion and bleeding which further requires medication which costs daily Rs. 100-150/- (antibiotics, pain killers, dressing etc.).
12. It is further the submission of the Appellant that learned Claims Tribunal erred in not enhancing future prospects in correct prospective. In view of the functional disability of 50% suffered by the Appellant at the age of 32 years due to the accident, the learned Claims Tribunal ought to have applied the multiplier of

16. Learned counsel further pointed out that the learned Claims Tribunal erroneously awarded a compensation of Rs. 5,25,953/- towards medical bills, whereas the Appellant placed on record the medical bills of Rs. 5,64,576/-, bill of Rs. 12,938/- towards doctor's fees and cost of accessories and an additional medical bill of Rs. 24,853/-.
13. With regard to the issue of loss of income, learned counsel for the Appellant submitted that at the time of the accident the monthly salary of the Appellant was Rs. 20,000/-. Learned Claims Tribunal erroneously recorded that the Appellant suffered loss of income only to the tune of Rs. 1,800/- p.m. even after acknowledging and recording that had the Appellant not suffered the injury, his salary would have increased manifold.
14. *Arguendo*, even if assuming without conceding, if the monthly salary of the Appellant is considered as Rs. 13,200/-. The salary of the Appellant should have been more than 24,000/- as even the minimum wages in the span of 7 years from the date of the accident to the date of the impugned order had increased by double i.e., from Rs. 3,805/- p.m. to Rs. 8,068/- p.m.
15. Learned counsel for the Appellant furthered her arguments by submitting that as the salary of the Appellant was Rs. 20,000/- p.m. at the time of the accident, hence, his salary would have been Rs. 40,000/- p.m. and loss of salary should have been 12,000/- p.m.. and not Rs. 1,800/- p.m. On account of his disability, he is restricted from taking up a job which does not

involve any tours or outstation assignments. *Ergo*, he is getting paid Rs. 18,000/- in his current job instead of Rs. 40,000/-.

16. It is the contention of the learned counsel for the Appellant that even for commutation, he is dependent upon others as he can neither travel by bus nor can drive a car. She further argued that the Appellant has to wear specially customized shoes which costs him Rs. 3,000/- and the sole is to be replaced every six months which costs him Rs. 10,000/-. He is also required to wear special socks to avoid swelling of his foot which is required to be changed every six months and costs around Rs. 3,000/-.
17. It is further the contention of the learned counsel for the Appellant that the Appellant is required to have a prosthetics for his toes, but he was not able to procure the same as those are not available in India and the cost for the same is Rs. 4000-5000 USD. She furthered her arguments by submitting that the Appellant is not financially sound to visit the United States and get his much required prosthetics done.
18. Ms. Routary again submitted that admittedly, the Appellant failed to produce receipts for physiotherapy, ambulance cost, repair of his bike and also the leave records of his brother. The Appellant was staying alone in Delhi at the time of the unfortunate accident and with the type of injury he sustained, no toe movements were possible. He was neither in a position to take care of himself nor possible for him to engage an attendant. *Ergo*, after the operation, sometimes the Appellant went to his

brother's place in Kharagpur and sometimes his brother came to Delhi to attend him. Learned counsel for the Appellant furthered her arguments by submitting that during the present litigation which went on for more than seven years, the brother of the Appellant who has been posted in army was posted at several places and it was impossible for him to get all his leave records. Learned Counsel for the Appellant points out that the learned Claims Tribunal ought to have awarded a sum of Rs. 43,037/- towards conveyance expenses and attendant charges to his brother.

19. Further the learned Claims Tribunal erred in granting loss of amenities and discomfort at Rs. 40,000/- as due to the disability suffered by the Appellant, he is neither able to drive his car nor can travel by bus or walk long distances. Hence the learned Claims Tribunal erred in granting Rs. 50,000/- only for 'pain and suffering' which should be suitably enhanced. Lastly learned counsel for the Appellant submitted that learned Claims Tribunal erred in awarding interest @ 7.5% p.a. on the awarded amount which is on the lower side.

20. With these submissions, learned counsel for the Appellant prays for the enhancement of the compensation.

SUBMISSIONS OF THE RESPONDENT NO.3/INSURANCE COMPANY

21. Learned counsel for Respondent No.3 while relying on the Impugned Award submitted that the learned Claims Tribunal has granted adequate compensation while going through the
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documents and evidence on record. He further pointed out that the Appellant failed to prove his avocation/nature of job as per the judgment of the Hon'ble Supreme Court in ***Raj Kumar v. Ajay Kumar*** reported as (2011) 1 SCC 343. It is the contention of Respondent No.3 that the Appellant failed to bring on record any evidence for enhancing the compensation granted by the learned Claims Tribunal.

22.Mr. Shahi further argued that the Appellant has failed to prove that the accident coupled with disability would hamper the nature of the job of the claimant. Learned Counsel for Respondent No. 3 supported the impugned Award and prays for the dismissal of the present Appeal.

LEGAL ANALYSIS

23.This Court heard the arguments advanced by the learned counsel for the parties and perused the records.

24.It is deemed appropriate to state here that the Motor Vehicles Act is in the nature of a social welfare legislation and its provisions very well make it clear that the compensation should be justly determined. The Hon'ble Supreme Court in the matter of ***Raj Kumar (supra)*** laid down the heads under which compensation is to be awarded for personal injuries:

*“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.”

25. In this backdrop, it is quintessential to first examine the issue with regard to the income of the Appellant. Regarding the calculation of the income of an employee for the purpose of the insurance Claim, the Hon'ble Supreme Court in ***National Insurance v. Indira Srivastava*** reported as (2008) 2 SCC 763, held *inter alia* as follows:

“19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.”

26. Hence, the amounts which were required to be paid to an employee by his employer by way of perks, to be included for computation of his monthly income. From the said monthly income, the statutory amount of tax payable thereupon to be deducted to find out the actual income. In the present case, the Appellant was working as a commercial officer with TMI Associates Pvt. Ltd. since 21.09.2000, wherein he was drawing a Salary of Rs. 2.42 lacs p.a. as per the Salary Certificate (Exhibit P2) issued by the Employer. However, as per Exhibit PW3/4, the Appellant's remuneration was revised w.e.f 01.04.2005 and the actual salary paid to the Appellant was Rs. 13,200/- (basic Rs.8,000/-, HRA Rs.4,000/-, and conveyance allowance Rs.1,200/-). In addition, the Appellant was entitled for an incentive of Rs. 21,600/- p.a. (to be paid in equal quarterly installments) and bonus of Rs.50,000/- p.a. as per Exhibit PW3/3. Hence the annual salary of the Appellant would be (13,200X12) +Rs.50,000/- +Rs.21,600/- = Rs,2,30,000/- p.a. If the Appellant had not met with the accident, his income Tax liability for the

financial year 2005-2006 would have been Rs.21,420/-. Hence, this Court is of the considered view that the annual income of the Appellant can be taken as Rs. 2,30,000/- less Rs.21,420/- = 2,08,580/- p.a. and monthly income of the Appellant as Rs. 17,382/-p.m.

27.The Appellant deposed that after getting discharged from the hospital, he took leave from his job and went to Kharagpur where his brother was residing as he could not have lived independently. It is the contention of the Appellant that the learned Claims Tribunal erred in not granting loss of earning as the Appellant was confined to bed for a period of seven months. Further, no medical assistance was provided by his employer due to the injuries sustained by him. The Appellant in this respect has placed Exhibit PW1/8, the report submitted by Respondent No.3/investigator of Insurance Company. In the said report, it is clearly stated by the employer of the Appellant, TMI Associates Pvt. Ltd. that the Appellant remained absent from his job for a period of 7 months and later joined back office after the accident on 01.12.2005. Exhibit PW/8 further states that no medical assistance was provided by the employer of the Appellant during those 7 months. This Court is of the considered view that the Appellant is entitled for the loss of earnings for the period from 15.5.2005 - 30.11.2005 (198 days), the period in which the Appellant remained under treatment. Hence, loss of earnings during the period of treatment from 15.5.2005 - 30.11.2005(198 days) would be Rs. 17,382 X 6½ months = **Rs. 1,14,721/-**.

28.It is the contention of the Appellant that the learned Claims Tribunal erroneously awarded a meagre sum of Rs. 1,38,000/- for loss of future earnings which is on the lower side. Further, it was argued that the future prospects were also not enhanced in correct prospective. In view of the functional disability of 50% suffered by the Appellant at the age of 32 years at the time of accident, the learned Claims Tribunal ought to have applied the multiplier of 16 while calculating the future prospects.

29.MACT Tribunals are statutorily enjoined to award “Just” compensation. Hence, while granting compensation under the MACT Act, it is important to bear in mind the objective of Section 166 of the MV Act, 1988. Compensation can be said to be “just” if it has the element of restoring the claimant to the position prior to the accident, *albeit* to the extent possible, in full measure. The Tribunals and the Courts are expected to be alive to the fact that a person is not only to be compensated for the physical injury but also for the loss, which such injury entails, namely, inability to earn as much as the injured used to earn or could have earned, inability to lead the life to the fullest and not in the least the inability to enjoy the usual amenities and joys which the life offers. In the present case, the Appellant suffered 50% permanent disability. Even though, the Appellant managed to get a job, one needs to see that the Appellant is an MBA Professional. If he had not suffered with 50% disability, his earning capacity would have been much more than what it is today. Hence, this Court is of the

considered view that the Appellant is entitled for the future prospects.

30.As reiterated by the Hon'ble Supreme Court in *Sandeep Khanuja v. Atul Dande & Anr* reported as (2017) 3 SCC 351 it is now well settled principle of law that in awarding compensation the multiplier method is logically sound and legally well established. This method, known as 'principle of multiplier', has been evolved to quantify the loss of income as a result of death or permanent disability suffered in an accident. However, from the perusal of the impugned Award, it appears that the learned Claims Tribunal calculated the future prospects not based on the principle of multiplier. Hence, this Court is of the considered view that the learned Claims Tribunal has erred in calculating the future prospects and the same needs to be recalculated based on principle of multiplier.

31.In view of para 59.4 of *Pranay Sethi (supra)*, future prospects of 40% should be granted to a person who is on a fixed salary and is below the age of 40 years. The Appellant being at the age of 32 years will be granted 40% of future prospects. Hence, the Appellant's monthly income, inclusive of future prospects, is re-assessed as **Rs. 24,335/- p.m** (i.e., **Rs. 17,382/- + 40% of Rs.17,382/-**).

32.The Hon'ble Supreme Court in *Raj Kumar (supra)* explained how the future loss of earnings is to be calculated in case of permanent disability. The relevant portion of the said Judgment reads, inter alia as follows:

“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.

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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 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."

35. Apropos the judgment in **Raj Kumar (supra)**, it is clear that the disability certificate states that the injured has suffered permanent disability to an extent of 50% of the left lower limb. It is also pertinent to note here that the Appellant was employed by R.P Corporate Management as Associate Accountant and Financial Executive from 1st October, 2011 and was drawing a salary of Rs.18,000/-p.m. The learned Claims Tribunal has taken 40% functional disability. This Court finds no reason to depart from the said finding. Hence, this Court is of the view that the Appellant can work in other roles as well and therefore, the

disability for the assessment of compensation on the head of loss of earning capacity is fixed at 40%.

36.The Appellant's age was 32 at the time of the accident. The Multiplier laid down in *Sarla Verma and Ors. v. Delhi Transport Corporation and Anr.* (2009) 6 SCC 121 would be **16**.

37.In the present case, even though there is no actual loss of income as the Appellant managed to obtain a job with monthly income of Rs.18,000/-. However, on account of the injuries sustained in the accident he has suffered Physical disability to the tune of 50%. Further, it also resulted in functional disability, as the daily schedule and movement of the Appellant was affected which is evident from the affidavit of the Appellant (Exhibit PW1/A). Therefore, being conscious about the fact that the injured has done no wrong but has suffered wrong at the hands of the wrongdoer and hence everything must be done to grant fair compensation to the injured. Further, at the cost of repetition, I would like to reiterate that the Appellant had a degree of MBA and was working as a commercial officer in the year 2005. Recently, the demand for a degree in MBA has increased. This Court is certain that the Appellant with his caliber would have earned much more than what he is earning presently. The injuries suffered by him have impacted his future earning capacity as well.

38.The loss of future income must be calculated in terms of the Judgment of the Hon'ble Supreme Court in *Raj Kumar (supra)*,

wherein the Hon'ble Supreme Court specifically held that where the claimant suffers a Permanent Disability as a result of injuries, the assessment of compensation for loss of future earnings would depend upon the impact and effect of the Permanent Disability on his earning capacity. The effect of the Permanent Disability on the earning capacity of the injured must be considered; 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 suffered by the claimant. Hence, the compensation to be awarded is calculated as follows:

- I. Minimum annual income of the Appellant after adding future prospects = Rs. 24,335/- X 12 = Rs.2,92,020/- p.a.
- II. Loss of future income at the level of his disability (40%) = 40% of Rs. 2,92,020/- = Rs.1,16,808/-
- III. Multiplier applicable (32 years) = 16
- IV. Loss of future earnings = 1,16,808/- X 16 = **Rs.18,68,928/-.**

39. Going ahead with the issue of medical expenses, it is argued by the learned counsel for the Appellant that the learned Claims Tribunal erroneously awarded compensation of Rs. 5,25,953/- towards medical bills. It is the case of the Appellant that he placed on record the medical bills for Rs. 5,64,576/-, bills for doctor's fees and cost of accessories for Rs. 12,938/- and the additional medical bill for Rs. 24,853/-. It is also noted that during the pendency of the present Appeal, the Appellant has undergone

surgeries twice, i.e. on 17.12.2012 and 29.10.2016. The Appellant vide CM No. 17389/2013 and CM No. 30278/2018 brought these medical bills on record. As per the said medical bills, the Appellant had to spend Rs.64,552/- and Rs.1,70,000/- towards these surgeries. The Insurance Company is not disputing the veracity of these documents. Hence, this Court is of the considered view that the Appellant is entitled for the reimbursement of the actual medical bills. Hence, actual medical bills of **Rs.8,36,919/-** (Rs.5,64,576/- + Rs.12,938/- + Rs. 24,853/- + Rs.64,552/- + Rs.1,70,000/-) is awarded in favor of the Appellant.

40.The Appellant submitted that he has to undergo operations in the future also. In so far as the contention of the Appellant with respect to the cosmetic restored partial foot prosthesis, which the Appellant is required to undergo and the estimated cost in the year 2008 was Rs. 85,000/-. In view of the same, it appears that the Appellant requires constant medical care and attention and hence this Court is inclined to grant a cumulative amount of **Rs.3,00,000/-** under the head of future medical expenses to be incurred.

41.With regard to the issue of attendant, it is the contention of the learned counsel for the Appellant that the learned Claims Tribunal ought to have awarded a sum of Rs. 43,037/- towards conveyance expenses of his brother, Col. K.R Suraraj, who was traveling from Chennai to Delhi to look after his ailing brother during the period of treatment. Further, to support his claim, he produced

photocopy of the train tickets over a period of time. However, it is relevant to point out here that no evidence has been led to show that any attendant was prescribed to the Appellant at the time of his discharge. The learned Claims Tribunal discarded the evidence produced by the brother of the Appellant/ PW-4 as it did not instill confidence and further awarded a lumpsum of **Rs.20,000/-** towards conveyance and traveling charges incurred during the treatment for visiting the hospital. Further, besides conveyance charges, the learned Claims Tribunal also awarded a sum of **Rs. 10,000/-** towards special diet and nourishment. This Court is in full agreement with the compensation granted by the learned Claims Tribunal with respect to conveyance and special diet and hence, not inclined to interfere with the same.

42. In so far as the contention with regard to the non- pecuniary damages, loss of amenities and discomfort and pain and suffering is concerned, the learned Claims Tribunal awarded a sum of **Rs.40,000/-** and **Rs. 50,000/-** respectively. This Court is of the opinion that the compensation granted under these heads by the learned Claims Tribunal is appropriate and hence is not interfered with.

43. Lastly, the Appellant argued that the learned Claims Tribunal awarded an interest @ 7.5% p.a. on the awarded amount which is on the lower side. Granting of interest is the discretionary relief vested in the learned Claims Tribunal. There is nothing to suggest that learned Claims Tribunal exercised the discretion arbitrarily.

Hence, this Court is not inclined to interfere with the rate of interest granted by the learned Claims Tribunal.

44. Keeping in view the facts and circumstances of the case, the appeal is partly allowed and the judgment of the learned Claims Tribunal is modified. The compensation granted to the Appellant under the various heads is revised as hereunder:

S.No.	Head	Compensation awarded
Pecuniary Damages		
1.	Actual Income	Rs. 17,382/- p.m
2.	Medical expenses (A)	Rs.8,36,919/-
3.	Loss of future prospects	40 % Rs. 24,335 p.m (i.e., Rs. 17,382/- + 40% of 17,382/-)
4.	Loss of Income: Loss of earnings during the period of treatment + Loss of future earning capacity and future prospects of income (B)	Rs.1,14,721/- + Rs. 18,68,928/- = Rs. 19,83,649/-
5.	Special diet expenses (C)	Rs. 10,000/-
6.	Conveyance charges (D)	Rs.20,000 /-
7.	Future medical expenses(E)	Rs. 3,00,000/-
Non- Pecuniary Damages		
8.	Pain, suffering damages (General damages)(F)	Rs. 50,000/-
9.	Loss of amenities and discomfort(G)	Rs.40,000 /-
Total Compensation (A+B+C+D+E+F)		Rs.32,40,568 /-

45. Accordingly, the compensation granted by the learned Claims Tribunal is enhanced from **Rs. 7,84,193/-** to **Rs. 32,40,568/-**.
46. The Respondent/Insurance Company is directed to deposit the entire enhanced amount with interest @ 7.5% p.a. from the date of filing of the present Appeal till the date of deposit with the Registrar General of this Court within a period of 4 weeks. On deposit of the entire enhanced amount with interest thereon, the same shall be released to the Appellant within a period of two weeks thereafter. The statutory deposit shall also be released to the Appellant.
47. The Appeal is allowed in the above terms. CM Appl. 30278/2018 also stands disposed of accordingly. No order as to costs.

GAURANG KANTH, J.

OCTOBER 31, 2022

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