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

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*Reserved on: 14.10.2022
Pronounced on: 17.11.2022*

+ **MAC.APP. 311/2013 and C.M. No. 5642/2013**

ARUN KUMAR VERMA Appellant
Through: Mr. S.N. Parashar, Advocate.

versus

BIPIN KUMAR SRIVASTAVA AND ORS Respondents
Through: Mr. Pradeep Gaur, Advocate for
respondent No. 2.

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present appeal has been preferred by the Appellant challenging the award dated 04.09.2012 (“**impugned award**”) passed by the learned Presiding Officer, Motor Accidents Claims Tribunal-II, Dwarka Courts, New Delhi seeking an enhancement of the sum awarded by the learned Claims Tribunal. The Appellant had prayed for a compensation of Rs. 10,00,000/- with an interest @ 12% per annum against which the learned Claims Tribunal had awarded Rs.5,32,318/- with an interest @ 9% per annum payable from the date of filing of the claim petition till its realisation.
2. The accident occurred on 21.12.2006 when a motorcycle bearing number DL 3S-AV-9115 driven by the Appellant along with a

pillion rider Sh. Vinod Kumar was hit by a car driven by Respondent No 1. The accident caused the Appellant fractures in the right leg at three places and head injuries. The learned Claims Tribunal, awarded the compensation under the following heads:

S.No.	Head	Compensation awarded
Pecuniary Damages		
1.	Loss of future earning	Rs. 2,23,560/-
2.	Loss of wages during treatment period	Rs.56304/-
3.	Medical expenses	Rs.1,37,454/-
4.	Special diet and travelling expense & Attendant Charges	Rs.7500 +Rs.7500 +Rs.25,000/-
Non- Pecuniary Damages		
5.	Pain, suffering damages	Rs. 75,000/-
Total Compensation		Rs. 5,32,318/-

3. Being aggrieved by the impugned award, the Appellant preferred the present Appeal for the enhancement of the compensation.

SUBMISSIONS ON BEHALF OF THE APPELLANT

4. Learned counsel appearing for the Appellant, Mr. S.N. Parashar, had contended that the learned Claims Tribunal ought to have appreciated that the income of the deceased at the time of the accident was Rs. 13,000/- per month as an employee of M/s

Manpower Incorporated and it was incorrect to apply the minimum wages of an unskilled worker while calculating the *Loss of Earning during the treatment period* and *Loss of Future Earnings*.

5. It was further submitted that the learned Claims Tribunal erred in construing the disability of the Appellant at 25% instead of 51% as recorded in the disability certificate. The accident restricted the movement of the right leg of the victim, preventing him from performing his work. Reliance was placed on ***K. Suresh vs New India Assurance Co. Ltd & Anr*** reported as (2012) 12 SCC 274; ***Neerupam Mohan Mathur vs New India Assurance Co.***, reported as (2013) 14 SCC 15; ***Sr. Anthony @ Anthony Swamy vs Managing Director Ksrtc***, Civil Appeal No 2551 of 2020 decided on 10.06.2020.
6. It was the contention of Mr. Parashar that the amount awarded towards attendant charges being Rs. 25,000/- and special diet & conveyance being Rs. 7,500/- each is very meagre and ought to be enhanced.
7. Mr. Parashar submitted that considering the prolonged hospitalisation of the Appellant, the award of Rs. 75,000 for *Pain & Suffering* and *Loss of Amenities* is minimal. An enhancement in lieu of the same has been sought.
8. Lastly, it was submitted that the learned Claims Tribunal failed to award compensation under the heads 'Future conveyance', 'Loss of enjoyment of Life and disfigurement'. It was their case that compensation must be awarded under such heads as well.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

9. Mr. Pradeep Gaur, learned counsel appearing for Respondent No 2, submitted that the Appellant failed to produce any proof of the educational qualification he possesses to be a Cutting In Charge in a garment factory. It was also their case that in the absence of a statement from the employer of the Appellant attesting to the salary certificate, the learned Claims Tribunal was right in applying the minimum wages. Learned counsel had relied on a judgement of this Court in *National Insurance Company Ltd Vs Chander Prabha & Ors*, MAC Appeal 537 of 2009 decided on 30.07.2012, which was also applied by the learned Claims Tribunal. In this case, the salary certificate of the deceased was disregarded as there was no proof to attest to the same. For want of evidence, minimum wages were applied by the court.
10. Mr. Gaur contended that the learned Claims Tribunal was right in estimating the functional disability of the Appellant at 25%, and the finding of the learned Claims Tribunal is in consonance with the holding in *Raj Kumar Vs Ajay Kumar and Anr*, reported as (2011) 1 SCC 343.
11. It was submitted that the Appellant was not in permanent employment and would hence be entitled to only 40% towards future prospects instead of 50% awarded by the learned Claims Tribunal. Learned counsel had relied on *National Insurance Co. Ltd Vs Pranay Sethi & Ors*, reported as (2017) 16 SCC 680.

12. Learned counsel finally averred that the interest awarded by the learned Claims Tribunal @ 9% per annum is contrary to the law laid down by the Hon'ble Supreme Court in *Vimla Devi and ors Vs The National Insurance Company*, Civil Appeal No 11042 of 2018 decided on 16.11.2018; *Inanyath Rajasab Attar Vs Shantavva*, Civil Appeal No 2526 of 2012 decided on 19.02.2020.

LEGAL ANALYSIS

13. This Court heard the arguments addressed by the learned counsel for the parties, examined the documents and Judgments relied upon by the parties.

14. The first submission of the learned counsel for the Appellant is that the learned Claims Tribunal erred in discarding the appointment letter and salary slip of the Appellant for the purpose of determining the income of the Appellant. The Appellant in his Affidavit stated that he is in private service with M/s Chunnu International as a Fabric cutter. In order to prove his income, the Appellant, placed on record his Pay Slip (Ex. PW1/A), Identity Card (Ex. PW1/A1) and Appointment letter (Ex. PW1/A2) issued by M/s Manpower Incorporated.

15. In order to prove the income of the Appellant, PW-2, Vasudev Sarin, CEO of M/s Chunnu International was examined. PW-2 deposed that the appellant never worked with M/s Chunnu International as their employee, however, he being a contractor had worked for them on contract basis. He produced Ex. PW2/A issued by Smt. Vijay Laxmi Sarin, Partner of M/s Chunnu International. The said document, reads, as follows:

- “ 1 That M/s. Chunnu International is an Partnership firm dealing in Export of Garments and I, Smt. Vijay Laxmi Sarin, is one of the Partner of the said firm.*
- 2. That Personal Manager- Sh. Ramesh Yadav has been directed to appear in person along with requisite records on 05th March 2011, who has already left our firm since long and as such he shall not be available on the said date,*
- 3. That Sh. Vas Dev Sareen, Chief Executive of the firm is authorised to appear before the Hon'ble Court, on behalf of the firm.*
- 4. That Shri. Arun Kumar Verma S/o Shri Surajbhan Vemia worked with our factory, through a Contractor whose Manpower Incorporated Office was located at No.200, Vill. Saini Khera, South City, Sector 29, Gurgaon (HR). As such Shri Arun Kumar Verma was not our employee and actually he was the employee of the Contractor, who maintained all the records pertaining to the attendance/salary of all the employees including Shri. Arun Kumar Verma.”*

16.Ex. PW2/A clearly shows that the Appellant was working with M/s Chunnu International through their contractor M/s Manpower Incorporated. Appellant was an employee of M/s Manpower Incorporated and he was working at the premises of M/s Chunnu International as ‘Cutting In charge’. Ex. PW1/A1 (Identity card) shows the working location of the Appellant as ‘Chunnu International for Manpower Incorporated’. Ex. PW1/A2 (Appointment letter dated 13.06.2006) issued by Manpower Incorporated shows that the Appellant was appointed as a ‘Cutting In charge’ with a salary of Rs.13,000/-. Ex. PW1/A (Salary slip for the month of October-2006) shows that the Appellant’s salary was Rs.13,000/- (inclusive of Rs.1,000/- as Conveyance Charges and Rs. 2000/- as HRA).

17.The Appellant also examined PW-4, Shri Omprakash. PW-4 was not a summoned witness, he appeared as a witness as per the

request of the Appellant. PW-4 deposed that he was working with M/s Manpower Incorporated as a supervisor and the said firm closed somewhere in 2007. He further deposed that the Appellant was working with M/s Manpower Incorporated as Cutting In Charge and his salary was Rs.10,000/- and HRA Rs.2,000/-. He further deposed that the Appellant was paid Rs.1,000/- towards conveyance charges and his gross emoluments were Rs. 7,428/-. He also produced payment sheet of M/s Manpower Incorporated for the month of March, 2006, October, 2006 and April, 2006 as Ex. PW4/1, Ex. PW4/2 and Ex. PW4/3 respectively. However, the learned Claims Tribunal discarded the evidence of PW-4 while determining the income of the Appellant. The relevant portion of the impugned Award, reads as follows:

- “71. Petitioner has examined one witness Sh. Om Prakash as PW-4 who has produced wages sheet for the month of October, 06 and April, 06 to show that petitioner was employed with M/s. Manpower Incorporated at a monthly salary of Rs. 13,000/-per month.*
- 72. However, a reading of his statement does not inspire much confidence because he was not a summoned witness and was appearing on the request of petitioner. He did not know the legal status of M/s. Manpower Incorporated where he stated that petitioner was employed. He claimed that he was a Supervisor in that firm but he could not produce any document to show that he was Supervisor in that firm. He deposed that the firm is now closed. He stated that he is not having any authority on behalf of the firm to appear in the court. He admitted that even the record produced by him is not attested by any partner of the firm.*

18. It is trite in motor accident claim cases that *Preponderance of Probability* is the legal dogma when evaluating evidence rather

than proof beyond reasonable doubt. The Hon'ble Supreme Court in *Anita Sharma & Ors. Vs The New India Assurance Co. Ltd. & Anr*, reported as (2021) 1 SCC 171, dealt with a circumstance where the negligent driver cum owner of the vehicle who caused the death of an individual travelling in his car was not examined. Due to lack of such a pivotal examination, the High court had taken an adverse inference against the claimants. The Hon'ble Supreme Court had, however, ruled against such an adverse inference by taking the following view:-

"21. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyse the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true."

19. From a perusal of the case quoted above, it can be derived that in motor accident cases, there can be no *sine qua non* for the evidence required to determine the issues in the case. It is sufficient if the evidence at hand is appreciated and the principle of *Preponderance of Probability* is applied to them.

20. In the present case, it must be borne in mind that the testimony of the Appellant remained unrebutted throughout the proceedings before the learned Claims Tribunal. PW-4 in his evidence categorically stated that M/s Manpower Incorporated closed its

business somewhere in the year 2007. The evidence in the present matter was recorded during April 2012. Hence, it was not possible for the Appellant to examine his employer, M/s Manpower Incorporated. However, the Appellant produced the original appointment letter (Ex. PW1/A2), Original Pay Slip for the month of October 2006 (Ex. PW1/A) and his Original ID card issued by M/s Manpower Incorporated. M/s Manpower Incorporated, the employer of the Appellant, is a firm that was engaged in providing labour to small industries that are unable to hire permanent employees. At the time of the accident, the Appellant was assigned the job as a cutting in charge in M/s. Chunnu International, which is involved in the export of garments. In addition, PW-2, Mr. Vasudev Sarin placed on record Ex. PW2/A in which it was categorically stated that the Appellant was working at their premises through contractor M/s Manpower Incorporated. The appointment letter and Pay slip of the Appellant, along with the testimony of PW-2 and PW-4, satisfies the employment status of the Appellant on the Preponderance of Probability. This Court is of the considered view that it is not the prerogative of the learned Claims Tribunal to cherry pick one statement that is worthy of discredit and ignore all the other evidence that contributes to the case of the Appellant.

21. The decision in ***Chandra Prabha (Supra)***, which had been relied on by Respondent No 2, can be distinguished from the facts of this case as, unlike the facts in ***Chandra Prabha (Supra)***, there is ample evidence in the present appeal to corroborate with the pay slip of the Appellant.

22. The concerns of Respondent No 2 regarding the lack of proof of the legitimacy of the pay slip can be dispelled by observing the judgment of the Hon'ble Supreme Court in the case of **Chandra @ Chanda Versus Mukesh Kumar Yadav and Ors**, reported as (2022) 1 SCC 198. In this case, the Supreme Court had gone a step further to hold that, even in the absence of a salary certificate, the oral evidence of the wife of the deceased cannot be discredited. While stating that minimum wages are a guiding factor in determining income, it is not the absolute yardstick in the absence of salary certificate, it was held that:-

“9. ...In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs.15000/- per month.

23. From a perusal of **Mukesh Kumar Yadav (Supra)**, it is evident that the conclusion adopted by the learned Claims Tribunal in the present case while applying minimum wages was in disregard of all the documentary evidence available in favour of the Appellant in the present Appeal.

24. Based on the above analysis, this Court is of the considered view that the salary set out in the pay slip of the Appellant, i.e., Rs.13,000/- must be applied in computing *Loss of Earning during*

the treatment and Loss of Future Earnings. Hence Loss of earning during treatment would be Rs.13,000X17=**Rs.2,21,000/-**.

25. The second point raised by the Appellant is that the learned Claims Tribunal erred in assessing the functional disability of the whole body as 25%. In the present case, the permanent disability of 51% has been expressed apropos of the right lower limb.
26. The leading case law on the determination of functional disability and loss of future earnings is ***Raj Kumar (Supra)***, which states 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 Learned Claims 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

Learned Claims 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.”

27. The disability certificate of the Appellant states that he suffers from
Post Traumatic Ankylosis in the right knee with a permanent

disability of 51% in relation to the right lower limb. This disability percentage does not represent the functional disability of the entire body of the Appellant. Post Traumatic Ankylosis of the knee restrains the movement of the knee joint, which incapacitates a person from even walking.

28. Dr. K.K. Kumra, PW-3 who signed the disability certificate of the Appellant, affirmed the following in his statement:-

"I have seen the disability certificate dated 25.10.2011 given to Sh. Arun Kumar Verma. I have signed the certificate at point A and the same is Ex.PW 3/1 (GSR).

The disability certificate is only with regard to a particular limb which in this case is right lower limb. It is not possible to comment on the basis of this certificate what is the total disability vis a vis whole body."

29. From the above statement, it is evident that the only scientific data at hand is the percentage of permanent disability of the right lower limb. The permanent disability of the right lower limb was evaluated by the medical officer as 51%. Hence the functional disability of the body and the loss of future earning capacity needs to be arrived at based on this figure.

30. The Court in **Raj Kumar (Supra)** had arrived at the functional disability of the body and the loss of future earning capacity through an approximation. However, the learned Claims Tribunal in the present Appeal has applied the percentage of functional disability by drawing comparisons with **Oriental Insurance Co. Ltd. Vs Prabhu Dayal & Ors.**, MAC APPEAL No. 413 of 2010 decided on 24.07.2012. The victim in **Prabhu Dayal (Supra)** was a tailor by profession and had suffered a permanent disability of 60%

in the left lower limb, and the functional disability was considered as 40 to 50%. Based on this, the learned Claims Tribunal had determined the functional disability of the body of the Appellant as 25%.

31. Before arriving at the functional disability of the Appellant in the present appeal, the nature of his work must first be analysed. In general, the role of cutting in charge requires the mobility of the knee to adjust himself to any position to cut the fabric that has been spread out over metres. Since the fabrics used are enormous in size, it is the cutting in charge who has to move around the cutting table ceaselessly to get the work done efficiently. In addition to this, the cutting in charge has to manoeuvre himself on top of the fabric table to draw the designs based on which the fabric will undergo the cutting process.

32. Since the employer of the Appellant, i.e., M/s Manpower Incorporated is in the business of providing contractual labour for small industries, it implies that the Appellant could be moved to different garment factories with varying levels of automisation. As cutting in charge is usually hired in garment companies for the purpose of marking the designs on fabrics and cutting them in the shape or pattern required for the stitching of garments, the disability in the right lower limb will substantially hinder the Appellant from performing such work. Regardless of whether the cutting work is predominantly mechanised, the tasks of unrolling the fabric and processing it through the machine in the desired manner require reasonable mobility of the feet.

33. Other ancillary tasks, such as maintaining records of the fabric used, its wastage and planning its efficient usage, which the Appellant may have been performing, are all sedentary in nature and do not necessitate the movement of his legs. Though his ancillary tasks are sedentary in nature, his disability has incapacitated him from performing his primary duty, i.e. Cutting.
34. Since the disability certificate only pertains to the right lower limb, this Court is constrained to presume that the remaining parts of the body of the Appellant are hale and hearty and can be put to work. Despite this, the conundrum still remains if the Appellant is capable of performing any work apart from the one he was performing before the accident took place.
35. Since there is no proof of the educational qualifications of the Appellant, it is not possible to ascertain if he is capable of performing other jobs that require the greater application of the mind and lesser physical mobility. Furthermore, it has been stated by the Appellant before the learned Claims Tribunal that he has been removed from M/s Manpower Incorporated, which negates the possibility of the Appellant taking up a lower grade job with his employer. However, there has been no proof presented to this effect, and thus neither his termination nor the non-possibility of taking up a lower grade job can be presumed.
36. Be that as it may, despite this disability, the cutting in charge can still work in small tailor shops where the scale is less, and the fabrics dealt with are smaller in size and barely require any

mobility. But this relegation will substantially shrink the earnings of the Appellant.

37. Since the percentage and type of permanent disability diagnosed by the medical professional, in this case, is akin to the one in ***Raj Kumar (Supra)***, it is proposed that a functional disability of 25% be applied in this case as well. Notwithstanding the functional disability of the Appellant being ascertained as 25%, this case acts as an archetype to the circumstance contemplated in para 14 of ***Raj Kumar (Supra)***. Though it would be far-fetched to state that the permanent disability of the Appellant has precipitated a 100% loss in his earning capacity, it can certainly be inferred from the analysis presented above that the Post Traumatic Ankylosis has predominantly curtailed the Appellant from performing the functions in his vocation. This Court thus determine the functional disability of the Appellant as **50%**.
38. The Appellant's age was 36 at the time of the accident. The Multiplier laid down in ***Sarla Verma and Ors. V Delhi Transport Corporation and Ors.*** (2009) 6 SCC 121 would be **15**.
39. Pertaining to the issue on future prospects, the learned counsel appearing for Respondent No. 2 had pointed out that the Appellant is not a permanent employee of M/s Manpower Incorporated and had relied ***Pranay Sethi (Supra)*** to state that the addition of future prospects must be made at 40% as opposed to the 50% awarded by the Tribunal. Though it is not the prerogative of Respondent No 2 to raise new submissions in an appeal, this Court holds the power to

apply the dictum in ***Pranay Sethi (Supra)*** and modify the incorrect appreciation of the law:-

*“....The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., **an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years** an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.*

58. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb Rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.”

(emphasis supplied)

40. A perusal of the appointment letter of the Appellant reveals that the employer or the employee is entitled to terminate the contract at any point by providing a month's notice. This goes on to show that the Appellant does not hold a permanent employment and rather holds a fixed salaried employment. That being so, this Court is of the view that the future prospects must be calculated at 40% of the income of the Appellant.

41. 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.13,000 X 40% of 13,000/-) X 12 = 2,18,400/- p.a.
 - (ii) Loss of future income at the level of his disability (50%) = 50% of Rs. 2,18,400/- = Rs.1,09,200/-
 - (iii) Multiplier applicable (36 years) = 15
 - (iv) Loss of future earnings = 1,09,200/- X 15 = **Rs.16,38,000/-**
42. On the issue of enhancement of the attendant charges, the learned Claims Tribunal had observed that no proof of taking the aid of an attendant during the treatment was provided. Despite the lack of proof, the learned Claims Tribunal had taken a lenient stance and awarded a sum of **Rs. 25,000/-** by taking cognizance of the fact that the Appellant would have needed the assistance of an attendant

during the seventeen months of his treatment. Hence no enhancement is to be made in this regard.

43. Since the Appellant was hospitalised for different durations in a span of seventeen months, the amount of Rs. 7,500/- would not have sufficed in meeting the diet requirements of the victim. The amount is thus enhanced to **Rs. 15,000/-**.
44. To compensate the Appellant for the Transportation expenses incurred during the treatment and the future transportation expenses that would be incurred by virtue of the disability, a sum of **Rs. 15,000/-** is awarded. The Appellant in his Affidavit stated that steel rods planted in his both legs are required to be removed and he was expecting huge medical expenses for that. In addition, the Appellant is still under treatment of St. Stephen Hospital and needs to visit his doctors frequently for regular check-ups. Hence a sum of **Rs. 50,000/-** is awarded for future medical expenses as well.
45. This Court notes that the learned Claims Tribunal has not granted any compensation under the head *Loss of Amenities*. This Court has already awarded the *Loss of Future Income* at 50% and hence it is sufficient to award a nominal sum under the head *Loss of Amenities* as suggested in **Raj Kumar (Supra)**. Hence a nominal amount of **Rs.10,000/-** is granted as compensation under the head of *Loss of Amenities*. Learned Claims Tribunal granted **Rs.75,000/-** towards the compensation under the head *Pain & Suffering*. This Court finds that the said compensation is reasonable and hence is not varied.

46. No separate amount can be awarded for loss of enjoyment of life or disfigurement, and they get covered under the scope of *Pain & suffering*.
47. Respondent No. 2 had made a submission requiring a reduction in the rate of interest awarded. Respondent No. 2 in the present appeal is merely entitled to respond to the grounds raised by the Appellant and shall not raise new grounds of their own against the award passed by the learned Claims Tribunal. The Respondent should have exercised this right independently by way of an appeal and is thus disallowed from piggybacking on the proactive effort of the Appellant to serve their interests.
48. Nevertheless, there are no guiding principles that the Courts or Tribunals are obliged to follow while granting interest. It is in fact a discretionary power accorded to them. In ***Abati Bezbaruah v. Geological Survey of India***, reported as **(2003) 3 SCC 148**, the following was held while interpreting section 171 of the Motor Vehicles Act, 1988:-

*“Three decisions were cited before us by Mr A.P. Mohanty, learned counsel appearing on behalf of the Appellant, in support of his contentions. No ratio has been laid down in any of the decisions in regard to the rate of interest and the rate of interest was awarded on the amount of compensation as a matter of judicial discretion. The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering, loss of future income, loss of enjoyment of life etc., into consideration. **No rate of interest is fixed under Section 171 of the Motor Vehicles Act, 1988.** Varying rates of interest are being awarded by*

Tribunals, High Courts and the Supreme Court. Interest can be granted even if a claimant does not specifically plead for the same as it is consequential in the eye of law. Interest is compensation for forbearance or detention of money and that interest being awarded to a party only for being kept out of the money which ought to have been paid to him. No principle could be deduced nor can any rate of interest be fixed to have a general application in motor accident claim cases having regard to the nature of provision under Section 171 giving discretion to the Learned Claims Tribunal in such matter. In other matters, awarding of interest depends upon the statutory provisions, mercantile usage and doctrine of equity. Neither Section 34 CPC nor Section 4-A(3) of the Workmen's Compensation Act are applicable in the matter of fixing rate of interest in a claim under the Motor Vehicles Act. The courts have awarded the interest at different rates depending upon the facts and circumstances of each case. Therefore, in my opinion, there cannot be any hard-and-fast rule in awarding interest and the award of interest is solely on the discretion of the Learned Claims Tribunal or the High Court as indicated above."

49. To countenance the view taken by the learned Claims Tribunal in the present case, the judgment of this Court in ***New India Assurance Co. Ltd. V Dinesh Devi*** reported as 2017 SCC OnLine Del 8614 can be observed:-

"4.The learned counsel for the appellant lastly submits that the Learned Claims Tribunal has awarded interest at the rate of 12% instead of the usual rate of 9%. In Municipal Corporation of Delhi, Delhi v. Association of Victims of Uphaar Tragedy (2011) 14 SCC 481: AIR 2012 SC 100 the Supreme Court had granted interest at the rate of 9% for an accident which happened in 1998. This Court has consistently granted interest at the rate of 9% in a number of cases. Accordingly, the awarded amount shall carry an interest rate of 9% instead of 12%. The impugned Award is modified accordingly."

50. In view of the above judgements and the bar on the Appellant to raise such a submission at this stage, this Court finds no reason to

interfere with the learned Claims Tribunal decision on the award of interest.

51. Based on legal analysis provided above, the compensation awarded to the Appellant is modified in the following manner:-

S.No	Head	Compensation
Pecuniary Damages		
1.	Actual Income	Rs. 13,000/- p.m
2.	Medical expenses (A)	Rs.1,37,454/-
3.	Loss of future prospects	40% Rs. 18,200/- p.m (i.e., Rs. 13,000/- + 40% of 13,000/-)
4.	Loss of Income: Loss of earnings during the period of treatment + Loss of future earning capacity and future prospects of income (B)	Rs.2,21,000/- (Rs.13,000X17) + Rs.16,38,000/- = Rs. 18,59,000/-
5.	Special diet expenses (C)	Rs. 15,000/-
6.	Conveyance charges (D)	Rs.15,000 /-
7.	Future medical expenses(E)	Rs. 50,000/-
8.	Attendant Charges (F)	Rs.25,000/-
Non- Pecuniary Damages		
9.	Pain, suffering damages (General damages)(G)	Rs. 75,000/-
10.	Loss of amenities (H)	Rs.10,000 /-
Total Compensation (A+B+C+D+E+F+G+H)		Rs.21,86,454 /-

52. Accordingly, the compensation granted by the learned Claims earned Claims Tribunal is enhanced from **Rs. 5,32,318/-** to **Rs.21,86,454/-**.

53. The Respondent/Insurance Company is directed to deposit the entire enhanced amount with interest @ 9% 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 four 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.

54. The Appeal is allowed in the above terms. Pending application is disposed off accordingly. No order as to costs.

GAURANG KANTH, J.

NOVEMBER 17, 2022