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

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Reserved on: 23.09.2022
Pronounced on: 18.10.2022

+ **MAC.APP. 372/2013 & CM APPL. NOS. 26848/2015 &
26849/2015**

ALAMGIR

..... Appellant

Through: Mr. M.K. Sinha, Advocate
versus

ABDUL RAHIM ANSARI & ORS

..... Respondents

Through: Mr. J.P.N. Shahi, Advocate
for respondent No. 3/ NIA.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. Present appeal has been preferred by the Appellant to seek modification of the compensation awarded on certain accounts by the learned Motor Accidents Claims Tribunal vide the judgment dated 29.01.2013 (hereinafter referred to as the "Impugned Award") in Suit No. 478/09 titled as *Shri Alamgir versus Shri Abdul Rahim Ansari*. Vide the impugned Award, the Appellant was awarded an amount of Rs.3,15,000/- as compensation with interest @ 9% per annum against claimed compensation of Rs.25,00,000/-, from the date of filing of the suit, i.e. 07.08.2009, till the payment is made by respondent No.3/Insurance Company within 30 days from the date of the Impugned Award with accrued interest along with the right to respondent

No.3/Insurance Company to recover the same jointly from respondent Nos. 1 and 2.

2. The facts relevant for adjudication of the present appeal are that on the unfortunate day of 31.08.2008, appellant was travelling on his motorcycle bearing registration no. DL-3S-AM-6473 when at around 2.45 p.m. he met with a road vehicular accident at Ma Anand Mai Marg near Jal Board Office, New Delhi involving a Bus (the offending vehicle) bearing registration no. DL-1PB-5756 driven by the respondent no. 1. Respondent no.1 was driving the bus in a rash and negligent manner as the bus came from behind and hit the Appellant's motorcycle, it ran over left leg of the appellant, which has been corroborated by the statement of an eye-witness. As a result of the impact, the Appellant sustained injuries, in form of pelvic and left femur's shaft fracture. An Accident Information Report (AIR) has also been filed by the police in respect of this accident (FIR No.435/08, PS Kalkaji).
3. Consequently, the Appellant was admitted to Jai Prakash Narayan Apex Trauma Center, AIIMS Hospital, New Delhi, where medical treatment was given to him from 31.08.2008 to 21.10.2008. Later he was hospitalized from 20.01.2010 to 26.01.2010 and was again treated on 10.03.2011. It is pertinent to note that Appellant suffered pelvic bone and left femur's shaft fracture along with other grievous injuries due to the accident. The Appellant was issued a Permanent Disability Certificate dated 23.02.17 by Jai Prakash Narayan Apex Trauma Centre,

AIIMS, Delhi mentioning Permanent Disability of 78% with respect to his B/L Lower Limbs, along with left Femur's shaft fracture, pelvic bone fracture and right knee stiffness.

4. Subsequently, the Appellant preferred an application under Sections 166 and 144 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "**Act**") praying for compensation of Rs.25,00,000/- (Rupees twenty five lacs only) on various counts @12 % per annum from the date of filing the claim petition till its realization before the Motor Accidents Claims Tribunal, Delhi. It is pertinent to note that the appellant claimed that he was 37 years old at the time of the accident and was working as a cutting-master with M/s Art Kart Creation Pvt. Ltd. It was further the claim of the appellant that his monthly income was Rs. 10,000/- per month by way of monthly salary.
5. In order to prove his claim, the petitioner has got himself examined as AW-1; Mr. Amit Gupta, Additional Professor of Surgery, JPN Apex Trauma Centre, AIIMS as AW-2; Dr. Vijay Sharma, Addl. Professor Orthopedics Apex Trauma Center AIIMS as AW-3; Mr. Ratan Singh Medical Record Technician, Trauma Center AIIMS as AW-4.
6. The Respondent no. 3/Insurance Company has got examined Shri G.N. Manjhi, Assistant, M/s New India Assurance Company Ltd. As R3W-1. Other respondents have not got any witnesses examined in their defence.
7. Learned Claims Tribunal vide its impugned Award dated 29.01.2013 decided the issue in favor of the Appellant by holding

that he is entitled to get the total compensation from respondent No.3/Insurance Company with the right to recover the same jointly from respondent Nos. 1 and 2. The heads in which the Claims Tribunal awarded compensation are as follows:

S. No.	Head	Compensation Awarded
1.	Compensation for medical expenses	Rs.1,30,000/-
2.	Compensation for conveyance	Rs.15,000/-
3.	Compensation for special diet and attendant charges	Rs.20,000/-
4.	Compensation for loss of income	Rs.75,000/-
5	Compensation for pain and suffering & loss of amenities of life	Rs.75,000/-
	TOTAL COMPENSATION AWARDED	Rs. 3,15,000/-

8. The adequacy of grant of compensation was assailed by appellant by filing an appeal under Section 173 of the Act before this Court praying for suitable modification or enhancement of the compensation granted in Suit No. 478/09. It is pertinent to note that the Appellant had preferred an application before this Court vide CM No. 26848/2015 for medical examination for assessment of his disability. This Court vide its order dated 04.11.2016 had directed the Medical Superintendent of J.P.N. Apex Trauma Center, AIIMS to constitute a Medical Board and have the nature and extent of disability suffered by the Appellant assessed. On

14.03.2017, a Permanent Disability Certificate (**Exh. AW-4/1**) issued by J.P.N Apex Trauma Center dated 23.02.2017 was placed before this Court.

9. On 29.02.2016, Mr. Amit Gupta, working as Additional Professor of Surgery, J.P.N. Apex trauma Center, AIIMS was examined before this Court, wherein he categorically deposed that the appellant was undergoing treatment under his medical supervision from the date of accident i.e. 31.08.2008 and he had performed surgery upon appellant on more than one occasion. He further went on to depose that multiple surgeries have been performed upon appellant for treating his perineal and abdominal injuries. Relevant extract of recorded statement dated 29.02.2016 has been reproduced as follows:

“The natural passage for stools is damaged because of this accident and cannot be reconstructed. As a result of this he will have problems in day to day functioning in addition to massive psychological and social stigma. In future he might not be able to perform his professional activities to satisfaction. He might also have certain complications of colostomy in his life which cannot be predicted as of now.”

10. Also that Dr. Vijay Sharma, AW-3 working as Additional Professor Orthopedics, J.P.N. Apex Trauma Center, AIIMS, was examined on 26.04.2016. Relevant part of the examination dated 26.04.2016 is reproduced hereunder:

“Date: 26.04.2016

Statement of AW-3: DR. VIJAY SHARMA, ADDL. PROFESSOR. ORTHOPEDICS, 317, APEX TRAUMA CENTRE, A.I.I.M.S.

ON S.A.

I am the summoned witness. Patient-Alamgir sustained road side traffic accident and was admitted in Trauma Centre, AIIMS on 31.08.2008 at 02:00 P.M. He had a pelvic fracture with fracture left-thigh bone with injury to the perineum. On the same day, on 31.08.2008, he was operated for his pelvic and thigh injury and external fixators were applied in emergency operation theatres. The patient-Alamgir underwent various surgical procedures as follows:-

i. He underwent surgery for knee stiffness

ii. Surgery for urethral injury

iii. He also underwent permanent diverting colostomy for his irreparable perineal injury.

The injured/patient cannot squat because of injuries suffered by him in the accident. The injured patient is not in a position to do his profession tailoring (as stated by him) as he cannot sit for long and do the job.

The injured/patient is under my treatment and he visits us once in two or three months for further treatment. The medical documents like treatment and discharge summary and others are already on record as Ex. AW-1/1 (pages 74 to 82 and pages 157 to 198).

I have treated the injured patient for orthopaedic issues and Dr. Amit Gupta treated the injured for other surgical treatments like permanent colostomy and others. The injured patient still as on today complains pain and discomfort and not in a position to perform his day to day activities normally due to injuries sustained by him in the accident....

11. The Appellant through the present appeal has raised the following grounds before this Court which are as:

- a. Learned Claims Tribunal has not considered the loss of income and future income arising out of the said accident and moreover, the learned Claims Tribunal has granted meagre amount of Rs. 75,000/- towards the loss of income.
- b. Learned Claims Tribunal failed to consider the proper compensation under the head of "pain and sufferings" and also the loss suffered towards the enjoyment of life etc.
- c. Learned Claims Tribunal ought to have awarded interest @ 9.5% p.a. on awarded compensation but instead it awarded interest @ 9% p.a. from the date of petition till realization.

SUBMISSIONS MADE ON BEHALF OF THE APPELLANT

12. Mr. M.K. Sinha, learned counsel for the Appellant initiated his arguments by submitting that at the time of the accident the Appellant was aged about 37 years and was in good health. Learned counsel submitted that the Appellant was working as a cutting master at M/s Art Kart Creations Pvt. Ltd, earning Rs.10,000/- per month as salary. Learned counsel further argued that the aftermath of the accident is that the Appellant has suffered severe injuries resulting into permanent disability and due to permanent colostomy, he now faces difficulty in prolonged sitting and cannot carry out tailoring job with earlier efficiency, thereby severely affecting his earning capacity. He further submitted that the accident has made him dependent on others for executing day to day routine work and has caused hindrance in enjoying the amenities of life. Furthermore, the Appellant had undergone multiple surgeries and follow up treatment is required

because of which he has to regularly visit the hospital. Learned counsel has thrown light upon the fact that heavy expenditures have been incurred on the treatment of the appellant and due to this accident of the appellant, who is the sole bread-earner of his family, the entire family has suffered financial losses. He furthered his arguments by submitting that besides financial loss, the appellant has suffered great pain, shock, mental torture and agony on account of the accident caused by respondent No.1.

SUBMISSION MADE ON BEHALF OF RESPONDENT NO.3/INSURANCE COMPANY

13.Learned counsel appearing on behalf of Respondent no. 3 opposed the present appeal filed by the appellant for enhancement of compensation on the grounds that present matter is a case of contributory negligence. Further, it is submitted that the appellant has been unsuccessful in bringing any evidence on record to prove that he was employed with M/s Art Kart Creations Pvt. Ltd as cutting master and was earning Rs. 10,000/- per month at the relevant time. Therefore, the compensation for loss of income cannot be ascertained on the basis of the above-mentioned salary and the appellant is not entitled to any enhancement of compensation in the light of afore-stated circumstances.

LEGAL ANALYSIS

14.This Court heard the arguments advanced by the learned counsel for the parties and perused the documents and evidences placed on record.

15. Before delving into the question regarding adequacy and fairness of the awarded compensation, it would be *ad rem* to elucidate the jurisprudence of compensation in motor vehicle accident cases. Under the provisions of section 168 of the Act, a Tribunal is required to “*make an award determining the amount of compensation which appears to it to be just*”. It shall be the end objective of judicial forums to award compensation in a manner which is ‘just’, so as to place the victim in a position at which he was just before the accident, approximately if not completely.
16. The Hon’ble Supreme Court in catena of judgments delivered in ***Oriental Insurance Co. Ltd. v. Mohd. Nasir [(2009) 6 SCC 280]*** and ***Ningamma v. United India Insurance Co. Ltd. [(2009) 13 SCC 710]***, ***Nagappa v. Gurudayal Singh & Ors. reported as [(2003) 2 SCC 274]*** stated that the Tribunals/Courts are responsible to award “just” compensation which is reasonable on the basis of evidence produced on record. The Tribunals should be sensitive enough to the miseries and melancholy faced by accident victims and their dependents, so that the affected parties are not left abandoned at crossroads of life on account of the discontinuance or diminishment of the income earned by the victim. Also that in ***Pappu Deo Yadav v. Naresh Kumar & Ors. reported as 2020 SCC OnLine SC 752***, the Apex Court observed that:

“6. The principle consistently followed by this court in assessing motor vehicle compensation claims, is to place the victim in as near a position as she or he was in before the accident, with other

compensatory directions for loss of amenities and other payments. These general principles have been stated and reiterated in several decisions.

...
8. This court has emphasized time and again that “just compensation” should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident, (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face their lives.”
(Emphasis Supplied)

17. The idea behind ‘just compensation’ involves application of fair and equitable principles and a reasonable approach on the part of the Tribunals and Courts. In **Jagdish v. Mohan (2018) 4 SCC 571**, The Apex Court observes that through grant of compensatory awards, the Courts must aim at recognizing the value of human life and dignity:

“...the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law.”

18. For ensuring that compensation awarded by courts are ‘just and adequate’, the judgment delivered by the Hon’ble Supreme Court
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in the matter of ***Raj Kumar v. Ajay Kumar (2011) 1 SCC 343*** acts as a North star to guide Courts while awarding compensation and has laid down the parameters 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.”

19. It is clear from the afore-stated judgment that if the victim of a motor vehicle accident suffers permanent or temporary disability, then Courts shall make an effort to award just and adequate compensation not only to recompense loss caused by bodily injury and treatment, but also for pain, suffering and trauma suffered due to the accident, loss of earning and the victim's inability to lead a life as he was living before accident and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.

INCOME OF APPELLANT AT THE TIME OF ACCIDENT

20. For the purpose of adjudicating the present appeal, it is germane to ascertain the income of the appellant which he was earning at the time of the accident. It has been a constant submission of the appellant that he was employed as a cutting master with M/s Art Kart Creations Pvt. Ltd. fetching a monthly salary of Rs 10,000/- (Ten Thousand Rupees). PW-2/Shri Sanjay Sharan, Accounts In-charge, M/s Art Kart Creations Pvt. Ltd. had deposed that the appellant worked with them from 1993 to 2003 and thereafter he again joined back in service w.e.f 01.04.2004 and was working till 31.08.2008. He produced the salary registers for the period from November 2006 till October 2009 (Exhibit PW-2/A). He further deposed that the appellant was getting basic pay of Rs.7000/- and deduction of Rs.840/- was being made from his salary towards the Employees Provident Fund and the PF eligibility register of the employees maintained by the Company was proved on record as **Exh. PW-2/C**. He further submitted that

the Appellant resigned from the service of the Company w.e.f 01.09.2008, however he could not produce the said resignation letter as it was not available in the records of their company. Hence from the testimony of PW-2, it was evident that on the date of the accident, the Appellant was an employee of M/s Art Kart Creations Pvt. Ltd. and his basic salary was Rs.7,000/-. However, he resigned from the service w.e.f 01.09.2008. Since the Appellant resigned w.e.f 01.09.2008, the learned Claims Tribunal held that the Appellant failed to prove that he has suffered loss of income for 3 years due to the accident. Hence the learned Claims Tribunal awarded lump-sum amount of Rs.75,000/- on account of compensation for loss of income suffered by the Appellant due to this accident. However, on evaluation of the evidence on record, this Court is of the considered view that the monthly salary of the Appellant is to be taken as Rs.7,000/-. PW-2 stated that the Appellant resigned w.e.f 01.09.2008 however, the said resignation letter was not available in the Company's record. It is also not clear that the said resignation was tendered before or after the accident. The accident happened on 31.08.2008 and the appellant didn't attend the office there after. Hence it is quite possible that the appellant resigned from his service w.e.f 01.09.2008 subsequent to the accident as he was not in a position to attend the office. He would have withdrawn his Provident Fund w.e.f 01.09.2008. Hence only on the basis of withdrawal of Provident Fund w.e.f 01.09.2008, one can not presume that the appellant tendered his resignation

prior to the accident. Therefore, this Court is of the considered view that on the date of accident, the monthly salary of the appellant was Rs.7,000/-.

LOSS OF INCOME DURING COURSE OF TREATMENT

21. Taking into consideration the nature of injuries sustained by the appellant and the treatment period, this court now proceeds ahead to determine loss of income suffered by him during the course of treatment i.e. from 31.08.2008 to 10.03.2011. As discussed herein above, the monthly income of the appellant was Rs.7,000/- p.m. Therefore, this Court grants compensation to the appellant for loss of his income during the course of treatment from period from 31.08.2008 to 10.03.2011 (30 months 10 days) at rate of Rs.7000/- p.m. Hence the loss of income during the period of treatment would be Rs.7,000/- X 30 months 10 days=Rs.2,12,333/-.

LOSS OF FUTURE PROSPECTS AND FUTURE EARNINGS

22. One of the grounds on which the present appeal is preferred is that the appellant is aggrieved by the fact that the learned Claims Tribunal failed to grant any compensation for Future Prospects or loss of future earnings. The Permanent Disability Certificate issued by J.P.N. Apex Trauma Centre, AIIMS dated 23.02.2017 has been placed on record before this Court, which explicitly mentions that appellant is diagnosed with “*fracture shaft of Femur (L.T.) stiffness knee (RT)*”. Further that he has 78% (Seventy Eight Percent) Permanent Physical impairment, in relation to his B/L Lower Limbs. Moreover, physical disability of

the appellant stands corroborated by testimony of AW-2 and AW-3, who have categorically stated that the appellant had undergone multiple surgeries for treatment of injuries due to which he might face difficulty in operating his daily life and performing his job as a tailor. Appellant himself has stated his condition in his cross-examination dated 12.08.2015 that:

“It is difficult for me to work in the sitting position. When I was working as a tailor before the accident I used to earn Rs.10,000/- per month. It is wrong to suggest that I was not earning Rs. 10,000/- per month. I have not met with any other accident except the present one which took place on 31.08.2008.”

23.For better grasp of the relevance of future prospects in the motor vehicle accident cases, this Court examines the observation made in **Pappu Deo Yadav** (Supra) wherein it was held that narrow reading of **Pranay Sethi** (Supra) to exclude the possibility of compensation for future prospects of permanently disabled accident victims is illogical because it denies altogether the possibility of the living victim progressing further in life in accident cases and admits such possibility of future prospects, in case of the victim's death.

24.It is provided by para 59.4 of **Pranay Sethi (Supra)** that the Future Prospects of 40% should be granted to a person who is a salaried employee and is below age of 40. The Appellant being at the age of 37 years at the time of accident will be granted 40% of future prospects. Hence, the Appellant's monthly income,

inclusive of future prospects, is re-assessed at Rs. 9,800/- p.m. (i.e., Rs.7,000/- + 40% of Rs.7,000/-).

25. The Appellant, owing to his permanent disability and adverse impact on his earning capacity, has raised discontentment that the learned Claims Tribunal has erred in granting compensation since due to the permanent disability of 78% with respect to his lower limbs, he now fails to sit for prolonged period of time which forms a requisite in occupations such as tailoring. The appellant states that he also faces difficulty in performing his daily tasks and is now dependent on his family members, who he claims are suffering the trauma and pain along with him.

26. Before Assessment of loss of future earning on account of permanent disability, it is prudent to pause and refer to the decision in ***Raj Kumar (Supra)***, wherein comprehensive law was laid down by the Hon'ble Supreme Court regarding calculation of compensation for loss of future earning:—

“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.

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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."

27. This Court is mindful of the fact that the appellant was working as a cutting master before this accident and that it is a known fact that Tailoring as a profession requires rigorous hours of focused physical activity involving prolonged standing and sitting in a stationary posture to measure, cut and stitch the fabric. Physical discomfort caused due to Perineal (Grade III) injury with pubic fracture and infirmity of lower limbs will act as a major hurdle in the way of the appellant in performing regular job as a tailor and therefore will severely affect his efficiency and earning capacity. This Court is of the opinion that since the appellant is a skilled worker, who earns his bread and butter through physical labor, permanent disability of 78% with respect to lower limb along with multiple operations near pelvic and abdominal regions is fatal to

the appellant's professional development and future prospects. 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 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. This Court is sensitive towards the suffering of the appellant and therefore the assessment of compensation on the head of loss of earning capacity is fixed at 78%.

28. The Appellant's age was 37 years and 8 months at the time of the accident taking into consideration his age as mentioned in the Appellant's Voter Identity Card as on 01.01.2008. The Multiplier laid down in *Sarla Verma and Ors. V. Delhi Transport Corporation and Ors. (2009) 6 SCC 121* would be 15. Hence, the compensation to be awarded is calculated as:

I.	Minimum income of the Appellant after adding future prospects	Rs. 9800 /- X 12 = Rs. 1,17,600 p.a.
II.	Loss of future income at the level of his disability (78%)	78% of Rs. 1,17,600/- = Rs. 91,728/-
III. Multiplier applicable (37 years) = 15		
IV.	Loss of future earnings	Rs. 91,728/- X 15= Rs.13,75,920/- (Thirteen Lakhs Eight Lakhs Seventy Five thousand Nine Hundred and twenty Rupees)

29. Determining the non-pecuniary damages, (i.e., damages for pain, suffering and trauma, loss of amenities and loss of expectation of life), the learned Claims Tribunal granted a combined sum of Rs.75,000/- to the Appellant. It is the contention of the Appellant that the amount awarded by the learned Claims Tribunal is on the lower side and a higher amount should have been awarded.
30. It is the assessment of this Court that since the appellant had to undergo painful medical procedures and will continue to go through aftermath discomfort and anguish, this Court deems it appropriate to enhance the compensation under the separate head of 'pain, suffering and trauma' to Rs. 1,00,000/-. For the Appellant to lose his earlier efficiency and bodily vigor is destined to cause emotional, physical and financial distress for all stakeholders.
31. Hence, in my opinion to recompense the appellant for degradation in the quality of life, it is also appropriate to grant a compensation for 'loss of amenities and loss of expectation of life' amounting to Rs. 1,00,000/-. Therefore total compensation under heads of 'Pain, Suffering and Trauma' and 'Loss of amenities and loss of expectation of life' now stands at Rs.2,00,000/- (Rs 1,00,000 + Rs 1,00,000).
32. Before proceeding to the next head, it will be relevant to refer to the celebrated judgment of the Hon'ble Apex Court in ***K. Suresh v. New India Assurance Co. Ltd. (2012) 12 SCC 274***, wherein it was held that:

“10. It is noteworthy to state that an adjudicating authority, while determining the quantum of compensation, has to keep in view the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. Hence, while computing compensation the approach of the Tribunal or a court has to be broad-based. Needless to say, it would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the fundamental criterion of ‘just compensation’ should be inhered.”

33. Lastly, the Appellant argued that the learned Claims Tribunal ought to have awarded interest @ 9.5% p.a. on the awarded amount but instead it awarded 9% from the date of petition till realization.

34. In this regard, this Hon’ble Court in the matter of ***New India Assurance Co. Ltd. v. Dinesh Devi reported as 2017 SCC OnLine Del 8614***, held as follows:

“4. The learned counsel for the appellant lastly submits that the 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.”

35. In view of the above, this Court does not deem it necessary and is not inclined to interfere with the rate of interest as fixed by the learned Claims Tribunal and hence 9% interest rate is maintained.

36. For the sake of clarification, this Court has deliberately not re-assessed the compensation awarded by the learned Claims Tribunal under various heads, apart from ‘Loss of Income and future prospects’ and ‘Pain, suffering Trauma & Loss of amenities of life’, since those remain unchallenged by the appellant for the purpose of modification.

CONCLUSION

37. 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 are hereunder:

S. No.	Heads	Compensation awarded
Pecuniary Damages		
1.	Actual income	Rs. 7000/-
2.	<i>Medical expenses (A)</i>	Rs. 1,30,000/-
3.	Loss of future prospects	Rs. 9800/-
4.	Loss of income: Loss of earning during period of treatment + loss of future	Rs.2,12,333/- + Rs.13,75,920 /-

	earning capacity and future prospects (B)	= Rs.15,88,253/-
5.	Special diet expenses and attendant charges (C)	Rs. 20,000/-
6.	Conveyance charges (D)	Rs. 15,000/-
Non-pecuniary Damages		
7.	Pain, suffering and trauma (E)	Rs. 1,00,000/-
8.	Loss of Amenities + Loss of expectation of life (F)	Rs. 1,00,000/-
	Total Compensation(A+B+C+D+E+F)	19, 53,253 /- (Nineteen Lakhs Fifty three Thousand Two Hundred and Fifty three Rupees only)

38. It is directed that respondent No. 3 shall pay the compensation awarded to the Appellant of Rs. 19, 53,253 /- along with interest @ 9% per annum, from the date of filing of the petition till realization. Further, as directed by the learned Claims Tribunal, respondent No.3 shall be entitled to recover the compensation jointly from respondent Nos.1 & 2.

39. Respondent No.3 is directed to deposit the differential amount with the Registrar General of this Court within 4 weeks from today. On depositing the said amount, the Registry is directed to release the said amount to the appellant. The statutory deposit may also be released to the Appellant.

40. The Appeal along with pending application stands disposed of.
No order as to costs.

GAURANG KANTH, J.

OCTOBER 18, 2022

