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

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Reserved on: 14.10.2022

Pronounced on: 18.11.2022

+ **MAC.APP. 552/2013**

NATIONAL INSURANCE CO. LTD Appellant

Through: Mr. Pankaj Seth, Advocate.

versus

PANKAJ MALHOTRA & ORS Respondents

Through: Mr. Navneet Goyal, Advocate
for respondent No. 1.

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 under Section 173 of the Motor Vehicles Act, 1988 wherein the Appellant has challenged the award dated 15.02.2013 passed by the learned Additional District and Sessions Judge cum Presiding Officer, Motor Accident Claims Tribunal, Rohini Courts, Delhi in MAC Petition no. 692/10 titled as *Pankaj Malhotra v. Mohd. Nazim & Ors.* (“impugned award”).
2. The learned Claims Tribunal vide the impugned Award held that the Appellant herein was liable to pay compensation to Respondent No. 1 as the offending vehicle was duly insured with the Appellant and the driver of the vehicle was having a valid driving license. Furthermore, the Appellant did not have any other statutory defence

to offer. The relief granted by the learned Claims Tribunal is as under:

S. No.	Head	Compensation awarded
PECUNIARY DAMAGES (SPECIAL DAMAGES)		
1.	Expenses on medicines etc.	Rs. 2,42,538/-
2.	Future medical expenses	Rs. 80,000/-
3.	Loss of income	Rs. 16,524/-
4.	Loss of future income	Rs. 4,15,661/-
5.	Special Diet Expenses	Rs. 10,000/-
6.	Conveyance Charges	Rs. 15,000/-
NON-PECUNIARY DAMAGES (GENERAL DAMAGES)		
7.	Pain, suffering, mental shock and trauma	Rs. 70,000/-
8.	Loss of amenities, etc.	Rs. 1,50,000/-
	Total compensation awarded	Rs. 9,99,723/-

FACTUAL MATRIX

3. On the unfortunate day of the accident, i.e. 20.12.2008, Respondent No. 1 was driving motorcycle No. DL 4S BC 6419 and was proceeding towards his house from Qutub Garh, Delhi. Shri Puran Mandal was riding pillion along with him. While travelling on the main road near Kanjhawala, Respondent No. 1 was hit by the offending vehicle no. HR 55A 2615, which was allegedly being driven in a rash and negligent manner. The aforesaid vehicle collided with the motorcycle. As a result of the forceful impact of the collision, Respondent No. 1 sustained grievous injuries. It is pertinent to note that an FIR was registered in respect of this

accident at Police Station Kanjhawala, Delhi vide FIR No. 692/10, under sections 279/338 of the Indian Penal Code.

4. Consequently, Respondent No. 1 was admitted into Brahm Shakti Hospital, Budh Vihar, Delhi, where appropriate treatment was given to him from 20.12.2008 to 24.12.2008. Even after getting discharged, he used to visit the hospital for routine check-up as per the advice of doctors. Since he had sustained serious crush injuries on his left hand, he again had to remain hospitalized for periods 01.01.2009 to 03.01.2009, 12.01.2009 to 15.01.2009 and 24.02.2009 to 25.02.2009. After discharge, he was advised by the doctors to undergo physiotherapy treatment for a period of nine months. This treatment record and medical bills have been proved by Respondent No. 1 as **Ex. PW2/1 & Ex. PW2/2**.
5. It is pertinent to note that the permanent disability sustained by Respondent No. 1 with respect to his left upper limb was assessed at 43%. The same has been proved on record as **Ex. PW5/A** by PW5, Dr. S.K. Sharma, Deen Dayal Upadhyay Hospital, Delhi.
6. Subsequent to these events, a claim petition was filed by Respondent No. 1 under Sections 166 and 140 of the Motor Vehicles Act, 1988 wherein he claimed compensation for the injuries sustained by him. The compensation claimed was to the tune of Rs. 20,00,000/- alongwith 18% interest from the date of filing of the petition till realization against the driver (Respondent no. 2), owner (Respondent no.3) and the insurer of the offending vehicle (Appellant). The notice of the claim petition was issued to the parties. The Appellant, while admitting the factum of insurance

in its Written Statement, disputed its liability on various grounds. Based on the pleading of the parties, learned Claims Tribunal framed the following issues:

- i. *“Whether on 20.12.2008 at about 2:00 PM at main road near Kanjhawala, Delhi the petitioner suffered injuries due to the accident caused by truck bearing registration No. HR 55A 2615 driven by respondent No. 1 in a rash and negligent manner?”*
- ii. *Whether the petitioner is entitled for compensation as prayed for, if so to what extent and from which of the respondents?*
- iii. *Relief.”*

7. In support of his case, Respondent No. 1 examined five witnesses before the learned Claims Tribunal. PW-1 was Shri Gulbir Singh, the Record Clerk of Brahm Shakti Hospital, Budh Vihar, Delhi. He brought the original treatment record, MLC and bills in respect of the injured Pankaj Malhotra. PW-2 was Shri Pankaj Malhotra, Respondent No.1 who was also an eye witness in this case. He tendered his evidence by way of affidavit **Ex. PW2/A** and relied upon the documents i.e. his treatment record as **Ex. PW2/I** and his medical bills as **Ex. PW2/2**. PW-3 was HC Raj Kumar, from PS Sultan Puri, who brought the photocopy of the complete charge sheet of the case which was registered at PS Kanjhawala, Delhi and placed on record as Mark ‘A’. He further deposed that the charge sheet in the case had already been filed in the month of September, 2010 against Md. Nazim and the same had been pending trial before the Court of Metropolitan Magistrate. PW-4 was Dr. Pankaj Gupta who deposed that he had issued the certificate dated

25.11.2010 regarding the future treatment expenses of the injured. He further deposed that the patient was required to be admitted in the hospital for about 4-5 days and would recover in at least two months during which he could not use his left hand. PW-5 was Dr.S.K. Sharma, Unit Head, Orthopaedics, Deen Dayal Upadhyay Hospital, Delhi. He proved the original disability certificate as **Ex. PW 5/A**. On the other hand, the driver examined himself as R1W1 and tendered his evidence by way of affidavit **Ex. DW 1/A**. He also relied upon the documents **Ex. DW 1/1** to **Ex. DW 1/3**.

8. Upon considering the facts of the case and the evidence placed on record, the learned Claims Tribunal decided the issues in favour of Respondent No. 1 and against the Appellant. Vide order dated 15.02.2013, the learned Claims Tribunal was pleased to pass an award whereby it awarded the amount of Rs. 9,99,723/- along with interest @ 9% per annum from the date of filing of petition till the date of realization of the amount, with a direction to the Appellant to discharge the liability of the awarded amount within 30 days from the date of award.
9. The Appellant, being aggrieved by the aforementioned award, preferred the present Appeal on the following grounds:
 - i. The learned Claims Tribunal wrongly held that the accident was caused by vehicle No. HR 55A 2615. The said vehicle was seized by the police after one year of the accident. The police case being vitiated by delay, reliance could not have been placed on the documents in the criminal case to decide the issue of negligence.

- ii. In the absence of proof of negligence, the learned Claims Tribunal erred in law in observing that the copy of criminal court record showed that respondent no.2 had been prosecuted by the police for causing the accident due to rash and negligent driving of the offending vehicle.
- iii. The learned Claims Tribunal erroneously applied minimum wages to determine the income of Respondent No. 1 as no proof of occupation or income was tendered by Respondent No. 1.
- iv. The learned Claims Tribunal erred in law in granting 30% increase towards future prospects in the absence of proof of employment and income of respondent no.1.
- v. The learned Claims Tribunal wrongly granted loss of future income amounting to Rs.4,15,661/- to Respondent No. 1. In view of the business being run by Respondent No.1, his physical disability did not affect his future earning capacity at all.
- vi. The learned Claims Tribunal erred in law in granting Rs.70,000/- towards pain and suffering. This was exaggerated and without any sound basis.
- vii. The learned Claims Tribunal wrongly awarded Rs. 80,000/- towards future medical expenses without any evidence or plea on record.
- viii. The learned Claims Tribunal erred in awarding interest @ 9% per annum on the awarded amount.

SUBMISSIONS ON BEHALF OF THE APPELLANT

10.Mr. Pankaj Seth, learned counsel for the Appellant, placed reliance on *Raj Kumar v. Ajay Kumar* reported as (2011) 1 SCC 343 to contend that the functional disability of Respondent No. 1 should have been taken to be much less than 43% in relation to the whole body, as he was still capable of doing his own or some other work. Learned counsel further submitted that in view of the aforementioned case, the actual effect of the permanent disability on the earning capacity of the claimant ought to have been discerned by the learned Claims Tribunal. It was further submitted by him that in the present case, the loss of future income of the Respondent No. 1 could at the most be roughly about 50% of the 43% permanent disability as established by way of medical evidence, i.e. 22%.

11.Learned counsel further submitted that the learned Claims Tribunal erred in law in granting interest @ 9% on the amount included under the head '*future medical expenses*' to be incurred by Respondent No. 1. Learned counsel contended that the said amount was to be spent in future and therefore, interest could not be awarded on this amount.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

12.Mr. Navneet Goyal, learned counsel for Respondent No. 1, submitted that the number of offending vehicle had been given by the co-rider to police in his statement on the date of accident itself and the FIR was also registered on the date of accident itself. The learned counsel further strengthened his submission by stating that

the delay in seizing the offending vehicle was due to the change of address of its owner which could not be attributed to the injured.

13. To demolish the appellant's contention regarding the disability of Respondent No. 1 not being proved, the learned counsel submitted that the disability of the injured had been assessed by the medical board of doctors of DDU Hospital and had been proved on record by PW-5, Dr. S.K. Sharma.
14. Placing reliance on *National Insurance Co. Ltd v. Pranay Sethi & Ors* reported as (2017) 16 SCC 680, learned counsel for Respondent No.1 submitted that the learned Claims Tribunal erred by considering only 30% increase towards future prospects and the same should be increased to 40% as per the directions of the Hon'ble Supreme Court.
15. The learned counsel further submitted that Respondent No. 1 had sustained permanent disability of 43% on account of crush injuries sustained on left forearm as already proved on record by PW-5, who had been extensively examined by the learned Claims Tribunal. It was further submitted by the learned counsel that the said assessment had been rightly made by the learned Claims Tribunal as the injured was unable to drive two-wheeler vehicles which had resulted in loss of movement and reduction in earnings.
16. The learned counsel further submitted that the plea about compensation for loss of amenities, etc. being high ought to be rejected considering the fact of 43% permanent disability sustained by the injured on the left forearm which had resulted in the loss of wrist movement.

17. Having made these submissions, the learned counsel prayed that the disability compensation be increased by granting 40% increase towards future prospects. It was also prayed by the learned counsel that the entire amount be directed to be paid to Respondent no. 1.

LEGAL ANALYSIS BASED ON THE FACTS OF THE CASE

18. This Court has heard the arguments advanced by the learned counsel for the parties and also examined the documents placed on record and the judgments relied upon by the parties.

19. Before dealing with the submissions made by the learned counsel, it would be apt to deal with the jurisprudence behind the compensation awarded in cases relating to personal injuries.

20. In ***Pappu Deo Yadav v. Naresh Kumar & Ors.*** reported as **2020 SCC OnLine SC 752**, the Apex Court has made the following observations:

“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)

21. The Hon'ble Supreme Court has expounded the law relating to compensation to be awarded in cases involving personal injuries to the claimants culminating in disability in ***Raj Kumar (supra)***. The Hon'ble Court has made the following observations:

“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.”

(emphasis supplied)

22. Keeping in mind the aforesaid observations, this Court shall now proceed to deal with the grounds of challenge to the impugned

award which have been mentioned in the pleadings of the Appellant.

23. The first ground of challenge raised by the Appellant pertains to the issue of negligence wherein the Appellant has contended that the criminal case was vitiated by delay in the seizure of the offending vehicle and therefore reliance could not have been placed on the documents in the criminal case to make inferences to decide upon the negligence of the driver.

24. On this issue, it will be pertinent to reproduce the findings of the learned Claims Tribunal, which read as follows:

“8. The copy of criminal case record filed in this case shows that respondent no. 1 has been prosecuted by the police for causing the accident in question due to rash and negligent driving of the offending vehicle. PW-2, petitioner as well as eye-witness/injured in his affidavit of evidence disclosed that how and in which manner accident had taken place and specifically blamed respondent no. 1 for driving offending vehicle in rash and negligent manner and hitting the motorcycle of the injured. Apart from vague suggestions nothing substantial in his cross examination has come on record which shows that there was any negligence on the part of the petitioner or the accident had not happened in the manner as alleged. Respondents cross examined the witnesses but they failed to disprove the negligency of the respondent No. 1.

It is stated at bar by the counsel for R1 and R2 that truck was seized after one year, the number was mentioned in the FIR recorded on the very first day of the accident. Admittedly the owner had been shifted to the nearby residence without mentioning it to the RTO in the year 2007 or at other places, so in the absence of the record of the RTO being not agreed pertaining to the address of the owner of the vehicle it is but natural that there was difficulty in seizing vehicle and serving the notice U/s. 133 MV Act, Even all the arguments put forth by the counsel for R1 and R2 pertaining to his false implication were not even put to the petitioner who was also accompanying the person at the times of accident at whose instance FIR was recorded, so thereby himself also being eye witness. No attempt was made to summon

and even put a suggestion in cross examination to Pankaj who is the injured and who has received substantial injury in this accident and not a person who lodged the FIR being accompanied at the time of accident. Hence on the basis of the statement available on record IO has been examined who has clarified that why the vehicle number of which was mentioned in the FIR could not be seized for so long.

9. It is not the case of the respondents that they had lodged any complaint to any higher authority against alleged false implication of respondent no. 1 in criminal case. It is also not their case that they had any previous enmity with petitioner or IO of the case which facilitated them to involve respondent no.1 in the alleged false case. In absence of any effective cross examination of eye witnesses/injured regarding the manner of accident, I find no ground to disbelieve the statement and accordingly it is held that accident had taken place due to rash and negligent driving of offending vehicle by respondent no. 1 by which injured had suffered grievous injuries and there was no negligence on his part. Accordingly, this issue is thus decided in favour of petitioner and against the respondents.

25. In this regard, it will be pertinent to quote the observations of the Hon'ble Supreme Court in **N. K. V. Bros (P) Ltd vs M. Karumai Ammal And Ors.** reported as **(1980) 3 SCC 457:**

*"3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. **This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there.** Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their 'neighbour'."*

(emphasis supplied)

26. Taking into consideration the aforementioned observation of the Hon'ble Supreme Court and having gone through the findings of the learned Claims Tribunal as well as the evidence placed on record, this Court finds itself in agreement with the learned Claims Tribunal. This Court is thus of the considered opinion that negligence on part of the driver of the offending vehicle has been established in the case at hand. Since the Appellant has not availed of any of the statutory defences available to it under the Motor Vehicles Act, 1988, the liability of the Appellant to compensate Respondent No. 1 has been established.
27. This Court shall now proceed to deal with the ground pertaining to the income of the Appellant. It is pertinent to note that no proof of income had been placed on record by Respondent No. 1 to establish his income as Rs. 10,000/- per month. He had, however, proved his matriculation certificate on record. In view of the same, learned Claims Tribunal considered him to be a matriculate worker and the loss of income was awarded to him according to the rates of minimum wages of matriculate worker. The accident took place on 20.12.2008 and at that time, minimum wages of matriculate labour were Rs. 4,131/- per month. It was also contended by Respondent No. 1 before the learned Claims Tribunal that due to the accident and the injuries suffered therein, he had to undergo treatment for a long time and lost his income for that period. In view of the same, the learned Claims Tribunal granted him loss of income for six months. However, learned Claims Tribunal erroneously multiplied

the monthly income with '4' instead of '6'. Hence, this court is of the considered view that the compensation under this head should be i.e. **Rs.24,786/- (Rs. 4,131 X 6).**

28.This Court finds itself in agreement with the views of learned Claims Tribunal with regard to taking the income of Respondent No.1 based on the minimum wages of Rs. 4,131/- per month as Respondent No. 1 failed to place on record any documentary evidence with regard to his income being Rs. 10,000/- per month.

29.As far as the submissions pertaining to the ambiguity shrouding the grant of future prospects is concerned, it is pertinent to note that the learned Claims Tribunal held that future prospects at the rate of 30% had to be added in the income of Respondent No. 1 since the injured was 36 years as per his matriculation certificate which was proved on record. Learned MACT therefore assessed the monthly income of injured at **Rs. 5,370.3 (Rs.4,131 + 30% of Rs. 4,131).**

30.In this regard, it will be apt to note that the position of law regarding the award of future prospects in cases of personal injury has been settled in view of the judgment of the Hon'ble Supreme Court in ***Pappu Deo Yadav (supra)***. The relevant portion is being reproduced hereunder:

"7. Two questions arise for consideration : one, whether in cases of permanent disablement incurred as a result of a motor accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects too; and two, the extent of disability. On the first question, the High Court no doubt, is technically correct in holding that Pranay Sethi involved assessment of compensation in a case where the victim died. However, it went wrong in saying that later, the three-judge bench decision in Jagdish was not binding, but rather that the subsequent decision in Anant to the extent that it did not award compensation for future prospects, was binding. This

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court is of the opinion that there was no justification for the High Court to have read the previous rulings of this court, to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading of Pranay Sethi 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."

(emphasis supplied)

31.It is pertinent to note that in view of **Para 59.4** of *Pranay Sethi* (*supra*), future prospects at the rate of 40% of the income are to be added to the income of a person who was self-employed and was below the age of 40 years. The same is being reproduced below:

"59.4 In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

32.Applying the afore stated principle to the case at hand, this Court finds that as Respondent No. 1 was aged 36 years at the time of his accident, he should be granted an addition towards future prospects at the rate of 40% of the established income. Hence, the monthly income of Respondent No.1, inclusive of future prospects, is re-assessed at Rs. **5, 783.40/-**-(i.e. Rs. 4,131 + 40% of 4,131/-).

33.At this juncture, it will be pertinent to note that the computation of the compensation to be granted to Respondent No. 1 under the head 'loss of future income' is based on the assessment of disability suffered by the injured as a result of the accident. This Court shall now proceed to analyse the aforementioned issue.

34. In this regard, it will first be pertinent to take note of the prevailing position of law on this issue. The same has been summed up by the Hon'ble Supreme Court in ***Raj Kumar (Supra)*** in the following words:

“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."

(emphasis supplied)

35. The yardstick to be adopted in such exigencies was reaffirmed by the Hon'ble Supreme Court in *Pappu Deo Yadav (supra)*. The following was set out by the three Judges' Bench:

"13. ... Whilst it is true that assessment of injury of one limb or to one part may not entail permanent injury to the whole body, the inquiry which the court has to conduct is the resultant loss which the injury entails to generating the capacity earning or income of the claimant. Thus, loss of one leg to someone carrying on a vocation such as driving or something that entails walking or constant mobility, results in severe income generating impairment or its extinguishment altogether. Likewise, for one involved in a job like a carpenter or hairdresser, or machinist, and an experienced one at that, loss of an arm, (more so a functional arm) leads to near extinction of income generation. If the age of the victim is beyond 40, the scope of rehabilitation too diminishes. These individual factors are of crucial importance which are to be borne in mind while determining the extent of permanent disablement, for the purpose of assessment of loss of earning capacity.

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20. Courts should not adopt a stereotypical or myopic approach, but instead, view the matter taking into account the realities of life, both in the assessment of the extent of disabilities, and compensation under various heads. In the present case, the loss of an arm, in the opinion of the court, resulted in severe income earning impairment upon the appellant. As a typist/data entry operator, full functioning of his hands was essential to his livelihood. The extent of his permanent disablement was assessed at 89%; however, the High Court halved it to 45% on an entirely wrong application of some 'proportionate' principle, which was illogical and is unsupportable in law. What is to be seen, as emphasized by decision after decision, is the impact of the injury upon the income generating capacity of the victim. The loss of a limb (a leg or arm) and its severity on that account is to be judged in relation to the profession, vocation or business of the victim; there cannot be a blind arithmetic formula for ready application. On an overview of the principles outlined in the previous decisions, it is apparent that the income generating capacity of the appellant was undoubtedly severely affected. Maybe, it is not to the extent of 89%, given that he still has the use of one arm, is young and as yet, hopefully training (and

rehabilitating) himself adequately for some other calling. Nevertheless, the assessment of disability cannot be 45%; it is assessed at 65% in the circumstances of this case.”
(emphasis supplied)

36. As discussed above, the loss of future income to Respondent No. 1 is to be calculated in terms of the judgment of the Hon'ble Supreme Court in **Raj Kumar (supra)**, wherein it has been 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 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.
37. It is pertinent to note that in the present case, Respondent No. 1 has placed on record the Disability Certificate dated 27.06.2011 which states the permanent disability sustained by Respondent No. 1 with respect to his left upper limb as 43%. The same has been proved on record vide **Ex. PW5/A**.
38. At this juncture, it would be relevant to note that a perusal of the document annexed with the Disability Certificate (**Ex. PW5/B**) titled as '**Evaluation of daily living activities**' reveals that Respondent No. 1 was able to do most of his activities 'satisfactorily' and he only had problem in driving two-wheelers. Moreover, Respondent No. 1 could also not use his left hand for assistance in doing fine activities. However, it will be pertinent here

to take cognizance of the fact that Respondent No. 1 was not engaged in any enterprise involving manual labour as he had a building material shop. Moreover, he predominantly used his right hand as the dominant hand. A logical inference that can be derived from these two facts is that the aforesaid permanent disability would not hamper the future income of Respondent No. 1 as gravely as has been assessed by the learned Claims Tribunal.

39. In view of the principles laid down in *Raj Kumar (Supra)*, it is clear that permanent disability to an extent of 43% of the left upper limb as stated in a Disability Certificate is not the same as 43% permanent disability with reference to the whole body. It is to be emphasized that the extent of disability of a part of the body expressed in terms of a percentage of the total functions of that part cannot logically be assumed to be the extent of disability of the whole body. Hence, in the considered opinion of this Court, Respondent No.1 in the present case cannot be granted loss of earning capacity due to permanent disability at 43% with respect to the whole body as the aforesaid disability was only with respect to the left upper limb. In the opinion of this Court, the functional disability for calculating the loss of future income should be assessed at 50% of his disability, i.e. at **21.5%**.

40. The age of Respondent No.1 was 36 years at the time of the accident as per the Date of Birth (**21.08.1972**) as mentioned in his matriculation certificate (**Ex. P-X**). In view of the above, the multiplier laid down in *Sarla Verma and Ors. v. Delhi Transport Corporation and Anr.* reported as (2009) 6 SCC 121 would be **15**.

41. Hence, the compensation to be awarded under the head '*loss of future income*' is calculated as follows:

- i. Income of the Appellant after adding future prospects =
Rs. 5,783.40/- X 12 = Rs. 69,400.80 /- p.a.
- ii. Loss of future income at the level of his disability(21.5%)
= 21.5% of Rs. 69,400.80/- = Rs.14,921.172/- p.a.
- iii. Multiplier applicable (36 years) = 15
- iv. Loss of future income = Rs. 14,921.172/- X 15=
Rs.2,23,817.58/-

42. It is pertinent to note that the learned Claims Tribunal has awarded Rs. 80,000/- under the head '*future medical expenses.*' The same has been challenged by the Appellant as having been granted without any evidence placed on record. In this regard, it will be apposite to reproduce the relevant portion of the award:

"... There is no dispute with regard to the disability of the injured as well as the fact that his treatment will go on in future also. In support of its claim the petitioner examined PW-4 Dr. Pankaj Gupta, MBBS, MS, Orthopedics from Dr. Balaji Action Institute. He deposed that the injured was required muscle sliding surgery of left hand which will costs around Rs. 80,000/- and proved his certificate to this effect as Ex.PW4/A. During cross examination on behalf of R1 and R2 he denied the suggestion that the said certificate was a bogus certificate and had been manipulated to help the petitioner. In view of same, an amount of Rs. 80,000/- is granted to him to be used for future medical expenses. Hence, the petitioner /Injured is entitled to Rs. 80,000/- towards future medical expenses."

43. Having perused the evidence on record, this Court is in agreement with the view taken by the learned Claims Tribunal and would not like to interfere with the amount awarded under this head.

44. There is no challenge to the amount awarded towards '*special diet expenses*' and '*conveyance charges*'. Hence this Court is not interfering with the compensation awarded by the learned Claims Tribunal.
45. With regard to the non-pecuniary damages, (i.e., damages for pain suffering and trauma and loss of expectation of life), learned Claims Tribunal has granted **Rs.70,000/-** to Respondent No.1 with respect to pain suffering and trauma. Furthermore, learned Claims Tribunal has awarded Rs. **1,50,000/-** under the head '*loss of amenities, etc.*'.
46. To appreciate the aforementioned award of non-pecuniary damages, it will be apposite to delve into the jurisprudence behind the practice of awarding such damages. The same has been summed up by Hon'ble Apex Court in ***K. Suresh v. New India Assurance Co. Ltd.*** reported as **(2012) 12 SCC 274** in the following words:

"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."

(emphasis supplied)

43. In *Govind Yadav v. New India Insurance Company Limited* reported as (2011) 10 SCC 683, the Hon'ble Supreme Court has reiterated thus:

“18. In our view, the principles laid down in Arvind Kumar Mishra v. New India Assurance Co. Ltd. and Raj Kumar v. Ajay Kumar must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.”

(emphasis supplied)

44. The 'justness' of the compensation has been interpreted by a three Judges' Bench in *Jagdish v. Mohan* reported as (2018) 4 SCC 571 in the following words:

“...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.”

45. In the light of the above observations, this Court is not inclined to interfere with the compensation awarded by the learned Claims Tribunal under the head 'non-pecuniary damages' as the same appear to this Court to be just and reasonable in view of the facts of the case.

46. With respect to the contention of the learned counsel for Appellant regarding interest being awarded in present case on the amount awarded under the head 'future medical expenses', this Court is of

the considered opinion that the aforesaid contention does not hold water in view of the established judicial practice.

47. In view of the above discussion, the appeal is partly allowed and the impugned Award dated 15.02.2013 is modified to the following extent:

S. No.	Head	Compensation awarded
PECUNIARY DAMAGES (SPECIAL DAMAGES)		
1.	Expenses on medicines etc.	Rs. 2,42,538/-
2.	Future medical expenses	Rs. 80,000/-
3.	Loss of income for 6 months	Rs. 24,786/-
4.	Loss of future income	Rs. 2,23,817.58/-
5.	Special Diet Expenses	Rs. 10,000/-
6.	Conveyance Charges	Rs. 15,000/-
NON-PECUNIARY DAMAGES (GENERAL DAMAGES)		
7.	Pain, suffering, mental shock and trauma	Rs. 70,000/-
8.	Loss of amenities, etc.	Rs. 1,50,000/-
	Total compensation awarded	Rs. 8,16,141.58/- (Rs. 8,16,142/- in round figure)

48. Accordingly, the compensation granted by the learned Claims Tribunal is reduced from **Rs. 9,99,723/-** to **Rs. 8,16,142 /-.**

49. It is pertinent to note that vide order dated 02.07.2013, the Appellant was directed to deposit the entire awarded amount along with upto date interest accrued thereon with the Registrar General. The Registrar General was further directed to release 60% of the awarded amount in favour of the claimant/ respondent no.1 as per

the terms and conditions fixed by the learned Claims Tribunal and to keep the rest in the form of FDR. The Registrar General of this Court is directed to release the entire differential amount along with the accrued interest thereon in favour of Appellant/Insurance Company and the balance amount with accrued interest thereon may be released to Respondent No. 1/ claimant as per the terms and conditions fixed by the learned Claims Tribunal within a period of four weeks.

50. This Court is not inclined to interfere with the rate of interest awarded by the learned Claims Tribunal.

51. Appeal stands disposed of. No order as to costs.

NOVEMBER 18, 2022

GAURANG KANTH, J.

