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

% ***Reserved on : 31.08.2022***
Pronounced on: 20.09.2022

\+ **MAC.APP. 1141/2013 and C.M. No. 20555/2022 (for summoning of witness)**

SH GOVIND LAL WADHWA ..... Appellant
Through: Mr. Manish Maini, Advocate.

versus

MOHD MOHSIM & ORS ..... Respondents
Through: Ms. Archana Gaur, Advocate for R-3/Insurance Company.

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. This appeal has been filed by the Appellant to modify the compensation awarded on certain accounts by the MACT Judge vide the judgment dated 05.08.2013 (hereinafter referred to as the "**Impugned Award**") in Suit No. 419/13/08 titled as *Sh. Govind Lal Wadhwa Vs. Mohd. Mohsin & Ors.* whereby the Appellant was awarded an amount of Rs. 4,66,561/- as compensation with interest @9% per annum, from the date of filing of the suit, i.e. 02.01.2008, till the payment is made by respondent No.3/Insurance Company within 30 days from the date of the Impugned Award alongwith accrued

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

2. The facts germane to the present appeal as noted by the Tribunal are as follows:

> *"On the unfortunate day of 28.11.2007 the injured/petitioner was going driving his two wheeler scooter No. DL 85 AE 5534 at a very normal speed observing all the traffic rules, regulations and conventions of the road and he was proceeding towards sector 25, Rohini from his residence at Sector 15, Rohini via Japani Park, Sector 11, Rohini from his residence at Sector 15, Rohini via Japani Park, Sector 11, Rohini. At about 3.00 P.M when the injured reached at Ridhala road near Taxi Stand Japani Park, Sector 11, Rohini then a Tata 407 Tempo bearinq its registration No. DL IL C8217 being driven by the respondent No.l at a very high speed, rashly, negligently, without taking necessary precautions, without observing proper look out violating the traffic rules and without blowing any horn came from Rithala Metro Station side and suddenly took sharp right turn and violently hit one cyclist and then hit the two wheeler scooter of the injured and then again hit one pedestrian Sh. Gopi Chand Gupta who was going on foot on the foot path and dragged him for about 30 to 40 steps and then stopped after hitting against underground water storage Tank constructed in the park. As a result of this violent Impact Sh. Govind Lal Wadhwa, Sh. Gopi Chand Gupta and the cyclist fell down on the road and all of them sustained serious Injuries all over their bodies. The accident occurred due to negligence on part of respondent No.l. The FIR was registered in respect of this accident vide FIR No. 854/07, PS Prashant Vihar, U/s. 279/338 IPC."*

3. Consequently, the Appellant was admitted to Dr. Baba Saheb Ambedker Hospital, Rohini, Delhi, where necessary treatment was given to him from 28.11.2007 to 29.11.2007. Later he got admitted to Maharaja Agrasen Hospital and remained there from 29.11.2007 to 06.12.2007, 16.03.2009 to 19.03.2009 and 10.11.2009 to 16.11.2009. It is pertinent to mention here that on account of the accident, the

Appellant sustained various injuries such as a) Compound Comminuted Fracture Shaft; b) Inter lock nailing condylar region right femur; c) Fracture Radius Right; d) Fracture Ulna Right; e) Fracture Femur treated with ORIF; f) Fracture ulna treated fixation dual plate; g) Fracture radius treated fixation dual plate; h) Multiple Lacerated wounds i) Profusely bleeding; j) Abrasions and Blunt Injuries all over the body. The Appellant was issued a Temporary Disability Certificate by Dr. Baba Saheb Ambedkar Hospital stating 62% Temporary Disability with respect to his right lower limb and was further advised re-assessment after a period of one year.

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. 15,00,000/- (Fifteen 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 ("hereinafter referred to as "**MACT**"). It is pertinent to note that the appellant claimed that he was 50 years and was self-employed and was working as a lubricant supplier. It was further the claim of the appellant that his monthly income was Rs. 8,000/- per month.

5. Written Statement was filed on behalf of respondent Nos.1 and 2 separately wherein they denied all the allegations of the Appellant and further stated that they have been falsely implicated in this case. A separate written statement was also filed on behalf of respondent

No.3/Insurance Company wherein it denied all allegations made by the Appellant and tried to evade its liabilities.

6. In support of the claim petition, the Appellant has examined 8 witnesses. The Appellant and the Injured/Gopi Chand Gupta were examined as PW1 and PW2 respectively. Shri Surender Singh, the Record Clerk from Dr. Ram Manohar Lohia Hospital was examined as PW-3, who proved that the Injured/Gopi Chand Gupta remained admitted in the Hospital from 28.11.2007 to 01.01.2008. H.C. Ashish Kumar was examined as PW-4 and he proved the copy of FIR No.854/07 registered at Police Station Prashant Vihar, Delhi. Shri Ram Singh, Record Clerk of Dr. Baba Saheb Ambedkar Hospital, Rohini, Delhi was examined as PW-5 to prove the MLC register of the Appellant and other medical records relating to injured/ Gopi Chand Gupta. Shri Rajiv Trivedi, Deputy Law Officer and Shri K.D. Sharma, Record Clerk of Maharaja Agrasen Hospital were examined as PW-6 & PW-7 respectively to prove the hospital record in relation to the Appellant. The Appellant also examined Dr. D.B. Shankar, Neuro Surgeon, Dr. Ram Manohar Lohia Hospital, Delhi as PW-8. The witness proved the injured/ Gopi Chand Gupta's disability certificate. He deposed that the he had suffered '*head injury with right hemiparesis*' and was '*having 60% permanent disability in relation to his body*'. It was also stated that the injured/ *Gopi Chand Gupta* could not walk as a normal person due to his disability.

7. The Insurer/respondent No. 3 examined one Shri K.K. Mittal, Assistant Manager from the Insurance Company as R3W1.

8. MACT decided the issues in favour 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 MACT awarded compensation are as follows:

S.No.	Head	Compensation awarded
Pecuniary Damages		
1.	Loss of Income	Rs. 84,384/-
2.	Loss of future prospects	Nil
3.	Medical expenses	Rs. 2,62,177/-
4.	Special diet expenses	Rs. 25,000/-
5.	Conveyance charges	Rs. 25,000/-
Non- Pecuniary Damages		
6.	Pain, suffering damages (General damages)	Rs. 70,000/-
Total Compensation		Rs. 4,66,561/-

9. Aggrieved by the order of the MACT, the Appellant herein filed an appeal under Section 173 of the Act, against the order of the MACT before this Court praying for suitably modifying the Impugned Award, passed by the MACT in Suit No. 419/13/2008. This Court issued notice in the present matter vide its order dated 13.12.2013. Further, it is pertinent to note that, the Appellant has also preferred an application before this Court vide CM No. 7851/2014 for fresh medical

examination for reassessment of his disability. This Court vide its order dated 13.05.2016 had directed the Medical Superintendent of Dr.Baba Saheb Ambedkar Hospital to reconstitute a Medical Board and have the nature and extent of disability suffered by the Appellant to be reassessed. On 21.04.2022, a Permanent Disability Certificate dated 20.09.2016 was placed before this Court. Subsequent to that, the appellant moved an appropriate application being CM No. 20555/2022 for summoning the concerned person to prove the Permanent Disability Certificate.

10. Vide order dated 20.05.2022, AW-1, Dr. Namita Deka, Chairman, Disability Board of Dr. Baba Saheb Ambedkar Hospital was examined before this Court, wherein she categorically deposed that the Temporary Disability Certificate dated 11.04.2011 was a provisional document and was issued while the patient was under treatment. Thereafter, when the patient was examined again, it was post treatment and the patient was issued final certificate. It was specifically mentioned in the final certificate that the victim had suffered permanent disability and was not likely to improve. Further, it was also mentioned that there was a significant impairment of functioning of limbs. Relevant part of the examination and the cross-examination dated 20.05.2022 is reproduced hereunder:

"AW-1: Dr. Namita Deka, Chairman, Disability Board of Dr. Baba Saheb Ambedkar Hospital, Rohini. Mob. 9971412225

On S.A.

a. <u>I am a summoned witness and I have brought the summoned record pertaining to Permanent Disability Certificate No.628</u>

dated 20.09.2016 issued to patient Sh. Govind Lal Wadhwa son of Late Sh. Tek Chand Wadhwa. I have seen the original Permanent Disability Certificate No.628 lying on record (at Page 67). The same is Ex. AW-1/1. I identify the signature of Dr. Meenakshi Sidhar at point 'A'. The said certificate has been sent by the hospital to the court directly after examining the patient.
b. According to Right of Persons With Disability Act, 2016, the disability is more than 40% and is permanent in nature and there are no chances of improvement. The disability pertains to right upper and lower limb joints with specification right shoulder, right wrist and right knee joint.
c. The permanent disability suffered by the victim is correlated to the injuries suffered by him during accident as mentioned in Ex. PW- 5/A (colly) i.e.. Discharge Summary.

xxxn by Ms. Archna Gaur, Advocate for respondents

d. The Temporary Disability Certificate dated 11.04.2011 has been issued while the patient was under treatment and was healing. It was a provisional document / certificate. It was issued only for one year period. In the provisional certificate it is mentioned that there was likelihood of improvement in the condition of the patient because the treatment was still continuing at that time.
e. Thereafter when the patient was examined again, it was post treatment. At that time, the final certificate was issued and it was mentioned therein that the victim had suffered permanent disability and was not likely to improve. There was significant impairment of functioning of limbs.
f. I am not sure whether the patient took any treatment from the year 2011 to 2016. I cannot say if the patient in question would require a permanent attendant for attending to basic activities of his daily living. Vol. for this purpose he would be required to be examined again by the concerned medical specialist."

11. The principal grounds on which this appeal has been filed by the Appellant/Injured are as follows:

A. MACT erroneously assumed the income of the Appellant as minimum wages, when the Appellant was earning Rs. 8,000/- per month by supplying lubricants.

B. MACT ought to have considered the age of the Appellant and multiplier of 11 should have been applied after granting Future Prospects.

C. MACT has erred in not granting any compensation suffered by the Appellant for the loss of earning capacity due to permanent disability of 43% with respect to the whole body as the entire right portion of the Appellant's body is affected.

D. MACT failed to appreciate that the Appellant has suffered 100% functional disability qua his profession and further erred in not granting any compensation for future surgery to be undergone by the Appellant for the removal of plate & screws from right upper & lower limb.

E. MACT failed in not awarding any compensation for future conveyance as the Appellant would not be able to drive his two-wheeler.

F. MACT erred in not awarding any amount for the services of the attendant.

G. MACT erred in not awarding any amount for shortening of life and loss of expectancy of life to the Appellant due to permanent disability suffered.

H. MACT erred in not awarding any compensation under the head of loss of amenities of life.

I. MACT erred in not paying any compensation towards disfigurement/physical impairment.

J. MACT erred in granting Rs. 70,000 only for pain and suffering which should be suitably enhanced.

K. MACT ought to have awarded interest @18% on the awarded amount but instead it awarded 9% from the date of petition till realization.

SUBMISSIONS OF THE APPELLANT

12. Learned counsel for the Appellant vehemently initiated his arguments by submitting that at the time of the accident the Appellant was aged about 50 years and was in good health. Further, learned counsel submitted that the Appellant was self-employed and was purchasing lubricants from Punjabi Bagh and supplying it to various shops of Delhi at Burari, Mukand Pur, Tilak Vihar, Jahangirpuri etc., and was earning Rs. 8,000/- per month. He argued that the aftermath of the accident is that, the Appellant has suffered severe injuries resulting into permanent disability and he is not able to carry on his business and cannot even do household chores. 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 would also not be able to drive his vehicle in the future and cannot carry out his field work of supplying lubricants.

13. It is the contention of Mr. Maini that initially the Appellant suffered Temporary Physical Disability to the extent of 62%. As a result, the

Appellant was issued a certificate of temporary disability by Dr. Baba Saheb Ambedkar Hospital dated 11.04.2011 (**Exh. PW-1/84**) and was advised for re-assessment after one year. The learned counsel further argued that the condition of the Appellant remained non-progressive and was not likely to improve in future. The Appellant has consistent pain and rigidity in the right upper & lower limbs and he is further not able to lift weight, climb stairs, drive his vehicle and wear clothes on his own. The Appellant is certified to be a case of Post Traumatic Stiffness Right, Fracture Upper and Lower Limb Joints and Permanently Disabled of 43% with respect to Right Shoulder, Right wrist and Right knee joint and hence while computing loss of earnings, permanent disability should be considered with respect to the whole body. He furthered his arguments by submitting that besides financial loss, the Appellant has suffered great pain, shock, mental torture, agony on account of the accident caused by respondent No.1.

14. The learned counsel submitted that the quantum of compensation awarded by the MACT of Rs. 4,66,561/- is much less against the claimed amount of Rs. 15,00,000/-, which would have been the just and reasonable compensation to be awarded to the Appellant in the present scenario.

15. Learned counsel for the Appellant bolstered his submissions by relying on the judgments of the Hon'ble Supreme Court in ***Anant Vs. Pratap*** (2018) 9 SCC 450, ***Basappa Vs. T. Ramesh*** (2014) 10 SCC 789 and of this Hon'ble Court in **MAC APP. No. 258/2011** titled ***Mohd. Saleem Vs. Adarsh Kumar & Ors. decided on 24.10.2013***.

SUBMISSIONS OF THE RESPONDENT NO.3/INSURANCE COMPANY

16. Learned counsel appearing on behalf of the respondent No.3/Insurance Company while relying on the Impugned Award submitted that respondent No. 3 has proved that at the time of the accident the driver of the offending vehicle was having a fake driving license and hence the MACT has granted the right to recovery jointly from respondent Nos. 1 and 2.

17. Further, the learned counsel submitted that during the pendency of the appeal, the Appellant moved an application for his medical examination and for the issuance of Permanent Disability Certificate and the same was allowed and certificate of 43% Permanent Disability Certificate was taken on record. It is the contention of the learned counsel for respondent No.3 that though the Permanent Disability Certificate has been taken on record but on that disability certificate, no medical evidence has been placed on record so far. She further went on to submit that taking on record a document and relying upon that document are two different things.

18. Ms. Gaur submitted that permanent disability is only with respect to Right Shoulder, Right Wrist and Right Knee Joint and not in regard to the entire body so it cannot be considered to be a functional disability of the entire body. With regard to future prospectus she submitted that Appellant can be granted 10% future prospects relying on the judgment of the Hon'ble Supreme Court in ***National Insurance Co. Ltd Vs Pranay Sethi & Ors.*** reported as ***(2017) 16 SCC 680***. While rebutting the contention of the Appellant with regard to attendant charges, she

submitted that since the Appellant had not produced any evidence regarding the attendant, he is not entitled for attendant charges. The compensation awarded by the learned Tribunal on other aspects is just and reasonable and is not required to be enhanced.

19. The learned counsel for respondent No.3 relied on the judgments of the Hon'ble Supreme Court in ***Raj Kumar Vs. Ajay Kumar*** (2011) 1 SCC 343 and ***Pranay Sethi (supra)*** in support of her above-stated submissions.

LEGAL ANALYSIS

20. I have heard the learned counsel for the parties, and perused the records.

21. Before adjudicating whether the Tribunal awarded the right amount of compensation or not, it would be *ad rem* to expound on the jurisprudence of compensation. Section 168 of the Act empowers the Tribunal to "*make an award determining the amount of compensation which appears to it to be just*". Therefore, the requirement for determining the compensation is that it must be "just".

22. The Hon'ble Supreme Court in ***Nagappa v. Gurudayal Singh & Ors***. reported as ***(2003) 2 SCC 274*** held that the function of the Tribunal/court is to award "just" compensation which is reasonable on the basis of evidence produced on record. The Court is duty-bound and entitled to award "just compensation". The Tribunal should attempt to equate, as far as possible, the misery on account of the accident, so that the dependents of the victim do not face the vagaries of life on account

of the discontinuance of the income earned by the victim. 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)

23. Going forward with this observation, the Hon'ble Supreme Court in the matter of ***Raj Kumar (Supra)*** laid down the heads under which compensation is to be awarded for personal injuries:

> ***"6.*** *The heads under which compensation is awarded in personal injury cases are the following:*
>
> *Pecuniary damages (Special damages)*
>
> *(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.*
>
> *(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:*
>
> *(a) Loss of earning during the period of treatment;*
>
> *(b) Loss of future earnings on account of permanent disability.*
>
> *(iii) Future medical expenses.*
>
> *Non-pecuniary damages (General damages)*

> *(iv) Damages for pain, suffering and trauma as a consequence of the injuries.*
>
> *(v) Loss of amenities (and/or loss of prospects of marriage).*
>
> *(vi) Loss of expectation of life (shortening of normal longevity).*
>
> *In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."*

24. The ratio of the above-noted judgment is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for physical injury and treatment, but also for pain, suffering and trauma caused due to the accident, loss of earning and the victim's inability to lead normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.

25. The above-mentioned grounds of challenge by the Appellant at para 11 are dealt with in seriatim.

26. In light of the above, we shall now first consider the issue with regard to the income of the Appellant. The Appellant failed to furnish any proof of his income and/or educational qualification. Hence, the MACT assumed the income of the Injured/Appellant based upon minimum wages of Rs. 3,516/- per month for the calculation of loss of income and further also granted him loss of income for the period of 24 months i.e., Rs. 3516 X 24 = **Rs. 84,384/-.**

27. I do not defer with the views of the MACT with regard to taking the income of the Injured/Appellant based on the minimum wages of Rs.3,516/- as the Appellant failed to place on record any documentary evidence with regard to his income being Rs. 8,000/-.

28. At the outset, the Appellant deposed before the learned MACT in the form of PW-l/A (Evidence by way of Affidavit) that from the spot of accident, he was removed to Dr. Baba Saheb Ambedkar Hospital and was given necessary treatment from 28.11.2007 to 29.11.2007. Thereafter, he was shifted to Maharaja Agrasen Hospital, where he remained admitted from 29.11.2007 to 06.12.2007, where his right hand was operated by fixation of dual plate in ulna and radius bone. Further, since the fracture was not united, he was again admitted in Maharaja Agrasen Hospital from 16.03.2009 to 19.03.2009, where bone grafting with rose petalling right distal femur was done. Thereafter the Appellant visited the OPD of the said hospital for regular check-up for a long period of time. The statement of the Appellant stands proved by the evidence of PW-5, PW-6 and PW-7. Hence, I fully subscribe to the views of the MACT of granting him loss of income for the period of 24 months, as the Appellant during the period from the year 2007 to 2009 has been continuously visiting doctors of different hospitals for his recovery.

29. At the cost of repetition, I would like to clarify that the MACT didn’t grant any Future Prospects to the Appellant on the premise of his temporary disability. However, it has now come to notice before this Court that the Appellant has suffered permanent disability to an extent

of 43% with respect to Right Shoulder, Right wrist and Right knee joint and is further certified to be a case of Post Traumatic Stiffness Right, Fracture Upper and Lower Limb Joints.

30. In this Backdrop, I would take the liberty of reiterating para 7 of the decision in **Pappu Deo Yadav** (Supra):

> ***"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 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. In view of para 58 of ***Pranay Sethi (Supra)***, Future Prospects of 10% should be granted to a person who is self-employed and is between the age of 50-60 years. The Appellant being at the age of 55 years will be

granted 10% of future prospects. Hence, the Appellant's monthly income, inclusive of future prospects, is re-assessed at Rs. **3867.6 p.m** (i.e., Rs. 3516 + 10% of 3516/-).

> ***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 [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] . 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]*

32. The most pertinent issue raised by the Appellant is with regard to the assessment of disability. It is the contention of the Appellant that the MACT erred in granting compensation to the Appellant for the loss of earning capacity due to permanent disability of 43% with respect to the whole body as the entire right portion of the Appellant's body is affected.

33. The Appellant was issued a Temporary Disability Certificate dated 11.04.2011 by Dr. Baba Saheb Ambedkar Hospital stating 62% Temporary Disability with respect to his right lower limb (**Exh. PW-1/84**) and was further advised re-assessment after a period of one year. The certificate also had an observation that the condition of the

Appellant is likely to improve in the future. Unfortunately, the condition of the Appellant remained non progressive. As a result of it, the Appellant preferred an application before this court for his medical examination and issuance of a Permanent Disability Certificate which was allowed and the Appellant was certified to be a case of Post Traumatic Stiffness Right, Fracture Upper and Lower Limb Joints and Permanent Disability of 43% with respect to Right Shoulder, Right wrist and Right knee joint vide certificate dated 20.09.2016 by Dr.Baba Saheb Ambedkar Hospital. At this juncture, it is pertinent to note that the Permanent Disability Certificate issued to the Appellant is also corroborated by the evidence of AW-1, Dr. Namita Deka, Chairman, Disability Board of Dr. Baba Saheb Ambedkar Hospital wherein she specifically deposed that disability of the Appellant is more than 40% and is permanent in nature and there are no chances of improvement. She further deposed that the disability pertains to right upper and lower limb joints with specification right shoulder, right wrist and right knee joint.

34. In connection with the issue, it is deemed profitable to refer to the decision in ***Raj Kumar (Supra)***, wherein it was observed as under:—

> *"**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. *<u>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.</u> 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.*

xxxxxxxxx

13. *Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. <u>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</u>*

some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

14. *For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of "loss of future earnings", if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity."*

35. Apropos the judgment in ***Raj Kumar (supra)***, it is clear that 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. Hence, the Appellant in the present case cannot be granted loss of earning capacity due to permanent disability of 43% with respect to the whole body.

Further, I am also of the opinion that permanent disability of 43% with respect to Right Shoulder, Right wrist and Right knee joint, cannot lead to loss of earning capacity of 100% with respect to the whole body and consequently, the assessment of compensation on the head of loss of earning capacity is fixed at 43%.

36. As rightly held by the MACT, the Appellant's income is to be based on the minimum wages of Rs. 3,516/- per month as the Appellant/injured failed to place on record any documentary evidence with regard to the same. The Appellant's age was 55 years and 2 months at the time of the accident as per the Date of Birth (**06.09.1952**) mentioned in the Appellant's Pan Card. The Multiplier laid down in ***Sarla Verma and Ors. V Delhi Transport Corporation and Ors***. (2009) 6 SCC 121 would be **11**.

37. Further, 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 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 income of the Appellant after adding future prospects = Rs. 3867.6 /- X 12 = Rs. 46,411.2 p.a

II. Loss of future income at the level of his disability (43%) = 43% of Rs. 46, 411.2= Rs. 19,956.816/-

III. Multiplier applicable (55 years) = 11

IV. Loss of future earnings = Rs. 19,956.816 X 11= Rs. **219,524.976/-**

38. In so far as the contention of the Appellant with respect to compensation towards future surgery to be undergone by the Appellant for the removal of plate & screws from right upper & lower limb, future conveyance charges and attendant charges are concerned, it is noted that the Appellant placed on record certain medical bills and medical treatment papers amounting to **Rs. 2,62,177.83**. The MACT in the absence of any challenge by any of the respondents granted the same. Further, with regard to the head of conveyance charges and in the absence of any evidence, MACT granted **Rs. 25,000/-** towards conveyance charges. Furthermore, with respect to the head of attendant charges, the learned counsel for the Appellant submitted before this Court that he is unable to perform routine work properly, cannot drive his vehicle and would need an attendant all his life. *Per Contra*, learned counsel for respondent No. 3 contended that the Appellant has failed to prove that he had incurred any amount towards attendant charges or that he would require assistance of an attendant during his entire life.

39. It is relevant to point out here that no evidence has been led to show that any attendant was prescribed to the Appellant at the time of his

discharge, this Court cannot lose sight of the fact that the Appellant, who has claimed himself to be self-employed doing business of lubricant supplier has been declared 43% with respect to Right Shoulder, Right wrist and Right knee joint, with the opinion that his medical condition is not likely to improve. Further, as per the Appellant's submissions placed on record, he is now 70 years of age and will have to undergo surgery for removal of plate.

40. The injury caused due to the accident has reduced the Appellant’s enjoyment of life and the full pursuit of all activities he engaged in prior to the accident. In light of the aforesaid, the Appellant is held entitled to an additional cumulative amount of **Rs. 75,000/-** towards future medical expenses, future conveyance charges and attendant charges.

41. With regard to the non- pecuniary damages, (i.e., damages for pain suffering and trauma, loss of amenities and loss of expectation of life), the MACT with respect to pain suffering and trauma granted Rs.70,000/- to the Appellant. It is the contention of the Appellant that the amount awarded by the MACT is on the lower side and a higher amount should have been awarded. Mr. Maini, learned counsel for the Appellant further argued that the MACT erred in not awarding any compensation with respect to disfigurement/physical impairment and for loss of expectation of life. This Court deems it appropriate to enhance the compensation under the head of ‘pain suffering and trauma’ to **Rs. 1,00,000/-.** The Appellant has now attained the age of 70 years and would be suffering from other co-morbidities. For the

Appellant to constantly rely on someone else for his day today work is destined to cause emotional, physical and financial fatigue for all stakeholders. Further, it is the claim of the Appellant that he has also developed cyst gland right region of his face, which needs to be removed from surgery. Hence, in my opinion it is also appropriate to grant a combined compensation for loss of amenities, loss of expectation of life amounting to **Rs. 2,00,000/-.**

42. At this juncture, it is also 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."*

43. Further, a person therefore is not only to be compensated for the injury suffered due to the accident but also for the loss suffered on account of the injury and his inability to lead the life he led, prior to the life-altering event. Justice D.Y. Chandrachud speaking for a three judges' bench in ***Jagdish* v. *Mohan*** (2018) 4 SCC 571 makes the following relevant observation on the intrinsic value of human life and dignity that is attempted to be recognised, through such compensatory awards,

> *"...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."*

44. Lastly, the Appellant argued that the MACT ought to have awarded interest @18% on the awarded amount but instead it awarded 9% from the date of petition till realization.

45. 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. <u>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%.</u> The impugned Award is modified accordingly."*

46. In view of the above, I am not inclined to interfere with the rate of interest as fixed by the MACT and hence 9% interest rate is maintained.

CONCLUSION

47. Keeping in view the facts and circumstances of the case, the appeal is partly allowed and the judgment of the MACT is modified. The

compensation granted to the Appellant under the various heads are hereunder:

S.No.	Head	Compensation awarded
Pecuniary Damages		
1.	Actual Income	Rs. 3516/- p.m
2.	Medical expenses	Rs. 2,62,177/-
3.	Loss of future prospects	**10%** 10% of 3516= 351.6/- Rs. 3867.6 p.m
4.	Loss of Income: Loss of earnings during the period of treatment + Loss of future earning capacity and future prospects of income	Rs.84,384/-.+ 219,524.976/-
5.	Special diet expenses	Rs. 25,000/-
6.	Conveyance charges	Rs. 25,000/-
7.	Future medical expenses+ Attendant charges+ Future conveyance charges	75,000/-
Non- Pecuniary Damages		
8.	Pain, suffering damages (General damages)	Rs. 1,00,000/-
9.	Loss of amenities+ Loss of expectation of life	Rs. 2,00,000/-
Total Compensation		Rs. 991,085.976/-

48. It is directed that respondent No. 3 shall pay the compensation awarded to the Appellant of **Rs. 991,085.976/-** alongwith interest @ 9% per annum, from the date of filing of the petition till realization. Further, as directed by the MACT, respondent No.3 shall be entitled to recover the compensation jointly from respondent Nos.1 & 2.

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

GAURANG KANTH, J.

SEPTEMBER 20, 2022
PS