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

MAC.APP. 1140/2013

Reserved on : 21.04.2022
Date of Decision : 26.07.2022

IN THE MATTER OF:

SH. GOPI CHAND GUPTA ..... Appellant
Through: Mr. Manish Maini, Advocate

Versus

MOHD. MOHSIM & ORS. ..... Respondents
Through: Mr. Arihant Jain, Advocate for respondent No. 3

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. By way of the present appeal filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the '*Act*'), the appellant has sought modification of judgment dated 05.08.2013 passed by the learned ADJ-cum-PO, MACT, Rohini Courts, Delhi in MACT No. 418/13/08.

FACTS OF THE CASE

2. For the sake of felicity, brief facts, as noted by the Tribunal, are reproduced hereinbelow:-

> *"1. On the unfortunate day of 28.11.2007 the injured/petitioner Sh. Gopi Chand Gupta alongwith his son Sh. Roopak were going on foot and they were proceeding towards their residence at Sector 127, Rohini from Rithala via Japani Park, Sector 11, Rohini. At about 3.09 PM when injured and his son reached at Rithala road near Taxi standJapani Park, Sector*

> *11, Rohini then a Tata 407 tempo bearing its registration No. DL 1LC 8217 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 one two wheeler scooterist namely Sh. Govind Lal Wadhwa and then hit the injured petitioner with a great force and dragged him for about 30-40 steps and the stopped after hitting against under ground water storage tank constructed in the park. As a result of this violent impact the injured fell down on the road and sustained grievous injuries all over his body and was removed to Dr Baba Sahab Ambedkar Hospital from the place of accident and after first aid he was referred to Ram Manohar Lohiya Hospital and got admitted there. The FIR was registered in respect of this accident vide FIR No. 854/07, PS Prashant Vihar, U/s. 279/338 IPC".*

3. After the accident took place, the appellant was assessed at *Dr. Ram Manohar Lohia Hospital, New Delhi* by a Medical Board. In the 'Certificate for the Persons with Disabilities' issued on 08.07.2009, he was opined to be a case of *head injury with right hemiparesis*. It was further opined that the appellant was physically disabled/speech disabled, he had suffered 60% permanent (physical/speech) impairment in relation to his body and, his condition was not likely to improve. Re-assessment was not recommended.

4. The appellant preferred an application under Sections 166 & 140 of the Act before the MACT, Delhi for grant of compensation against respondent Nos.1-3, i.e. the driver, the owner and the insurer of the offending vehicle. In his application, the appellant claimed that he was 44 years of age and doing business of selling tailoring material & garments under the name & style of '*Roopak Matching Centre'*. He further claimed his monthly income to be Rs.8,000/- per month.

The respondents contested the claims of the appellant. In the written statement filed on behalf of respondent Nos. 1 & 2 before the Tribunal, while the contents of the claim petition, including factum of the accident as well as that of the offending vehicle being driven by respondent No. 1, were denied, the factum of ownership by respondent No. 2 of the vehicle alleged to have caused the accident was admitted. It was further stated that the offending vehicle was duly insured with respondent No. 3. Although subsistence of a valid policy from 10.04.2007 to 09.04.2008 was admitted, the liability of respondent Nos. 1 and 2 to indemnify respondent No.3/insurer or to pay compensation to the claimants/appellant was denied.

5. On account of the accident, two persons had sustained injuries – the appellant and one *Govind Lal Wadhwa*. Both filed their respective claim petitions before the Tribunal. Considering the facts of the cases, the Tribunal directed recording of common evidence in the cases, which however were inquired and disposed of vide separate judgment(s).

6. In support of the claim petition, the appellant examined eight witnesses. Injured/*Govind Lal Wadhwa* and the appellant were examined as PW-1 and PW-2 respectively. *Shri Surender Singh*, the Record Clerk from *Dr. Ram Manohar Lohia Hospital* was examined as PW-3, who proved that the appellant 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 P.S. 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 of the appellant and other medical record relating to injured/*Govind Lal Wadhwa*. *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 injured/*Govind Lal Wadhwa*.

7. The appellant also examined *Dr. D.B. Shankar, Neuro Surgeon*, *Dr. Ram Manohar Lohia Hospital, Delhi* as PW-8. The witness proved the appellant's disability certificate. He deposed that the appellant had suffered '*head injury with right hemiparesis*' and was '*having 60% permanent disability in relation to his body*'. It was also stated that the appellant could not walk as a normal person due to his disability.

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

9. Initially, vide order dated 24.04.2010 passed by the learned Judge, MACT, an interim compensation of Rs.25,000/- was awarded to the appellant to be paid by the Insurance Company alongwith interest @ 7.5% p.a. from the date of filing of the petition till realization. Subsequently, vide the impugned Award, the appellant was held entitled to a further sum of Rs.9,11,105/- alongwith interest @ 9% from the date of filing of the petition i.e., 04.02.2008 till realization from the Insurance Company, which was granted recovery rights against both respondent Nos. 1 and 2.

10. The compensation under the impugned Award was granted under the following heads: -

"Pecuniary damages (Special damages):

Loss of income---Rs. 21,096/-
Loss of future prospects--------------------------------------Rs. 4,60,343/-
Medical expenses---Rs. 1,04,666/-
Special diet expenses--Rs. 25,000/-
Conveyance charges---------------------------------------Rs. 25,000/-

Non-pecuniary damages (General damages)

Pain, suffering, mental shock and trauma-------------------------------Rs. 50,000/-
Loss of amenities--Rs. 1,50,000/-
Loss of shortening and enjoyment of life etc. --------------------------Rs. 1,00,000/-

Total Rs. 9,36,105/-"

SUBMISSIONS ON BEHALF OF THE APPELLANT

11. Mr. Manish Maini, learned counsel for the appellant, put forth the following submissions in support of prayer (i) seeking enhancement of the amount of compensation under the Award:

(i) Though the appellant had suffered 60% permanent disability with respect to whole body, the Tribunal failed to consider that he was in fact 100% functionally disabled;

(ii) The Tribunal erred in not awarding any compensation towards attendant charges, conveyance, future surgery to be undergone by the appellant for the removal of plate, etc.;

(iii) The Tribunal erred in granting an amount of only Rs.50,000/- towards pain, suffering, mental shock and trauma, which is on the lower side and infact, higher amount ought to have been awarded;

(iv) The Tribunal erred in not awarding any compensation for disfigurement/physical impairment and for loss of expectation of life;

(v) The Tribunal erred in awarding interest @ 9% on the awarded amount, when in fact it should have been 18%.

12. In support of his submissions, learned counsel for the appellant placed reliance on the decision of the Supreme Court in Parminder Singh *v.* New India Assurance Company Limited and Others reported as **(2019) 7 SCC 217**.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.3/INSURER

13. Mr. Arihant Jain, learned counsel appearing on behalf of respondent No.3/insurer, submitted that loss of future prospects of the appellant ought to be calculated @ 30% instead of 25%. It was further submitted that though the Tribunal has accepted 60% permanent disability suffered by the appellant as 60% functional disability, as per the evidence of *Dr. D.B. Shankar* (PW-8), he can walk but not as a normal person. It was stressed that it is not even the appellant's case that he is completely bed ridden and he has not led any evidence in support of the contention that he is permanently disabled. Learned counsel also submitted that the appellant is not entitled to attendant charges in absence of his having led any evidence in that regard. However, if the same are awarded, the amount may only be a notional sum.

ANALYSIS

14. I have heard learned counsels for the parties and gone through the material placed on record as well as the Tribunal's Records.

15. It is well-settled that the amount of compensation awarded under the Act should be just and, to the extent possible, should fully and adequately restore the claimant to a position as existed prior to the accident. The object being to make good the loss suffered as a result of the accident in a fair, reasonable and equitable manner.

16. In cases of personal injury, compensation is normally awarded under the following categories: -

Pecuniary damages (Special Damages):

(i) Expenses relating to treatment, hospitalization, 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 [Refer: Raj Kumar *v.* Ajay Kumar and Another reported as **(2011) 1 SCC 343**].

17. In the present case, the factum of accident having taken place on 28.11.2007 stands proved by the oral testimony of PW-1 & PW-2. The appellant initially was admitted in *Dr. Baba Saheb Ambedkar Hospital* and his MLC dated

28.11.2007 was proved by *Ram Singh,* the Record Clerk, who deposed that the appellant was admitted in the Hospital on 28.11.2007 and discharged on the same date. The appellant, later on the same date, was admitted in *Dr. Ram Manohar Lohia Hospital* where he remained till 01.01.2008. The entire record, including the discharge summary, was proved by *Surender Singh,* the Record Clerk of *Dr. Ram Manohar Lohia Hospital*.

18. As per the discharge slip and the MLC, the appellant suffered the following injuries: -

a) Head Injuries with Right Hemiparesis;
b) Speech Defect, Slurring of speech;
c) Intra Cerebral Bleed around post horn of left right ventricle;
d) Fracture Shaft of Femur (Right);
e) Fracture Shaft of Femur (Left);
f) Fracture Symph Pubis;
g) Fracture Femur Bone Treated with I.L. Nailing;
h) Tracheostomy done;
i) Urinary Tract Infection (U.T.I.) and Urine Blockage;
j) Profuse bleeding;
k) Abrasions and Blunt Injuries all over the body;

The above aspect has not been challenged either in the present case or by way of a separate appeal on behalf of any of the respondents.

19. During the pendency of the claim petition before the Tribunal, as the appellant failed to furnish proof of his income and/or educational qualification, the Tribunal assessed his income on the basis of minimum wages applicable to an unskilled labor. As such, the appellant was taken to be earning a minimum wage of Rs.3,516/- per month and his loss of income for 6 months was assessed at Rs.21,096/- [3516 x 6 = 21,096/-]. Since the appellant was aged 44 years at the time of accident, future prospects of 30% were added to his income, totaling to Rs.4,566.9 [3,516/- + 30%] per month.

While calculating the loss of future earnings on account of permanent disability, the Tribunal applied multiplier of '14' in terms of the decision of the Supreme Court in Sarla Verma (Smt) and Others *v.* Delhi Transport Corporation and Another reported as **(2009) 6 SCC 121** and calculated the same as Rs.4,60,343/- (in round figure) (4,566.9 x 12 x 14 x 60%).

Issue (i): Assessment of disability

20. The first submission made on behalf of the appellant was that considering his disability certificate as well as the testimony of *Dr. D.B. Shankar* (PW-8), the Tribunal ought to have taken into account the disability as 100% instead of 60%. Per contra, learned counsel for respondent No.3/insurer had contended that while computing the amount under the Award, the Tribunal took 60% physical permanent disability of the appellant as 60% functional disability.

21. As per the 'Certificate for the Persons with Disabilities' dated 08.07.2009 issued by *Dr. Ram Manohar Lohia Hospital*, the appellant has 60% physical/speech impairment in relation to his body. The disability has been opined to be not likely to improve and no fresh reassessment has been recommended. A plain reading of the testimony of *Dr. D.B. Shankar* (PW-8) would show that the appellant was opined to be a case of *head injury with right hemiparesis* who cannot walk as a normal person due to his disability. The witness had further explained that *right hemiparesis* meant weakness of the entire right side of the body (right upper limb and lower limb).

22. In connection with the issue, it is deemed profitable to refer to the decision in Raj Kumar *v.* Ajay Kumar & Another (Supra), where 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. *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.*

xxx xxx xxx

***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."*

23. Recently, in Jithendran *v.* New India Insurance Co. Ltd. reported as **2021 SCC OnLine SC 983**, the Supreme Court reiterated the view taken in Raj Kumar (Supra).

24. Notably, the appellant has placed reliance on the decision in Parminder Singh (Supra), wherein the injured, at the time of the accident, was aged 23 years. He had suffered *inter-alia* a head injury with traumatic subarachnoid hemorrhage, fracture of jaw bones and disfiguration of his face. Pursuant to his injuries, he had to undergo a *hemi-craniotomy*, i.e. removal of front bone of the skull. The Medical Board classified him as an operated case with *hemiplegia*, i.e. weakness of one half of the body on the left side. The concerned Doctor opined that the injured shall not be able to work as a labourer, or do agricultural

work, or work as a driver and assessed the disability at 75%, which was permanent in nature.

In these facts and circumstances, the MACT assessed the appellant's loss of income due to functional disability as 75%. The High Court assessed the functional disability of the injured as 100%, which was not interfered with by the Supreme Court.

25. In the present case, it is noted at the cost of repetition that though the concerned Doctor deposed in his testimony that the appellant cannot walk as a normal person due to *right hemiparesis* (meaning weakening of entire right side of the body), the appellant is not bed ridden. In the disability certificate, he is opined to have 60% physical/speech impairment in relation to his body, which has already been counted towards loss of future earning capacity. The evidence of the concerned Doctor is silent insofar as the effect of the appellant's disability on his occupation is concerned.

In this backdrop, I am of the opinion that no case of aggravated disability or for assessment of functional disability at a higher extent is made out. Accordingly, the assessment of appellant's disability by the Tribunal @ 60% for computation of loss of earning capacity is maintained.

Issue (ii): Future prospects

26. Respondent No.3 has claimed that future prospects @ 30% were added by the Tribunal in the appellant's income and the monthly income was calculated as Rs.4,566.9/- (Rs.3,516/- + 30% of 3,516 = Rs.4566.9/-), however, in view of the subsequent decision in National Insurance Company Limited *v.* Pranay Sethi and Others reported as **(2017) 16 SCC 680,** the future prospects of the appellant ought to be calculated @ 25% of the income.

27. In this regard, it is noted that for assessment of the appellant's future prospects, the Tribunal relied on the decision in Rajesh and Others *v.* Rajbir Singh and Others reported as **(2013) 9 SCC 54,** which has subsequently been held *per incuriam* by a Constitution Bench of the Supreme Court while answering a reference in Pranay Sethi (Supra).

28. As per the decision in Pranay Sethi (Supra), in a case involving death of a person aged 40-50 years at the time of the accident and who was either self-employed or earning a fixed salary, future prospects @ 25% are to be added in income. In subsequent decisions of the Supreme Court, the standardized rules laid down in Pranay Sethi (Supra) for assessment of future prospects have been extended to cases where serious injuries have resulted in permanent disablement of the claimant [Refer: Jagdish *v.* Mohan and Others reported as **(2018) 4 SCC 571**, Parminder Singh (Supra), Kajal *v.* Jagdish Chand and Others reported as **(2020) 4 SCC 413** and Pappu Deo Yadav *v.* Naresh Kumar and Others reported as **2020 SCC OnLine SC 752**].

29. In Pappu Deo Yadav (Supra), the Tribunal had calculated future prospects of the injured @ 50%, considering the then prevalent law with respect to claimants aged 20 years at the time of accident. Though the High Court did away with the addition of future prospects, the Supreme Court, in appeal, awarded future prospects @ 40% by relying on the principles laid down in Pranay Sethi (Supra) as well as subsequent decisions of the Court. It is worthwhile to note that the award of future prospects @ 40% to the claimant, who was injured, constituted a reduction from the assessment of the same by the Tribunal @ 50%.

30. Relevant excerpt from the decision in Pappu Deo Yadav (Supra) is extracted 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 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.*
>
> *xxx*
>
> ***12.** In view of the above decisive rulings of this court, the High Court clearly erred in holding that compensation for loss of future prospects could not be awarded. In addition to loss of future earnings (based on a determination of the income at the time of accident), the appellant is also entitled to compensation for loss of future prospects, @ 40% (following the Pranay Sethi principle)."*

31. In view of the above, I find force in the submission of learned counsel for respondent No.3 on the aspect of future prospects. The appellant's monthly

income, inclusive of future prospects, is re-assessed as Rs.4,395/- (i.e., Rs.3,516/- + 25% of 3,516).

<u>Issue (iii): Future medical expenses, future conveyance charges and attendant charges</u>

32. Insofar as a contention with respect to non-grant of any compensation towards future medical expenses, future conveyance charges and attendant charges has been raised on behalf of the appellant, it is noted that based on certain bills and medical treatment papers placed on record by the appellant indicating expenses @ Rs.1,04,666.90/-, an amount of Rs.1,04,666/- was awarded by the Tribunal under the head *'medical expenses'*. In absence of production of sufficient evidence and complete documentary evidence on behalf of the appellant, an award of Rs.25,000/- was made under the head of *'conveyance charges'*.

33. As per the impugned Award, the appellant was treated with I.N. Nailing and his treatment was stated to be going on at the time. Although it was claimed during the proceedings that the family of the appellant was incurring expenditure on his treatment and they were required to travel by auto/taxi, which expenses would be permanent in nature, the Tribunal did not award any amount towards future medical expenses and future conveyance charges.

34. With respect to attendant charges, it was submitted on behalf of the appellant before this Court that he cannot walk without support, is unable to perform routine work properly, cannot drive his vehicle and would need an attendant all his life. On the contrary, 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 his entire life.

35. Although 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 selling tailoring material and garments, has been declared 60% physical impaired/speech impaired in relation to his body, 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.

36. 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.

Issue (iv): Compensation for non-pecuniary damages

37. The appellant has claimed that the amount of Rs.50,000/- awarded by the Tribunal towards pain, suffering, mental shock and trauma is on the lower side and a higher amount should have been awarded. He has further claimed that the Tribunal erred in not awarding any compensation for disfigurement/physical impairment and for loss of expectation of life.

In this regard, it is observed that combined with the compensation for *'loss of amenities'* and *'loss of enjoyment, shortening of life'*, the Tribunal has awarded a total amount of Rs.3,00,000/- to the appellant towards non-pecuniary damages.

38. Notably, in Raj Kumar (Supra), it was observed thus:-

> *"**15.** It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of*

expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may."

39. In view of the foregoing, I find no ground to interfere with the amount awarded to the appellant as non-pecuniary damages.

Issue (v): Rate of Interest

40. Another issue raised by the appellant is that while awarding the compensation amount, the Tribunal directed the same to be payable alongwith interest @ 9%, instead of 18%, from the date of filing of the petition till the time payment is made by respondent No.3. Respondent No.3 was held to have a right of recovery against respondent Nos.1 and 2.

41. In this regard, it is deemed expedient to make reference to the decision in Kumari Kiran thr. her father Harinarayan *v.* Sajjan Singh & Ors., **Civil Appeal No. 8632/2014**, where the Supreme Court observed as follows:-

"19. Further, we are of the view that the Tribunal and the High Court have erred in granting interest rate at only 6% p.a. and 7.5% p.a. respectively on the total compensation amount instead of 9% p.a. by applying the decision of this Court in Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy. Accordingly, we award the interest @9% p.a. on the compensation determined in these appeals."

42. In The New India Assurance Co. Ltd. *v.* Dinesh Devi & ors. reported as **2017 SCC OnLine Del 8614**, this Court as well modified the concerned Tribunal's Award to the extent that interest rate of 12% was levied on the amount of compensation awarded and observed:-

*"**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 AIR 2012 SC 100 the Supreme Court had granted interest at the rate of 9% for an accident which happened in 1998. This Court has consistently granted interest at the rate of 9% in a number of cases. Accordingly, the awarded amount shall carry an interest rate of 9% instead of 12%. The impugned Award is modified accordingly."*

43. As such, the levy of interest @ 9% by the Tribunal on the compensation under the Award is maintained.

CONCLUSION

44. Keeping in view the facts and circumstances of the case, the appeal is partly allowed. The appellant's monthly income, inclusive of future prospects @ 25%, is re-assessed at Rs.4,395/- and an additional sum of Rs.75,000/- is awarded towards future medical expenses, future conveyance charges and attendant charges. Consequently, the loss of future earning capacity of the appellant comes to Rs.4,43,016/- (i.e. 4,395 x 12 x 14 x 60%) and the total amount of compensation payable is enhanced from Rs.9,36,105/- to Rs.9,93,778/-.

45. It is directed that the insurer/respondent No. 3 shall pay to the appellant additional compensation amount of Rs.57,700/- (rounded off from Rs.57,673/-) alongwith interest @ 7.5% per annum, from the date of filing of the petition till realization. As a necessary corollary, the insurer/respondent No.3 shall be entitled to recover the additional compensation amount from respondent Nos. 1 & 2.

46. The balance amount under the Award be deposited by respondent No.3/insurer with the Tribunal within a period of 30 days from the date of passing of this judgment. The amount to be now deposited by respondent No.3

shall be released to the appellant in the form of an FDRs in his name for a period of 5 years, with the SBI, Tis Hazari Courts, Delhi. The appellant shall be at liberty to draw periodical interest from the same by way of his saving bank account.

47. A copy of this judgment be forwarded to the concerned Judge, MACT for information.

(MANOJ KUMAR OHRI)
JUDGE

JULY 26, 2022
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