

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE BIVAS PATTANAYAK

**FMA 237 of 2022
CAN 1 of 2022
National Insurance Co. Ltd.
versus
Sri Abhijit Mazumder & Anr.
With
COT 10 of 2022
Abhijit Majumder Alias Abhijit Mazumder
versus
National Insurance Company Limited & Anr.**

For the Appellant-Insurance Company : Mr. Sanjay Paul, Advocate

For the Respondent-Claimant : Mr. Ashique Mondal, Advocate

Heard on : 17.03.2023, 20.03.2023

Judgment on : 13.12.2023

Bivas Pattanayak, J. :-

1. This appeal is preferred against the judgment and award dated 23rd July, 2021 passed by learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 6th Court, Alipore, South 24 Parganas in M.A.C. Case No. 41 of 2016 granting compensation of Rs.18,87,243.04/- together with interest in favour of the claimant-injured under Section 166 of the Motor Vehicles Act, 1988.

2. The brief fact of the case is that on 24th April, 2015 at about 12:20 hours while the victim was proceeding on his motorcycle bearing registration no. WB-20/K-1438 along Taratala Road and when he reached near Brace Bridge vegetable market, the offending vehicle bearing

registration no. WB-73/B-8930, which was also proceeding along Taratala Road in the same direction in a rash and negligent manner, dashed the victim from behind, as a result of which, the victim sustained grievous injuries on his person. Immediately the victim was removed to “Cure Centre Nursing Home” wherefrom he was shifted to “AMRI Hospital” and later on discharged on 4th May, 2015. The right hand of the victim had to be amputated from shoulder region. Due to the injuries sustained, the victim suffered permanent disablement. On account of the injuries sustained and the subsequent disablement, the victim-injured filed application for compensation of Rs. 60,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

3. The claimant-injured in order to establish his case examined six witnesses and produced documents which have been marked as **Exhibits- 1 to 27** respectively.

4. The appellant-insurance company also adduced the evidence of one witness and produced documents which have been marked as **Exhibit- A to F** respectively.

5. Despite service of notice of appeal, respondent no.2-owner of the offending vehicle remained unrepresented.

6. Upon considering the materials on record and the evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs.18,87,243.04/- together with interest in favour of the claimant-injured under Section 166 of the Motor Vehicles Act, 1988.

7. Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal, the insurance company has preferred the present appeal.

8. Challenging the aforesaid judgment and award of the learned Tribunal, the claimant-injured has also filed cross-objection being **COT 10 of 2022**.

9. Both the appeal and the cross-objection are taken up together for consideration and disposal.

10. Mr. Sanjay Paul, learned advocate for insurance company submitted that the offending vehicle in the present case is an oil tanker. Though as per the extract of the driving licence (**Exhibit-F**), the driver of the offending vehicle had valid licence to driver transport and non-transport vehicles on the relevant date of accident, yet he did not have any effective and valid licence to drive vehicles containing hazardous substances such as petroleum etc. The insurance company by adducing the evidence of Dealing Assistant of Motor Vehicle Department, Howrah (D.W.1) has proved the extract of the driving licence. The evidence of the said witness as well as the extract of driving licence clearly shows that such driving licence does not empower the driver to drive vehicles containing hazardous substances. Since the driver was not qualified to drive vehicles carrying hazardous substances, there was violation of terms and conditions of the policy of insurance. Section 14 (2) of the Motor Vehicles Act, 1988 provides that the licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of three years and such licence is to be renewed subject to conditions as may be prescribed by the Central

Government. The provisions embodied therein clearly manifest that the driver holding a driving licence to drive transport vehicle, in order to drive vehicles carrying goods of dangerous or hazardous nature, should have specific licence to that effect. Since the driver of the offending vehicle on the relevant date was not holding driving licence to drive vehicles, carrying goods of dangerous or hazardous nature, hence there is breach of policy of insurance and, therefore, as per settled proposition of law, in the event of breach of condition of insurance policy, the insurance company be directed to satisfy the award with liberty to recover the said amount from the insured i.e. the owner of the offending vehicle in accordance with law. To buttress his contentions, he relied on the decision of the Hon'ble Supreme Court passed in ***S. Iyyapan versus United India Insurance Company Limited and Another*¹**.

He further submitted that the learned Tribunal erred in granting interest on compensation @ 8% per annum which should be scaled down in view of prevailing banking rate of interest.

In light of his aforesaid submissions, he prayed for modification of the impugned judgment and award of the learned Tribunal.

11. In reply to the contentions raised on behalf of the appellant-insurance company, Mr. Ashique Mondal, learned advocate for respondent no.1-claimant submitted that the learned Tribunal has erred in considering the income of the victim on the basis of income tax return for the Assessment Year 2016-2017 since the same pertains to the income of the victim after the accident. The learned Tribunal ought to have considered the income

¹ (2013) 7 SCC 62

disclosed in the Assessment Year 2015-2016 which shows the income of the victim just prior to the accident. Further, it failed to consider the memorandum of understanding for retainership **(Exhibit-21)** where the victim was given retainership fee of US \$ 2,000.00 from April, 2015 for six months by *Principals M/s. Patriot Engineering Services, U.S.A.*

He further submitted that the victim, due to the injuries received in the said accident, sustained physical disablement of 85%. However, since due to the injuries sustained in the said accident, the right hand of the victim had to be amputated, hence, his functional disability should be considered at 100% leading to the loss of earnings at 100%. In support of his contention, he relied on the decision of this Court passed in ***National Insurance Co. Ltd. (CR)-I versus Sri Subhasis Manna & Anr.***²

Moreover, he submitted that the victim since amputation of his right hand requires further treatment and quotation for above elbow prosthesis for the victim as been submitted by *Endolite India Limited (Exhibit-24)* be allowed along with future medical expenses bearing in mind the effect of amputation on the day to day functioning of the victim. To buttress his contention, he relied on the decision of the Hon'ble Supreme Court passed in ***Mohd. Sabeer alias Shabir Hussain versus Regional Manager, U.P. State Road Transport Corporation***³.

He further submitted that the learned Tribunal granted a meagre sum of Rs. 30,000/- towards pain and agony which needs to be increased.

² **FMA 1544 of 2018**

³ **2022 SCC OnLine SC 1701**

Moreover, he submitted that the victim is also entitled to future prospect of 10% of his annual income.

In light of his aforesaid submissions, he prayed for enhancement of compensation amount.

12. In reply to the contentions raised on behalf of the respondent no.1-claimant, Mr. Paul, learned advocate for appellant-insurance company submitted that the retainership has been terminated by the concerned company vide letter dated 5th May, 2015 (**Exhibit-D**) for unsatisfactory performance. So far as the claim of 100% functional disability is concerned, he submitted that the victim being a consultant continued with his job and is sufficiently performing his job in spite of amputation of his right limb, therefore, the extent of functional disability of 100% does not arise at all. Though the quotation of *Endolite India Limited* relating to prosthesis has been proved, but, precisely there is no evidence in support of future medical expenses.

13. Having heard learned advocates for respective parties, following issues have fallen for consideration:

Firstly, whether the driver of the offending vehicle had valid and effective driving licence to drive the vehicle on the relevant date of accident or not.

Secondly, whether the learned Tribunal erred in determining the income of the victim.

Thirdly, whether the victim sustained 100% functional disability resulting in 100% loss of earnings.

Fourthly, whether the claimant-victim is entitled to compensation for fixation of prosthetic limb and future medical expenses.

Fifthly, whether the compensation towards pain and sufferings requires to be increased.

Sixthly, whether the claimant-victim is entitled to future prospect of 10% of his annual income.

And *lastly*, whether the interest on compensation @ 8% per annum needs to be scaled down.

14. With regard to the first issue as to whether the driver of the offending vehicle on the relevant date of accident had valid and effective licence or not, it is found that the insurance company in its written statement has categorically raised the plea that on the relevant date of accident, the driver of the alleged vehicle was not holding the valid licence to drive oil tanker. In order to establish such defence, the insurance company adduced the evidence of one Rajdip Khastgir, Dealing Assistant of Renewal Driving Licence Section of Motor Vehicle Department, Howrah as D.W.1. He proved the extract of driving licence of the driver of the offending vehicle being no. WB1119940064896 (**Exhibit-F**). He deposed that such driving licence was issued on 3rd January, 1994. The extract of the driving licence reflects that validity period for non-transport category is from 31st March, 2009 to 13th October, 2023 and for transport vehicle validity is from 6th September, 2018 to 5th September, 2021. He further deposed that the driving licence does not empower the driver to drive any hazardous vehicle. Upon perusal of the extract of the driving license of the driver

(Exhibit-F), it is found that the validity and effectiveness of driving licence to drive in respect of non-transport vehicle is for the period from 31st March, 2009 to 13th October, 2023 and in respect of transport vehicle for the period from 6th September, 2018 till 5th September, 2021. Admittedly, the offending vehicle is an oil tanker which is also reflected in the seizure list **(Exhibit-6)**. Thus, the offending vehicle is meant for carrying inflammable hazardous substances. Section 14 of the Motor Vehicles Act, 1988 dealing with currency of licences to drive motor vehicles provides that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature it shall be effective for a period of three years and renewal thereof shall be subject to such conditions as the Central Government may prescribe. The aforesaid provision makes it imperative that in order to drive vehicle carrying goods of dangerous or hazardous nature, a driver should have valid and effective driving licence for the same. The extract of driving licence **(Exhibit-F)** clearly manifests that the driver of the offending vehicle did not have any valid and effective licence to drive vehicles carrying hazardous substances. Now it is to be seen whether there was any breach of condition of insurance policy for the reason of the offending vehicle (Oil Tanker) being driven by the driver without valid and effective licence to drive such vehicle.

14.1. In ***National Insurance Company Limited versus Swaran Singh***⁴, the Hon'ble Supreme Court held as hereunder:

“110. The summary of our findings to the various issues as raised in these petitions is as follows:

⁴ (2004) 3 SCC 297

(i) x x x x x

(ii) *An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.*

(iii) *The breach of policy condition e.g. disqualification of the driver or invalid driving license of the driver, as contained in sub-section(2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving license or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.*

(iv) *Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish “breach” on the part of the owner of the vehicle; the burden of proof wherefor would be on them.*

(v) *The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.*

.....”

14.2. Bearing in mind the aforesaid proposition of the Hon’ble Court, let me revert to the materials on record. The insurance company by adducing

the evidence of D.W.1 and through the extract of driving licence (**Exhibit-F**) could establish the fact the driver of the offending vehicle was not holding valid and effective driving license to drive such vehicle. However, mere absence of valid and effective driving licence of the driver for driving such vehicle at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time and such burden of proof lies with the insurer to establish '*breach*' on the part of the owner of the vehicle. At this juncture, it is to be seen as to whether such burden has been discharged by the insurance company. The owner of the vehicle was aware that the vehicle was meant for carrying hazardous substances like inflammable oil. It was incumbent upon the owner of the vehicle to ensure that all safety protocols has been reasonably taken care of including the fact that the driver was qualified to drive such vehicle carrying hazardous substances. Allowing a driver to drive such vehicle without having proper licence to drive hazardous substance by itself makes the owner of the vehicle guilty of negligence since he failed to take reasonable care for fulfilling the condition of policy. Since there is breach of condition of the policy of insurance, the principle of pay and recovery applies to the facts and circumstances of this case. The learned Tribunal though observed that the proposition in *S. Iyyapan (supra)*

applies in the factual matrix of the case, but no such order of pay and recovery was passed giving liberty to the insurance company to recover the compensation amount from the owner of the offending vehicle. I find substance in the submissions of Mr. Paul, learned advocate for appellant-insurance company relying on *S. Iyyapan* (supra) that liberty to recover the compensation amount from the owner of the offending vehicle shall be given to the insurer in the facts and circumstances of the present case.

15. With regard to the second issue pertaining to the determination of income of the victim, it is found that the learned Tribunal has determined the annual income of the victim at Rs. 1,51,614/- per annum on the basis of income tax return for the Assessment Year 2016-2017 since the road traffic accident has taken place on 24th April, 2015 which falls within Financial Year 2015-16 corresponding to Assessment Year 2016-17. Upon going through the income tax return acknowledgement for Assessment Year 2016-2017, it is seen that the income tax return has been filed on 4th August, 2016 which is much later after the date of occurrence on 24th April, 2015. From an income tax perspective, Financial Year is the year in which the assessee earns the income. Assessment Year is the following year in which the evaluation of previous year's income is made and the assessee pays taxes on it. For instance, if the Financial Year (2015-16) is from 1st April, 2015 to 31st March, 2016, then the assessment year for the money earned to the aforesaid period would begin after the Financial Year ends and would be Assessment Year 2016-2017. Since income for any particular Financial Year is evaluated and taxed in the Assessment Year,

income tax return forms have Assessment Year (AY). As the income earned in a Financial Year cannot be taxed before it is earned so it is taxed in the following year. The accident having taken place on 24th April, 2015, maximum period of earnings during the Financial Year 2015-16 falls after the date of accident. Hence, it would not be appropriate to rely on the income of the victim disclosed in the Income Tax Return for Assessment Year 2016-2017. It is trite law the income of the victim assessed should pertain to the date of accident. In order to establish his income, the injured-victim has also produced his income tax return acknowledgement along with Form 16 issued by the employer under Section 203 of the Income Tax Act, 1961 for Assessment Year 2015-2016. On perusal of income tax return acknowledgement for Assessment Year 2015-16, it is found that it has been filed on 28th August, 2015 which is also after the accident. Be that as it may, the Form 16 issued by the employer of the victim under the Income Tax Act for Assessment Year 2015-2016 shows income for the period 1st April, 2014 to 31st March, 2015 **(Exhibit-1)**, which period is just prior to the accident and it discloses the total annual income of the victim for the aforementioned period, falling just prior to the accident, to be Rs.5,67,924/-and the tax deducted at source under Section 192 of the Income Tax Act to be Rs.48,200/-. Therefore, the total annual income of the victim would be the amount equivalent to total income less tax paid on the income (i.e. Rs.5,67,924/- – Rs.48,200/-) which comes to Rs.5,19,724/-. Mr. Mondal, learned advocate for respondent no.1-claimant argued that the victim, as per the memorandum of understanding

(Exhibit-21), was given retainership fees of US \$ 2,000/- for a period of six months commencing from April, 2015 by the *Principals M/s. Patriot Engineering Services, U.S.A* which should also be considered for determination of the income of the victim. *Per contra*, Mr. Paul, learned advocate for appellant-insurance company referring to letter dated 5th May, 2015 **(Exhibit-D)** submitted that such memorandum of understanding has been terminated by the said company and thus the retainership fees has got no bearing so far as determination of income of the victim is concerned. On perusal of letter dated 20th March, 2015 issued in respect of memorandum of understanding **(Exhibit-21)**, it is found that the *Principals M/s. Patriot Engineering Services, U.S.A*, as per such memorandum, was supposed to pay directly a monthly retainership fees of US \$ 2,000/- for a period of six months commencing from April, 2015 to the victim. However, by subsequent letter dated 5th May, 2015 **(Exhibit-D)**, the victim was informed that the memorandum of understanding may be treated as void. Further though by dint of the letter dated 5th May, 2015 **(Exhibit-D)**, the victim was informed that he would be provided with a lump sum amount of Rs.1 lakh against his activities from 1st April, 2015 to 23rd April, 2015 but the same has been granted after the accident. For the aforesaid reasons, the income claimed in respect of retainership fees cannot be taken into account.

16. The third issue is whether the victim due to injuries sustained in the said accident resulting in amputation of right upper arm had functional disability of 100% leading to 100% loss of earnings. In order to appreciate

the present issue, it would be apposite to refer to the principles laid down by the Hon'ble Supreme Court in the decision of **Raj Kumar versus Ajay Kumar & Anr.**⁵ which is reproduced hereunder:

“12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

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*

⁵ (2011) 1 SCC 343

permanent ability (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 percent, 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 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.

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. . . .”*

16.1. Bearing in mind the aforesaid principles laid down by the Hon’ble Supreme Court, let me first decide whether the victim sustained any permanent disability due to the accident and, if so, to what extent. The victim in his claim application at column 11 stated that the he sustained multiple bleeding injuries on his person especially crush injury on his right hand. The discharge summary of the victim-injured issued by AMRI hospitals, Dhakuria **(Exhibit-26)** shows that the victim sustained crush injury of right upper limb and amputation (humerus upper one-third) was done on 24th April, 2015. The disability certificate **(Exhibit-15)** issued by Bangur Hospital, Kolkata also shows amputation of above elbow upto upper one third right arm and the disability is 85%. Considering the aforesaid evidence on record, it goes without saying that the victim sustained permanent disablement to the extent of 85%. Now it is to be seen as to what would be the effect of the aforesaid disablement. Mr.

Mondal, learned advocate for the respondent no.1-claimant argued that though the physical disablement of the victim is 85%, yet his functional disability is 100%. Learned Tribunal has considered the disablement of 85% as the loss of earnings while assessing the compensation amount. Though the victim due to the injuries sustained in the accident had to undergo amputation of above elbow upto upper one third right arm, yet there is no evidence that the day-to-day functions, mobility and other aspects necessary for carrying daily pursuits have been totally affected. Due to such reasons, the argument advanced on behalf of respondent no.1-claimant that the functional disability of the victim should be considered at 100% is not sustainable. Be that as it may, bearing in mind the extent of disablement and keeping in mind that the victim is a technical consultant, the loss of earnings of 75% would be appropriate in the facts and circumstances of this case.

16.2. In *Sri Subhasis Manna (supra)*, the claimant, who was working as a salesman in a medical shop, lost his job as the result of the accident. As per the disability certificate, he suffered permanent disability of 70% and was unable to travel without assistance of an escort and earn his livelihood. In such circumstances, this Court affirmed the assessment of functional disability of 100% by the learned Tribunal. The facts in the cited decision is distinguishable from the case at hand, hence, the ratio is not applicable to the present case.

17. The fourth issue relates to whether the injured is entitled to receive compensation for fixation of prosthetic limb and future medical expenses.

Mr. Mondal, learned advocate for the respondent no.1-claimant referring to quotation of *Endolite India Limited* (**Exhibit-24**) submitted that in order to perform his day to day functions, the victim needs prosthetic limb and the quotation for such prosthetic limb shows that the price of the same is Rs. 7,52,800/- which should be granted to the victim. To buttress his contention, he relied on the decision of the Hon'ble Supreme Court passed in *Mohd. Sabeer alias Shabir Hussain (supra)*. *Per contra*, Mr. Paul, learned advocate for appellate-insurance company submitted that in the absence of cogent evidence, the claimant is not entitled to future medical expenses. The quotation of prosthetic limb of *Endolite India Limited* has been proved by P.W.5, Mukesh Kumar who is a Prosthetist & Orthotist, which has been marked as **Exhibit-24**. The aforementioned quotation shows that the price of Endolite Std. Above Elbow Myo-Electric Three-Degree hand with Electrode Cable + Cosmetic Glove + Battery + Battery Charge + Socket & fabrication charge is Rs. 7,52,800/-. Be that as it may, there is no medical evidence that it is advisable for the victim to have fixation of the aforementioned prosthetic limb. There is also no recommendation of fixation of such prosthetic limb by any prosthetist. Though P.W.5 is a prosthetist and orthotist but in his evidence save and except proving the quotation there is no evidence that the witness has advised the victim for fixation of the aforementioned prosthetic limb. In *Mohd. Sabeer alias Shabir Hussain (supra)*, the claimant is a scrap dealer whose right leg below the knee was amputated. The Hon'ble Court has considered that the claimant to be able to augment his income is most definitely required to

move around. In such circumstances, allowed compensation towards prosthetic leg and its maintenance. The facts involved in the cited decision is quite dissimilar to the case at hand where the victim-claimant is a technical consultant and there is amputation of one-third of his right arm above elbow. Hence the ratio is not applicable to the fact of the case at hand. Therefore, the claim of aforesaid amount towards prosthetic limb falls short of merit. However, bearing in mind that the victim had undergone amputation of above elbow upto upper one third right arm, I am of the opinion that an amount of Rs. 2,00,000/- would be reasonable towards future medical expenses.

18. With regard to the fifth issue relating to escalation of the compensation under the head of pain and agony, it is found that the learned Tribunal has granted Rs.30,000/- on such head. However, bearing in mind that the victim due to the injuries sustained in the said accident had undergone amputation of above elbow upto upper one third right arm, an amount of Rs.50,000/- would be appropriate in the present case.

19. So far as the sixth issue relating to future prospect is concerned, since the victim at the time of accident was admittedly 50 years and 1 month of age and was on fixed salary, following the observation of Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others***⁶, the victim is entitled to an amount equivalent to 10% of his annual income towards future prospect.

20. Coming to the last issue relating to grant of interest on compensation amount, it is found that the learned Tribunal has granted interest @ 8%

⁶ (2017) 16 SCC 680

per annum on the compensation amount. Mr. Paul, learned advocate for appellant-insurance company argued that the interest on the compensation amount should be scaled down bearing in mind the prevalent banking rate of interest. In view of the aforesaid submissions and also considering the prevalent banking rate of interest, the compensation amount shall carry interest @ 6% per annum.

21. In view of the above discussion, the calculation of compensation is made hereunder:

Calculation of Compensation

Annual income	Rs. 5,19,724/-
Add: Future prospect @ 10% of the annual income	Rs. 51,972/-
	Rs. 5,71,696/-
Loss of earnings: 75% loss of income	Rs. 4,28,772/-
Adopting multiplier 13 (Rs. 4,28,772/- x 13)	Rs. 55,74,036/-
Add: Medical expenses incurred	Rs. 1,81,908/-
Add: Pain and agony	Rs. 50,000/-
Add: Future medical expenses	Rs. 2,00,000/-
Total compensation	Rs. 60,05,944/-

22. Thus, the claimant is entitled to compensation of Rs. 60,05,944/- together with interest at the rate of 6% per annum from the date filing of the claim application till payment. It is found that the appellant-insurance company has deposited a sum of Rs. 23,40,662/- vide OD challan No. 1865 dated 28th January, 2022 in terms of order of this Court dated 10th January, 2022 and statutory deposit of Rs. 25,000/- vide OD challan No. 1243 dated 13th December, 2021 before the registry of this Court. Both the aforesaid deposits together with accrued interest be adjusted against the entire compensation amount and interest thereon.

23. Appellant-insurance company is directed to deposit the balance compensation amount of Rs. 41,18,701/- together with interest as indicated above by way of cheque before the learned Registrar General, High Court, Calcutta, within a period of six weeks from date.

24. Respondent no. 1-claimant is directed to deposit *ad valorem* balance court fees on the compensation amount, if not already paid.

25. Upon deposit of the aforesaid amount balance compensation amount along with interest, learned Registrar General, High Court, Calcutta shall release the same in favour of respondent no.1-claimant on satisfaction of his identity and payment of *ad valorem* balance court fees on the compensation amount, if not already paid.

26. With the aforesaid observation, the appeal and the cross objection stand disposal of. The impugned judgment and award of the learned Tribunal is modified to the above extent. No order as to cost.

27. The appellant-insurance company is granted liberty to recover the amount of compensation from the owner of the offending vehicle, after satisfaction of the award, in accordance with law.

28. All connected applications, if any, stand disposed of.

29. Interim order, if any, stands vacated.

30. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)