

\$~

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

%

***Reserved on: 27.02.2023***

***Pronounced on: 21.04.2023***

+ **MAC.APP. 610/2013**

**RELIANCE GENERAL INSURANCE CO. LTD.**

...Appellant

Through: Mr. Pankaj Seth, Advocate

versus

**MANGAL SHAH & ORS.**

...Respondents

Through: Mr. S. N. Parashar, Advocate  
for Respondent No.1

**CORAM:**

**HON'BLE MR. JUSTICE GAURANG KANTH**

## **J U D G M E N T**

**GAURANG KANTH, J**

1. The present appeal has been preferred by the Appellant under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 08.04.2013 ("*impugned award*") passed by the Court of learned Presiding Officer, Motor Accident Claims Tribunal, Rohini Courts, Delhi.
2. Facts borne out of the records are that on 03.06.2010, respondent No.1 was going to Panipat in the cabin of Tempo Swaraj Mazda bearing No. HR-67-3182, which was driven in a rash and negligent manner at a high speed. The driver/respondent No. 2 was warned by respondent No. 1 and the co- passenger, not to drive the vehicle in a rash and negligent manner, however, the

driver continued driving in rash and negligent manner. When they reached Singhu Border, the driver lost control of the vehicle and hit against a tree. The co-passenger died on the spot and respondent No. 1 sustained grievous injuries. Respondent No. 1 remained in hospital from 03.06.2010 to 05.06.2010 and again from 06.06.2010 to 15.06.2010. During the course of treatment, the right leg of respondent No.1 was amputated below knee. Being severally effected physically, mentally and financially by the accident, respondent No. 1 filed a claim petition before the learned Claims Tribunal seeking a compensation of Rs. 15 lacs.

3. By way of the impugned Award dated 08.04.2013, the learned Claims Tribunal awarded a compensation of Rs. 9,05,054/- with interest @ 9% per annum from the date of filing of the claim petition till realization of the amount and directed the Insurance Company to pay the entire awarded amount within a period of one month. The learned Claims Tribunal granted the compensation under the following heads:-

| Head                    | Amount         |
|-------------------------|----------------|
| Medical Bills           | Rs. 12,972/-   |
| Future medical expenses | Rs. 1,50,000/- |
| Loss of Income          | Rs. 10,556/-   |
| Loss of future prospect | Rs. 6,17,526/- |
| Special Diet expenses   | Rs. 7,000/-    |

|                                         |                      |
|-----------------------------------------|----------------------|
| Conveyance charges                      | Rs. 7,000/-          |
| Pain suffering, mental shock and trauma | Rs. 1,00,000/-       |
| <b>Total</b>                            | <b>Rs.9,05,054/-</b> |

#### **SUBMISSION OF THE APPELLANT**

4. Mr. Pankaj Seth, learned counsel for the Appellant/Insurance Company contended that the Impugned order is perverse and has been passed without appreciating the principles of law, documents and the evidence on record. Learned counsel further contended that the deceased and respondent No. 1 were unauthorized/ gratuitous passengers in the goods vehicle and as such they are not covered under the insurance policy. He further submitted that respondent No. 1 and other co-occupants were carrying personal belongings and tools and as per section 2 (13) of the Motor Vehicles Act, the same does not fall under the definition of 'Goods', as such they cannot be considered to be either owner of the goods or authorized representative, thus the respondent was not liable to be paid any compensation by the appellant, thereby entitling the appellant for grant of recovery rights. He further submitted that no documentary proof was brought on record by respondent No. 1 to show his employment. As such applying minimum wages for calculation of compensation and also granting 30% increase towards future prospects under the head '*Loss of Income*' and '*Loss of Future Income*' is perverse and arbitrary. He further submitted that as

per disability certificate, respondent no.1 suffered 60% permanent disability, and 50% functional disability, however, he failed to show that due to this disability his earning capacity got affected and has suffered loss of future income, therefore no such compensation could be awarded in the absence of evidence. He further submitted that the learned Claims Tribunal erred in calculating the loss of earning capacity taking 50% as functional disability and in the absence of any medical and documentary evidence, the functional disability of respondent no.1 should be taken to be 30% instead of 50%, if any, for calculating the loss of future earnings. Learned counsel concluded his arguments by contending that grant of compensation under the heads '*Pain and Suffering*' and '*Future Medical Expenses*' without any evidence, are on the higher side.

#### **SUBMISSION OF THE RESPONDENTS**

5. Mr. S. N. Parashar, learned counsel appearing on behalf of Respondent No. 1/Claimant contended that as per the disability certificate, respondent No. 1/claimant has suffered 60% disability and the learned Claims Tribunal has erred in assessing the functional disability as 50% for computing the compensation under the '*Future loss of Income*' and the same shall be assessed as 60% for the whole body. Learned counsel further contended that in terms of judgment of the Hon'ble Supreme Court in the case of *National Insurance Co. Ltd Vs Pranay Sethi & Ors.* reported as (2017) 16 SCC 680, an addition of 40% of the established income of the respondent/claimant has to be granted

under the head '*Future Prospects*' instead of 30% as respondent No. 1/claimant was of the age of 39 years at the time of the alleged incident. He further contended that the compensation awarded under the heads '*Special Diet*', '*Conveyance Charges*' and '*Pain and Suffering*' needs to be enhanced considering the prolonged treatment of the injured and his disability.

### **LEGAL ANALYSIS**

6. This Court has heard the arguments advanced by learned counsel for both the parties and perused the documents on record relied upon by the parties.
7. The Appellant is challenging the impugned Award on the following grounds (i) that the respondent were unauthorized/gratuitous passengers in the goods vehicle and as such they are not covered under the insurance policy meaning thereby the appellant cannot be held liable for payment of compensation(ii) Applying minimum wages for calculation of compensation and also granting 30% increase towards future prospect, under the head '*Loss of Income*' and '*Loss of Future Income*' is perverse and arbitrary. (iii) Assessing functional disability as 50% without any documentary evidence is arbitrary and the functional disability should be 30%(iv) compensation under the heads '*Pain and Suffering*' and '*Future Medical Expenses*' without any evidence, are on the higher side.
8. Rebuttal contentions of Respondent No. 1/Claimant are that (i) Functional disability shall be assessed as 60% (ii) Compensation under the head '*Future Prospects*' shall be calculated by adding

40% of the established income instead of 30%. (iii) Compensation under the heads 'Special Diet', 'Conveyance Charges' and 'Pain and Suffering' shall be enhanced.

**(i) Whether the respondent/claimant was unauthorized/gratuitous passengers in the goods vehicle?**

9. Before advertent to the facts of the present case, this Court deems it appropriate to examine the law evolved with respect to unauthorized/gratuitous passengers travelling in the goods vehicle.
10. The history of this issue starts from the regime of Motor Vehicles Act, 1939 ("**1939 Act**"). Section 95 of the 1939 Act deals with the requirements of the policies and limits of liability of the Insurance Companies. Proviso to Section 95(1) of the 1939 Act states that the policy shall not be required in case of a goods vehicle for passengers being carried in the said vehicle. The Hon'ble Supreme Court in ***Pushpabai Purushotam Udeshi Vs Ranjit Ginning & Pressing Co Ltd*** reported as (1977(2) SCC 745) & ***Mallawa Vs Oriental Insurance Company*** reported as (1999 SCC (Cri) 58), construed the proviso of Section 95 (1)(b) of the 1939 Act and held that while the expression 'any person' and the expression 'every motor vehicle' are in wide terms but proviso (2) restricts the generality of the main provision by confining the requirement to cases where the vehicles in which the passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment. Hence the vehicle had to be a vehicle in which the passengers are carried. The Hon'ble

Supreme Court further clarified that the goods vehicle cannot be held to be a passenger vehicle even if the vehicle was found to be used for some stray occasions for carrying the passengers for hire or reward. Hence the gratuitous passengers travelling in a goods vehicle were not held to be covered by Insurance policy of a good vehicle.

11. Subsequently, the Motor Vehicles Act, 1988 ("**1988 Act**") was enacted. Section 147 of the 1988 Act is *pari materia* to Section 95 of the 1939 Act. One of the major differences between the two enactment was that 1939 Act defines the expression 'goods vehicle' whereas 1988 Act defines the term 'goods carriage' As per 2(8) of the 1939 Act, '*goods vehicle means any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or **in addition to passengers***'. However as per 2(14) of the 1988 Act, '*goods carriage means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods*'. The Hon'ble Supreme Court examined the liability of unauthorized/gratuitous passengers in the goods vehicle in ***New India Assurance Company Vs Satpal Singh*** reported as (2000 (1) SCC 237). While examining the said question, the Hon'ble Supreme Court held that an insurance policy covering third party risk is not required to exclude gratuitous passenger in a vehicle no matter the vehicle is of any type or class. Hence in view of the law laid

down by the Hon'ble Supreme Court in *Satpal Singh (supra)*, the Insurance Company is held liable to pay compensation even for gratuitous passengers of the goods vehicle.

12. The full Bench of the Hon'ble Supreme Court in *New India Assurance Company Ltd Vs Asha Rani* reported as 2003 (2) SCC 223 examined the correctness of its earlier Judgment *Satpal Singh (Supra)* and overruled the said Judgment. Concurring with the view expressed by the Hon'ble Chief Justice of India, Justice S.B Sinha (Retd) held as follows:

*"In view of the changes in the relevant provisions in 1988 Act vis--vis 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. 'a third party'. Keeping in view the provisions of 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.*

13. Again, the 1988 Act was amended and Motor Accident Amendment Act, 1994 came into effect. The material portion of the provision contained in Section 147 of the 1988 Act, as amended by the Motor Vehicles (Amendment) Act, 1994, reads as follows:

*"147. Requirements of policies and limits of liability- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-*

(a) XXX

XXX

XXX

(b) insures the person or classes of persons specified in the policy to the extent specified in sub- section (2) (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, **including owner of the goods or his authorized representative** carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) \* \* \*

(emphasis added)

14. The Hon'ble Supreme Court in *National Insurance Company Vs Baljit Kaur* reported as **2004 (2) SCC 1** examined the issue of whether an insurance policy in respect of a goods vehicle would also cover gratuitous passengers, in view of the legislative amendment in 1994 to Section 147 of the 1988 Act. The Hon'ble Supreme Court held that the owner of *the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people*'. The relevant portion of the Baljeet Kaur (Supra), inter alia, reads as follows:

*"Admittedly, it is incumbent upon a Court of law to eschew that interpretation of a statute that would serve to negate its true import, or to render the words of any provision as superfluous. Nonetheless, we find no merit in the above submissions proffered by the learned counsel for the respondent. The effect of the 1994 amendment on Section 147 is unambiguous. Where earlier, the words "any person" could be held not to include the owner of the goods or his authorized representative travelling in the goods vehicle, Parliament has now made it clear that such a construction is no longer possible. The scope of this rationale does not, however, extend to cover the class of cases where gratuitous passengers for whom no insurance policy was envisaged, and for whom no insurance premium was paid, employ the goods vehicle as a medium of conveyance.*

*We find ourselves unable, furthermore, to countenance the contention of the respondents that the words "any person" as used in Section 147 of the Motor Vehicles Act, would be rendered otiose by an interpretation that removed gratuitous*

*passengers from the ambit of the same. It was observed by this Court in the case concerning New India Assurance Co. Ltd. Vs. Asha Rani (supra) that the true purport of the words "any person" is to be found in the liability of the insurer for third party risk, which was sought to be provided for by the enactment.*

*It is pertinent to note that a statutory liability enjoined upon an owner of the vehicle to compulsorily insure it so as to cover the liability in respect of a person who was travelling in a vehicle pursuant to a contract of employment in terms of proviso (ii) appended to Section 95 of the 1939 Act does not occur in Section 147 of the 1988 Act. The changes effected in the 1988 Act vis-à-vis the 1939 Act as regard definitions of 'goods vehicle', 'public service vehicle' and 'stage carriage' have also a bearing on the subject inasmuch as the concept of any goods carriage carrying any passenger or any other person was not contemplated.*

-----  
*By reason of the 1994 Amendment what was added is "including the owner of the goods or his authorised representative carried in the vehicle". The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorised representative carried in the vehicle besides the third parties. The intention of the Parliament, therefore, could not have been that the words 'any person' occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever. If such was the intention there was no necessity of the Parliament to carry out an amendment inasmuch as expression 'any person' contained in sub-clause (i) of clause (b) of sub-section (1) of Section 147 would have included the owner of the goods or his authorised representative besides the passengers who are gratuitous or otherwise....."*

15. Hence now the legal position is that the owner/authorized representative of the owner of the goods travelling in a goods vehicle would be covered by the insurance policy. However, a gratuitous passenger travelling in a goods vehicle will not be covered by the insurance policy.

16. Based on this legal position as it stands today, this Court now proceed to examine the facts of the present case. Mr. S. N.

Parashar, learned counsel for respondent No. 1/claimant relied

MAC.APP. 610/2013

Page 10 of 21

on paragraph Nos. 25 to 28 of the impugned judgment and contended that the learned Trial Court has rightly held that the Insurance Company failed to prove that the passengers travelling in the offending vehicle were unauthorized/gratuitous passengers and as such the argument of Insurance Company that they are not liable to pay the compensation to respondent No. 1 is without any rhyme or reason.

17. In this context, this Court has examined the evidence produced by the parties before the learned Claims Tribunal. Respondent No.1/claimant appeared before the learned Claims Tribunal as PW-2 and with Evidence by way of Affidavit he deposed that:-

“...I say that on 03.06.2010, at about 01:40 P.M.. I alongwith my labour were going to Panipat with goods in HR-67-3182 (Tempo Swaraj Mazada), which was being driven by its driver at a very high speed, rashly, negligently in a zig-zag manner. He was warned by me and co-passenger not to drive the tempo in such a manner but he did not pay any listed and continued on his whims and fancies.

(emphasis supplied)

18. During cross-examination, respondent no.1 deposed as under:-

“I was sitting in the cabin of the offending vehicle alongwith the deceased Shiv Charan. The goods were lying in the tempo. We all were having goods. The goods were so heavy that it cannot be carried in other transport, i.e., bus. All the goods were scattered at the spot.....”

(emphasis supplied)

19. In the case of *National Insurance Co. Ltd. vs. Rattani and Ors.* reported as (2009) 2 SCC 75 the Hon’ble Supreme Court while dealing with the issue of gratuitous passenger has held as under:-

*“13. The question as to whether burden of proof has been discharged by a party to the lis or not would depend upon the facts and circumstances of the case. If the facts are admitted or, if otherwise, sufficient materials have been brought on record so as to enable a court to arrive at a definite conclusion, it is idle to contend that the party on whom the burden of proof lay would still be liable to produce direct evidence to establish that the deceased and the injured passengers were gratuitous passengers.”*

20. Respondent No. 1/Claimant was travelling in the offending vehicle to Panipat with goods as the owner/authorized representative of the goods. Hence in view of the above settled principle of law as well as the discussion made above, this Court is of the view that respondent No. 1/claimant cannot be treated as a gratuitous passenger but as an owner/authorized representative of the goods.

21. Learned Claims Tribunal also specifically dealt with this issue in the impugned Award. The relevant portion, reads as follows:

*“25. Counsel for the insurance company has cited judgments i.e. (2005) 12 Supreme Court Cases 243, MAC APP. 94/2005 & MAC APP 117/2005 and MAC. APP 229/2009, MAC APP. 230/2009 that liability of insurance company is not to reimburse the claim of unlawful passenger travelling in the goods vehicle. It is well settled law that one who takes the defence, he has to prove the defence. The petitioner examined two witnesses in support of his case. PW2 is the eye witness himself who is also the injured in the accident. Not even a single question in cross examination has been done on this point that he was a gratuitous passenger. Only a vague cross examination has been done by him. In response to the question put by the counsel for insurance company which is in the positive form that, it is correct that labourers were travelling with the belonging and tools'. No further clarification was sought by the seasoned counsel like Mr. Sujit Jaiswal. According to him it is apparent from the record i.e. FIR that they were travelling in the Jeep but when a single eye*

witness was examined it was the duty of the insurance company if they say that driver and owner of the offending truck have colluded that petitioner to cross examine on this point seeking permission U/s. 170 of the Act showing collision

26 It is well settled law that while deciding MACT cases statement in FIR is not a gospel truth and onus of proving the defence is upon the person who takes the defence and not upon the others. No evidence has been led on this point by the insurance company. It is suggested in the positive manner that they were travelling with their belongings and tools.

27 Ld counsel for insurance company Sh. Sujit Jaiswal, Adv. said that they were relying on the DAR report, however, they have not settled the matter on this count and evidence has been led and they have been allowed to cross examine even the eye witness on the point of negligence on the point of avoidance of liability. Hence insurance company is only to substantiate its defence either through cross examination of eye witness or by leading its own evidence. The insurance company has taken premium in unnamed passenger also in the cover note, it is nowhere mentioned that these un-named person are driver or cleaner, however it is clarified subsequently after 60 days it is after the money has been received and the vehicle has been insured, that this term has been altered to read as un-named passenger, two drivers and two cleaners. However, it is a case of third party liability.

28 In view of the policy and specific terms of the policy the owner of the vehicle is made to understand at the time of issuance of cover note and payment of the premium. It has specifically come on record that Mangal Sah and his co passenger who died were travelling in the cabin with their goods and they have hired the vehicle. The other co passengers who might be not entitled to the benefit and riot petitioner before this Tribunal. Ld. Counsel interjects and states that it is against the record. I have checked the record that there are about 20 judgments decision of various Hon'ble High Court titled as United India Insurance Co. Ltd. vs. Myakala Sukochana & Ors. IV 2008 ACC 22, Pushpakaran vs. Union of India, IV (2008) ACC 33 (D.B.) Kerala High Court, National Insurance Co. Ltd. vs. Islavath

*Chinnamma & Ors. IV (2006) ACC 843 of Single Bench of Andhra Pradesh, Ramchandra & Anr. vs. Shivnarayan & Ors., IV (2006) ACC 838 Madhya Pradesh High Court and Oriental Insurance Co. Ltd. vs. Raghunath Srichandan & Ors. III (2006) ACC 622 Orissa High Court specifically mentioning that in compensation case under Motor Vehicles Act. FIR charge sheet or other police papers are not substantive evidence and same not to be accepted in view of oral evidence adduced by claimants, which is contrary to what has been stated in police papers. As per the above cited judgments, the FIR is not a gospel truth and once the petition go for trial and is put in cross examination, it is more important than that what is stated in the FIR. Hence, as the vehicle was duly insured and insurance company has failed to prove its defence that they are not liable to make the payment of the amount as both the passengers are unauthorised passengers. Onus of proving was on them. Neither they have examined any witness on their behalf on this point or cross examination, in my considered view specifically on this point infact a vague suggestion has been put which has been replied in affirmative by the witness that labourars were travelling with their belongings and tools. Nowhere a question was put to the witness that he was not travelling in the cabin when witness was specifically put on record that he was travelling in the cabin. Hence the insurance company is liable to make the payment of the compensation amount to the petitioners."*

22. This Court concurs with the view expressed by the learned Claims Tribunal. Having, observed above, that respondent No. 1/claimant is not a gratuitous passenger but owner/authorized representative of the goods. Hence, in view of the law laid down by the Hon'ble Supreme Court in **Baljit Kaur (Supra)** the Insurance Company/appellant herein is liable to pay the compensation.

(ii) **Whether Assessing functional disability as 50% without any documentary evidence is arbitrary or it required to be increased to 60%.**

23. It is an admitted position that respondent No. 1/claimant sustained 60% permanent disability as per the disability certificate. It is also an admitted position that due to the accident, the right leg below knee of respondent No. 1/claimant was amputated. Cogent documentary and oral evidence has been proved by the respondent/claimant to show that due to the physical disability suffered in the accident, he was not able to discharge his daily work and professional commitment to his full capacity and has been struggling to provide proper financial support to his family.
24. At this stage, it is relevant to mention that the 1988 Act is a beneficial legislation, the Hon'ble Supreme Court time and again has reiterated that the Act stipulates that there should be a grant of "just compensation". Thus, it becomes a challenge for the court of law to determine "just compensation" which is neither a bonanza nor a windfall, and simultaneously, should not be a pittance. The Courts should pragmatically compute the loss sustained which has to be in the realm of realistic approximation.
25. In the case of *Pappu Deo Yadav Vs Naresh Kumar and Ors* reported as *2020 SCC Online SC 752*, the Hon'ble Supreme Court while dealing with the issue of granting compensation to an accident victim has held that severe limitations inflicted due to such injuries undermine the dignity (which is now recognized as an intrinsic component of the right to life under Article 21) of the individual, thus depriving the person of the essence of the

right to a whole some life which she or he had lived, hitherto, relevant portion of the same reads as under:-

*“In parting, it needs to be underlined that Courts should be mindful that a serious injury not only permanently imposes physical limitations and disabilities but too often inflicts deep mental and emotional scars upon the victim. The attendant trauma of the victim's having to live in a world entirely different from the one she or he is born into, as an invalid, and with degrees of dependence on others, robbed of complete personal choice or autonomy, should forever be in the judge's mind, whenever tasked to adjudge compensation claims. Severe limitations inflicted due to such injuries undermine the dignity (which is now recognized as an intrinsic component of the right to life under Article 21) of the individual, thus depriving the person of the essence of the right to a wholesome life which she or he had lived, hitherto. From the world of the able bodied, the victim is thrust into the world of the disabled, itself most discomfiting and unsettling. If courts nit-pick and award niggardly amounts oblivious of these circumstances, there is resultant affront to the injured victim.”*

26. Following the aforesaid principles laid down by the Hon'ble Supreme Court of India as well as evidence produced on record, this Court is of the view that the learned Claims Tribunal has correctly assessed the functional disability of respondent No. 1/claimant as 50% and accordingly, the argument addressed by the learned counsel for both the parties for variation in the assessment of functional disability holds no ground.

(ii) **Whether applying minimum wages for calculation of compensation and also granting 30% increase towards future prospect under the head 'Loss of Income' and 'Loss of Future Income' is perverse and arbitrary?**

27. Before the learned Claims Tribunal, respondent No. 1/claimant has produced three witnesses i.e. PW-1, Smt. Dropati Bai wife

of deceased co-passenger, PW-2, Mangal Shah, the claimant himself and PW-3, Dr. Jitender Singh, Head of Department of Orthopadics of Dr. Baba Saheb Ambedkar Hospital, Delhi. Respondent No. 1/ claimant during his evidence claimed that he was earning Rs. 10,000/- per month before the accident. No evidence has been led by the Insurance Company/appellant to invalidate the claim raised by respondent No. 1/claimant. However, the learned Claims Tribunal has recorded in the impugned judgment that ‘*No proof of income has been placed on record*’. The learned Claims Tribunal taking into account the evidence led by respondent No. 1/claimant treated him as a unskilled labour and assessed his income by granting him minimum wages at the rate of Rs. 5,278/- per month.

28. In order ascertain, the applicability of minimum wages, the Supreme Court in the case of *Hem Raj v. Oriental Insurance Co. Ltd.*, reported as (2018) 15 SCC 654 has held that:-

“7. We are of the view that there cannot be distinction where there is positive evidence of income and where minimum income is determined on guesswork in the facts and circumstances of a case. Both the situations stand at the same footing. Accordingly, in the present case, addition of 40% to the income assessed by the Tribunal is required to be made.”

(emphasis supplied)

29. It is a trite law that in absence of any evidence, documentary or otherwise, to establish the earnings of the injured, the Courts have to determine the income of the injured on the basis of the minimum wages notified under the *Minimum Wages Act*. In the present case, the learned Claims Tribunal on the basis of un-

rebutted evidence led by respondent No. 1 has granted the minimum of unskilled labour to respondent No. 1/claimant for assessing the compensation under the head '*Loss of Income*'. This Court is of considered opinion that the learned Claims Tribunal has rightly granted wages of unskilled labour to respondent No. 1/claimant.

**(v) Whether Compensation under the head '*Future Prospects*' shall be 40% instead of 30%.?**

30. This argument raised by the learned counsel for the respondent is purely legal and based on the law settled by the Hon'ble Apex Court in the case of *Pranay Sethi (Supra)* In terms of *Pranay Sethi (Supra)* an addition of 40% of the established income of respondent No. 1/claimant has to be granted under the head '*Future Prospects*' as respondent No. 1/claimant was of the age of 39 years at the time of the alleged incident. The Hon'ble Apex Court in the case of *Pranay Sethi (Supra)* with regard to grant of compensation under the head '*Future Prospects*' has held as under:-

*"....The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.*

*60. 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. SarlaVerma thinks it appropriate not to add any amount and the same has been approved in ReshmaKumari. 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)*

31. Accordingly, in view of the settled position as discussed above, this Court is of the view that an addition of 40% of the established income of the respondent/claimant has to granted under the head ‘*Future Prospects*’ instead of 30% as awarded by the learned Tribunal.

**(iv) Whether compensation under the heads ‘Special Diet’, ‘Conveyance Charges’ and ‘Pain and Suffering’ is to be modified?**

32. Learned counsel for both the parties have not referred to any substantial perversity in the impugned judgment in relation to grant of compensation under the heads ‘*Special Diet*’, ‘*Conveyance Charges*’ and ‘*Pain and Suffering*’ is concerned, as such this Court is not inclined to modify the compensation under the above heads. Accordingly, the argument raised by respective counsel in this regard is rejected.

33. In view of the above discussion, the compensation under the head '*Future loss of income*' is computed asunder:-

1. Rs. 5,278/- (monthly income) + 40% (Rs. 2,112.20/-) = Rs. 7,389.20/-
2. Rs. 7,389.20/- X 12 = Rs. 88,670.40/-  
(Annual Income)
3. Rs. 88,670.40/- X 15X50%= Rs. 6,65,028/-  
(Future Loss of Income)

34. Accordingly, the compensation granted by the learned Claims Tribunal is reduced/modified as under:-

| Head                                    | Amount                |
|-----------------------------------------|-----------------------|
| Medical Bills                           | Rs. 12,972/-          |
| Future medical expenses                 | Rs. 1,50,000/-        |
| Loss of Income                          | Rs. 10,556/-          |
| Loss of future prospect                 | Rs. 6,65,028          |
| Special Diet expenses                   | Rs. 7,000/-           |
| Conveyance charges                      | Rs. 7,000/-           |
| Pain suffering, mental shock and trauma | Rs. 1,00,000/-        |
| <b>Total</b>                            | <b>Rs. 9,52,556/-</b> |

35. Accordingly, the compensation granted by the learned Tribunal is enhanced from **Rs. 9,05,054/-** to **Rs. 9,52,556/-**.

36. This Court vide order dated 15.07.2013 directed the Insurance company/appellant to deposit the entire awarded compensation with upto date interest the Registry of this Court. Further the

Registry was directed to release the 60% of the said deposited amount to the claimant/respondent No. 1.

37. Hence in view of the same, the Appellant is directed to deposit the differential amount with 9% interest from the date of filing of the present Appeal till the date of deposit within a period of 4 weeks. Upon deposit of the said differential amount, Registry is directed to release the said differential amount along with balance 40% of the original deposited amount to the claimant/respondent No. 1, within a period of 4 weeks along with interest accrued thereupon. Statutory amount alongwith interest accrued thereupon should be released to the respondent No. 1/Claimant.

38. With the above directions, appeal stands disposed of. No order as to costs.

**GAURANG KANTH, J.**

**APRIL 21, 2023**

**n**