



2024:DHC:6474



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

% **Date of order: 28th August, 2024.**

+ **MAC.APP. 112/2021**

RAM CHANDERAppellant

Through: **Mr. S.K.Vashistha and Mr. Ankit
Sharma, Advocates.**

versus

VIVEK RANJAN & ANR.Respondents

Through: **Ms. Roshni Patil, Advocate for R-1
(Through VC).**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present appeal under Section 173 of the Motor Vehicles Act, 1988 has been filed on behalf of the appellant challenging the award dated 28th September, 2020 (hereinafter as the 'impugned award') passed by the learned Motor Vehicles Claims Tribunal, Rohini Courts, Delhi (hereinafter as the 'Tribunal') in MAC No. 5227/16 seeking enhancement of the compensation awarded to him.

2. The brief facts of the case are as follows:

- a. On 2nd July, 2013, Shri Ram Chander, the appellant/ claimant, was driving his truck from Azadpur, Delhi to Singhu Border. When he reached near Jain Mandir, Village Nangli, GT Road, Delhi, his truck broke down due to mechanical malfunctioning



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and the appellant called for mechanical help, waiting at the side of the road.

- b. In the meantime, at around 9:45 AM, one Maruti Car bearing registration no. DL-9CL-3356 (hereinafter as the 'offending vehicle'), which was travelling towards Azadpur and being driven by the respondent no. 1 hit the appellant, thereby causing him grievous injuries.
- c. Subsequently, an FIR No. 314/13 was registered under Sections 279/338 of Indian Penal Code, 1860 at Police Station S.P. Badli. The investigating officer filed a Detailed Accident Report (hereinafter as the 'DAR'), and claim petition bearing no. 5227/16 was filed, wherein the appellants sought compensation for sustaining the grievous injuries due to the rash and negligent driving of the offending vehicle by respondent no. 1.
- d. Thereafter, the learned Tribunal passed the impugned award dated 28th September, 2020 holding that the respondent no. 1 was driving in a rash and negligent manner, thereby, causing grievous injuries to the appellant. Accordingly, the learned Tribunal awarded a sum of Rs. 16,82,700/- to the appellant.
- e. Aggrieved by the compensation awarded by the learned Tribunal, the appellant has filed the instant appeal seeking enhancement of the same.



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3. Learned counsel appearing on behalf of the appellant submitted that the learned Tribunal failed to consider the appellant's salary as Rs. 11,500/- for computing the compensation for loss of income, despite having enough evidence on record.

4. It is submitted that the learned Tribunal erred in considering the loss of income for the duration of one year for medical treatment, whereas the appellant was under medical treatment for two years and that the medical records prove the same.

5. It is submitted that the learned Tribunal erred in taking 40% as functional disability while awarding the compensation, when the disability certificate states that he has incurred 61% permanent disability, thereby, affecting his loss of future income.

6. It is further submitted that just and fair compensation has not been awarded by the learned Tribunal for pain and suffering; loss of amenities and enjoyment of life; conveyance; special diet and nursing charges.

7. It is submitted that the learned Tribunal failed to award any compensation for mental and physical shock; disfiguration; hardships etc. as the appellant is entitled for the same given the intensity of his injuries.

8. In view of the foregoing submissions, it is submitted that instant appeal may be allowed, and the compensation amount may be enhanced.

9. *Per contra*, the learned counsel appearing on behalf of the respondent no. 1 submitted that the learned Tribunal has rightly assessed the loss of income by taking into consideration the minimum wages of an unskilled worker and one year as duration of medical treatment as no sufficient proof



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of evidence was placed on record by the appellant before the learned Tribunal to prove otherwise.

10. It is submitted that the learned Tribunal was correct in determining 40% as functional disability with respect to the whole body for calculating the loss of future income.

11. It is submitted that the appellant is not eligible for enhancement of compensation for pain and suffering; conveyance; loss of amenities; nursing charges etc. as well as additional compensation for disfigurement; mental and physical shock; hardships etc. as the same has been rightly awarded by the learned Tribunal in its impugned award.

12. Heard the learned counsel for the parties and perused the record.

13. The instant appeal is admitted.

14. It is the case of the appellant that the learned Tribunal has failed to consider the evidence on record while granting compensation under different heads and erred in computing the compensation which is liable to be enhanced in terms of the settled position of law.

15. In rival submissions, it has been contended on behalf of the respondent no. 1 that the learned Tribunal has passed the impugned award after giving due consideration to the evidence and overall difficulties of the appellant, therefore, no further enhancement is required to be given.

16. Therefore, the question for adjudication before this Court is whether the learned Tribunal erred in awarding adequate compensation to the appellant *vide* the impugned award dated 28th September, 2020.



17. Before advertng to the findings of the case, it is imperative for this Court to peruse the impugned award, relevant portion of which is as under –

“ISSUE NO. 2.

14. Section 168 of the Act enjoins the Claims Tribunal to hold an inquiry into the claim to make an award determining the amount of compensation which appears to it to be just and reasonable. It has to be borne in mind that the compensation is not expected to be a windfall or a bonanza nor it should be niggardly.

MEDICAL EXPENSES

15. PW1 Sh.Ram Chander i.e. injured himself, has deposed in his evidence by way of affidavit(Ex. PW1/A) that after the accident, he was taken to SRHC Hospital where his MLC was prepared. He further stated that he remained under treatment for a considerable period and incurred a a sum of Rs.7,00,000/- on his medical treatment. He relied upon the medical bills and prescriptions Ex.PW1/C(colly) to Ex. PW1/D(colly). in his affidavit of additional evidence Ex. PW1/X the petitioner has deposed that he was again admitted in the Saroj Hospital from 13.09.2017 to 14.09.2017 and undergone surgery. The petitioner has filed onrecord the discharge card issued by Saroj Hospital and Heart Institute which shows that he was admitted in the said hospital on 02.07.2013 and was discharged on 22.07.2013 and the diagnosis is mentioned as Raw area B/L Lower Leg with exposed bone fracture and displaced open grade 2-3 fracture tibia with focal subarchanoid hemorrhage. Further the another discharge summary issued from aforesaid Saroj Hospital shows that the petitioner was again admitted in the said hospital on 21.09.2013 and was discharged on 22.09.2013. The petitioner has also filed on record another discharge summary issued by Saroj Hospital which shows that he was admitted in the said hospital on 09.10.2013 and was discharged on 10.10.2013. Further in order to prove his



treatment and expenditure the petitioner has also examined Sh. Anil Sharma, Medical Record Incharge and Dr. Vinay Gupta, from Saroj hospital. Both the said witnesses have proved the medical treatment record of the petitioner of Saroj Hospital.

16. The petitioner has also filed on record the dressing bills Ex. PW1/C(colly) issued by General Hospital and Maternity Home, Narela, Delhi. The treatment record of Saroj Hospital clearly shows that the petitioner was advised continues dressing of both lower limbs. The bills Ex. PW1/C(colly) does not appear on the higher side. Further in order to prove the said bills the petitioner has also examined Sh. Rahish Khan as PW-3 who deposed that he is looking after the administration of the said hospital and has been authorised by Dr. Poonam Khatri to depose on her behalf. He identified the signatures of Dr. Poonam Khatri on Ex. PW1/C(colly). In view of material on record, I have no hesitation to hold that the petitioner might have incurred expenditure as per Ex. PW1/C(colly).

*17. It is relevant to note that the injured has filed on record the medical bills and dressing bills to the tune of Rs.7,71,458/-. It is quite evident that the respondents have not disputed the authenticity and genuineness of the said medical bills during the course of inquiry. Respondents have also not led any evidence in rebuttal so as to create any doubt on the genuineness of said bills. Accordingly, a sum **Rs.7,71,458/-** is awarded to the petitioner under this head.*

LOSS OF INCOME

18. Injured Sh. Ram Chander(PW1) has categorically deposed in his evidence by way of affidavit(Ex PW1/A) that at the time of accident he was working as truck driver and was earning a sum of Rs.11500/- per month. He further stated that due to the injuries sustained he was compelled to confine in bed for a long period. Though in order to prove his income the petitioner has



examined one Aashish Garg as PW-4 who deposed that the petitioner was working as driver with him and he used to pay Rs.11,500/- per month as salary. But during his cross examination he admitted that he can not produce any document in regard of employment and payment of salary to the injured. Since there is nothing on record to prove the employment and income of injured, the income of the injured shall be taken as minimum wages as per his educational qualifications. The petitioner has not filed any documentary proof of his educational qualifications, hence, the income of the petitioner is taken as minimum wages of an unskilled worker prevalent at the time of accident i.e. on 02.07.2013 which were Rs.7722/-

*19. The petitioner has deposed that he was confined to bed for a long period. The petitioner has not filed any document showing that he was advised complete bed rest for any specific period. However, the medical treatment record of the petitioner shows that he remained under treatment for a period of about two years. Considering the nature of injuries sustained by the petitioner and in view the treatment record brought on record, it is presumed that he would not have been able to work at all atleast for a period of one years or so. Thus, a sum of **Rs. 92,664/-** (Rs.7722x12) is awarded in favour of petitioner and against the respondent under this head.*

PAIN AND SUFFERING

*20. Hon'ble Delhi High Court in the matter titled as "**Vinod Kumar Bitoo Vs. Roshni & Ors.**" passed in appeal bearing no. **MAC.APP 518/2010** decided on 05.07.12, has held as under:*

" It is difficult to measure the pain and suffering in terms of money which is suffered by a victim on account of serious injuries caused to him in a motor vehicle accident. Since the compensation is required to be paid for pain and suffering an attempt must be made to award compensation which may have some objective relation with the pain and suffering underwent



by the victim. For this purpose, the Claims Tribunal and the Courts normally consider the nature of injury; the part of the body where the injuries were sustained, surgeries, if any, underwent by the victim, confinement in the hospital and the duration of treatment".

*21. Injured himself as PW1 has deposed in his evidence by way of affidavit(Ex PW1/A) that he had sustained grievous injuries in the accident in question. As already noted above, the medical treatment record of the petitioner shows that he remained under treatment for a considerable period. Apart from this, the petitioner is also shown to have sustained permanent disability to the extent 61 % in relation to his both lower limbs. Thus, he would have undergone great physical sufferings and mental shock on account of the accident in question. Keeping view the medical treatment record of petitioner available on record and the nature of injuries suffered by him, I hereby award a sum of **Rs. 60,000/-** towards pain and sufferings to the petitioner.*

LOSS OF GENERAL AMENITIES & ENJOYMENT OF LIFE

*22. As already mentioned above, there is sufficient evidence record to establish the petitioner remained under treatment for a considerable period. His treatment record would also show that he had suffered 61% permanent physical impairment in relation to his both lower limbs. Thus, he would not be able to enjoy general amenities of life after the accident in question, during rest of his life and his quality of life has been definitely affected. In view of the nature of injuries including permanent disability suffered by him and his continued treatment for considerable period, I award a notional sum of **Rs. 50,000/-** towards loss of general amenities and enjoyment of life to the petitioner.*



CONVEYANCE, SPECIAL DIET & ATTENDANT CHARGES

23. In para 5 of his affidavit Ex. PW1/A the petitioner has deposed that he incurred a sum of Rs.80,000/- on conveyance and Rs. 50,000/- on special diet. He further stated that he was compelled to hire services of one attendant for about eight months at the monthly salary of Rs.4000/- per month.

24. In order to prove the expenditure on conveyance the petitioner has relied upon the conveyance bills Ex. PW1/E(colly) issued by R. K. Tour and travells. In order to prove the genuineness of the said bills the petitioner has also examined one Sh. Rajender Kumar, as PW-5 who deposed that he used to run the business of tour and travels under the name of R. K. Tour and travels. He further deposed that he issued the bills Ex. PW1/E(colly).

25. It is argued on behalf of insurance company that the petitioner has not incurred expenditure as per conveyance bills Ex. PW1/E(colly) and produced fabricated bills record, in order to get higher compensation. Per contra. it is argued on behalf of petitioner that the petitioner has continuously attended the medical treatment and incurred expenditure conveyance per bills Ex. PW1/E(colly).

26. It be noted though in order to prove the genuineness conveyance bills Ex. PW1/E(colly) the petitioner has examined Sh. Rajender Kumar as PW-5 but he could not produce the carbon copy of the said bills. PW-5 also could not produce any document to prove that he was running tour and travel company in the name and style of M/s R. K. Tour and Travels. In the absence of any documentary proof of existence of aforesaid M/s R. K. Tour and Travels and carbon copy of conveyance bills Ex. PW1/E(colly), I am not inclined to accept the claim of petitioner qua the said bills. Hence, the same is



*declined. However, since the petitioner has suffered grievous injuries and consequent disability, notice can be taken of the fact that the petitioner might have incurred considerable amount towards conveyance charges while commuting to the concerned hospital as OPD patient for his regular check up & follow up during the period of his medical treatment and must have incurred expenditure. Accordingly, I deem it appropriate to award a sum of **Rs.20,000/-** towards conveyance charges.*

*27. The petitioner has failed to lead any cogent evidence on record in respect of amount incurred by him on special diet and attendant charges. At the same time, it cannot be overlooked that he had sustained 61% permanent physical impairment in relation to his both lower limbs and remained under treatment for a considerable period. Thus, he would have taken special rich protein diet for his speedy recovery. since the petitioner has suffered injuries in his both lower limbs, he would have been definitely helped by some person either outsider or from his family, to perform his daily activities as also while visiting the hospital during the course of his medical treatment. In these facts and circumstances, I hereby award a sum of **Rs.20,000/-** each for special diet and attendant charges to the petitioner.*

LOSS OF FUTURE INCOME

28. As already stated above, the petitioner is shown to have sustained 61% permanent physical impairment in relation to his both lower limbs. Same is quite evident from Disability Certificate dated 27.01.2016 of Medical Board of SRHC Hospital.

29. In order to prove the genuineness of the disability certificate the petitioner has examined PW-5 Dr. Ashutosh Gupta, Specialist Orthopaedics, SRHC Hospital, Delhi. He proved on record the disability certificate Ex. PW5/1. He deposed that the injured Sh.Ram Chander was examined by the



Medical Board consisting of five doctors of SRHC Hospital and he was also member of the said Board. He deposed that the petitioner was found to have suffered 61% permanent disability in respect of his both lower limbs. He further deposed that due to the disability the petitioner will have mild to moderate difficulty in walking, standing, running, squatting, cross legs sitting and kneeling etc. He will have difficulty in lifting or carrying the weight. He further deposed that he can not drive any type of vehicle on account of aforesaid disability in future.

30. It is argued on behalf of petitioner that the petitioner was a driver by profession and PW-5 Dr. Ashutosh Gupta has specifically deposed that the petitioner can not drive any type of vehicle and hence, the disability be taken as 100% in relation to his earning capacity. Here it be noted that the petitioner has not proved his avocation of driving by cogent evidence. There is nothing on record to show that the petitioner was a truck driver by profession. Hence, keeping in view the overall facts and circumstances of the case including the nature of injuries sustained by petitioner, his functional disability is taken as 40% with regard to whole body.

*31. The PAN the injured shows date of birth to be 01.01.1971. The date of accident is 02.07.2013. In view of said document, his about 42 years as the date of accident. Hence, the appropriate multiplier would be 14 in view of recent pronouncement made by Constitutional Bench of Apex Court in the case titled as "**National Insurance Company Ltd. Vs. Pranay Sethi Ors.**", passed in SLP(Civil) No. 25590/14 decided on 31.10.17. The monthly notional income of petitioner has been taken as Rs.7722/- per month as discussed above. Thus, the loss of monthly future income would be Rs.3088/- (Rs.7722x 40/100). The total loss of future income would be **Rs. 6,48,480/-** (Rounded of Rs. 6,48,500/-) (Rs. 3088 x 125/100 x 12 x14) (**Reliance placed on Jagdish Vs. Mohan Ors. (2018) 4***



SCC 571 and unreported decision of Hon'ble Delhi High Court in " The New India Assurance Co. Ltd. Vs. Deepak Arora & Ors.", MAC APP No. 320/2013 decided on 28.09.18). Thus, a sum of Rs.6,48,500/- is awarded in favour of petitioner under this head.

Thus, the total compensation is assessed as under:

1	Medical Expenses	Rs.	7,71,458/-
2	Loss of Income	Rs.	92,664/-
3	Pain and suffering	Rs.	60,000/-
4	Loss of general amenities and enjoyment of life	Rs.	50,000/-
5	Conveyance, special diet and attendant charges	Rs.	60,000/-
6	Loss of future income	Rs.	6,48,500/-
	Total	Rs.	16,82,622/-
	Rounded off to	Rs.	16,82,700/-

32. Now, the question which arises for determination is as to which of the respondents is liable to pay the compensation amount. Respondent no.2/insurance company has not proved any violation of terms and conditions of insurance policy. Respondent no.1/driver cum owner principal tortfeasor. Respondent no.2 being the insurer is liable to indemnify the insured. Hence, respondent no.2/insurance company is held liable to pay compensation amount. Issue no.2 is decided accordingly."

18. Upon perusal of the above excerpts of the impugned award, it is made out that while inquiring into the claim of awarding a reasonable compensation, the learned Tribunal relied upon the testimonies of the claimant's witnesses in determining the authenticity of the disability



certificate, employment, medical treatment etc. of the appellant, thereby ascertaining the loss of income as well as the future income. The learned Tribunal further relied on the intensity of the injuries, evidence on record as well as the situational difficulties faced by the appellant in granting compensation of Rs. 16,82,700/-, to be paid by the respondent no. 2.

19. In light of the above, this Court finds it apposite to address the issue of compensation awarded by the learned Tribunal by *firstly* addressing the reliefs sought under the ‘pecuniary heads’ and then the ‘non-pecuniary heads’.

20. It is the case of the appellant that the learned Tribunal has erred in granting just compensation under the head of loss of income as well as the head of future income.

21. While awarding compensation, various factors affecting the claimant needs to be taken into account and therefore, it is pertinent to note that the Hon’ble Supreme Court in the case of ***Raj Kumar vs. Ajay Kumar, (2011) 1 SCC 343***, observed the multiple factors to be considered while awarding compensation under various heads, which is inclusive of both loss of income and future income. The relevant portion of the said judgment is as follows –

“General principles relating to compensation in injury cases

4. The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do



so, in a fair, reasonable and equitable manner.

The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

5. The heads under which compensation is awarded in personal injury cases are the following:

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.

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. Decision of this Court and 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



6. 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 accidents 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 ('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.

7. 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%.

8. 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, 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. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on



appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation

(see for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. MANU/SC/0777/2010 : 2010(10) SCALE 298 and Yadava Kumar v. D.M., National Insurance Co. Ltd. MANU/SC/0657/2010 : 2010 (8) SCALE 567.

9. 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.

10. 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 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.”

22. By placing reliance on the aforesaid case, it is made out that the factors to be considered while determining the loss of income for the duration of treatment and future income are the income of the appellant, duration of the medical treatment, and extent of disability affecting his earning capacity.

23. It was testified by the appellant/PW-1 that before the occurrence of the accident, he was working as a Truck Driver, earning a monthly income of Rs. 11,500/- and in his cross-examination, he admitted that no proof of income has been produced on record. One Mr. Aashish Garg/ PW-4 also testified to the effect that the appellant worked as a driver for four years with him before the accident on the truck bearing no. HR-38-8616 and that he used to pay Rs. 11,500/- per month as salary. However, during his cross-examination, he admitted that he cannot prove the employment as well as the salary of the appellant *via* any documentary evidence.



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24. This Court has perused the record and found no document with respect to his employment or income, except for the driving license with HTV permit. However, mere possession of driving license with HTV permit does not prove that the appellant was employed as a driver and the same cannot be ascertained from the evidence available on record.

25. Relying on the testimonies of PW-1 and PW-4 and given that there is no proof to substantiate the argument advanced by the appellant, this Court is of the view that the learned Tribunal was right in taking the minimum wages of unskilled workers prevailing at the time of the accident, which is Rs. 7,722/- per month for determining the compensation for the loss of income as well as the future income, and no interference of any kind is required thereto.

26. It has been contended on behalf of the appellant that he underwent medical treatment for two years, and evidence of the same was also placed on record, however, the learned Tribunal failed to consider the same and has taken only one year as the duration of medical treatment while calculating the loss of income during the treatment.

27. With respect to the same, Mr. Rahis Khan/PW-3, who looks after the administration of the Delhi General Hospital and Maternity home, deposed that the appellant was given bandage for two years from the year 2013 and that the same stands recorded in receipts. Moreover, he has also testified that the said receipts of medical treatment were already placed on record.

28. This Court has perused the said receipts and other medical records, which duly reflects that the appellant had constantly visited the hospital for



about two years. Given the injuries sustained and operations underwent by the appellant, it is reasonable to presume that the appellant failed to generate income for these two years and the same needs to be considered while calculating the loss of income for duration of treatment. In view of the same, this Court awards a sum of **Rs. 1,85,328/-** [=Rs. 7,722 x 24 months] for the loss of income, thereby, enhancing the amount granted by the learned Tribunal.

29. In *Raj Kumar vs. Ajay Kumar (Supra)*, the Hon'ble Supreme Court has laid emphasis on the adverse impact of the permanent disability on the claimant's earning capacity for computing the compensation for loss of future income.

30. Further, it has been reiterated by the Hon'ble Supreme Court in *Sandeep Khanuja v. Atul Dande and Anr.*, (2017) 3 SCC 351, that in order to ascertain the loss of future income, it is imperative for the Court to determine the permanent disability incurred by the injured and the effect of the same on his/her earning capacity. The relevant paragraph is reproduced hereinunder –

“15. The crucial factor which has to be taken into consideration, thus, is to assess as to whether the permanent disability has any adverse effect on the earning capacity of the injured. In this sense, the MACT approached the issue in right direction by taking into consideration the aforesaid test. However, we feel that the conclusion of the MACT, on the application of the aforesaid test, is erroneous. A very myopic view is taken by the MACT in taking the view that 70% permanent disability suffered by the Appellant would not impact the earning capacity of the Appellant. The MACT



thought that since the Appellant is a Chartered Accountant, he is supposed to do sitting work and, therefore, his working capacity is not impaired. Such a conclusion was justified if the Appellant was in the employment where job requirement could be to do sitting/table work and receive monthly salary for the said work. An important feature and aspect which is ignored by the MACT is that the Appellant is a professional Chartered Accountant. To do this work efficiently and in order to augment his income, a Chartered Accountant is supposed to move around as well. If a Chartered Accountant is doing taxation work, he has to appear before the assessing authorities and appellate authorities under the Income Tax Act, as a Chartered Accountant is allowed to practice up to Income Tax Appellate Tribunal. Many times Chartered Accountants are supposed to visit their clients as well. In case a Chartered Accountant is primarily doing audit work, he is not only required to visit his clients but various authorities as well. There are many statutory functions under various statutes which the Chartered Accountants perform. Free movement is involved for performance of such functions. A person who is engaged and cannot freely move to attend to his duties may not be able to match the earning in comparison with the one who is healthy and bodily abled. Movements of the Appellant have been restricted to a large extent and that too at a young age. Though the High Court recognised this, it did not go forward to apply the principle of multiplier.”

31. It is the contention of the appellant that the learned Tribunal erred in taking the disability of the appellant as 40%, whereas the disability certificate states that he has incurred 61% permanent disability and therefore, the loss of future income has been calculated incorrectly.

32. Dr. Ashutosh Gupta/PW-5 (wrongly marked as PW-5 before the learned Tribunal) testified that he was one of the members of the Disability



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Board of SRHC Hospital, which assessed the appellant's disability. It was admitted that the disability certificate was issued by the Board, which reflects that the appellant suffers 61% permanent disability in both of his lower limbs and with respect to the same, the calculation sheet was exhibited. In his cross-examination, Dr. Gupta/PW-5 deposed about the functionality of the appellant, thereby, stating that he will face mild to moderate difficulty in walking, standing, sitting, squatting etc. and lifting weights, however, cannot drive any vehicle in the future.

33. It is pertinent to note that the appellant's employment as well as the income has not been proved before this Court and that the same cannot be taken into consideration while determining the effect of the permanent disability on the earning capacity.

34. The appellant has undergone surgeries pertaining to the injuries sustained by him, however, placing reliance on the testimony of Dr. Gupta/PW-5, there is no doubt that the appellant faces only mild to moderate difficulty in doing basic human activities and there is nothing on record to show that his ability to function and to work for gain has been affected majorly. Further relying on *Sandeep Khanuja v. Atul Dande and Anr. (Supra)* and *Raj Kumar vs. Ajay Kumar (Supra)*, for the impact of disability on the earning capacity, this Court is of the view that the learned Tribunal was correct in taking 40% as the functional disability for calculating the loss of income and therefore, no interference of this Court is required thereto.



35. Before calculating the loss of future income, it is important to note that the learned Tribunal has also included future prospects. Awarding both the loss of future income as well as the future prospects is imperative in the cases of permanent disability, as observed by the Hon'ble Supreme Court in ***Sidram vs. The Divisional Manager, United India Insurance Co. Ltd. and Ors.*, 2022 INSC 1204.**

36. Since this is a case of permanent disability, it is just and reasonable to award future prospects to the appellant. However, the factors to be borne in mind while calculating future prospects has been observed in ***National Insurance Co. Ltd vs Pranay Sethi*, AIR 2017 SC 5157**, wherein it was stated that:

“61.

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

37. In light of the above, this Court finds that the appellant was 42 years of age at the time of the accident and was an unskilled labor, and therefore, an addition of 25% of the established income is liable to made towards future prospects.

38. Although this Court finds that the values and reasoning given by the learned Tribunal are correct with respect to the loss of future income, the calculation of the same was done incorrectly. Therefore, the amount to be



granted for the loss of income, which is inclusive of future prospects, stands modified to **Rs. 6,34,748/-**. The calculation for the same is as follows—

Loss of future income	Rs. 5,18,918/- [=Rs. 7,722 (<i>monthly income</i>) x 12 (<i>months</i>) x 14 (<i>multiplier</i>) x 40% (<i>functional disability</i>)]
Future prospects	Rs. 1,15,830/- [= Rs. 92,664 (<i>annual income</i>) + 23,166 (25% of <i>annual income</i>)]
TOTAL	Rs. 6,34,748/-

39. Now, while adverting to awarding compensation under the non-pecuniary heads, this Court finds it pertinent to mention the observations made by the Hon'ble Supreme Court in the case of ***R.D. Hattangadi vs. Pest Control (India) Pvt. Ltd. and Ors.***, AIR 1995 SC 755, wherein, compensation to be awarded under the 'pecuniary and non-pecuniary heads' has been discussed. The relevant portion is as follows –

“9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit upto the date



of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment frustration and mental stress in life.”

40. In view of the aforementioned judgment, since the expenses incurred under the non-pecuniary heads cannot be calculated by way of any exact formula, the quantum of the same has to be just and reasonable.

41. It has been deposed by PW-1 that he sustained grievous injuries due to the negligence of respondent no. 1. Moreover, even the medical records project that the appellant has undergone medical treatment for a period of two years, and that the disability certificate reflects that the appellant has sustained 61% permanent impairment in both lower limbs, which has been further corroborated by the testimony of witnesses, which has been meticulously examined by this Court.

42. Therefore, this Court is of the considered view that the learned Tribunal has rightly taken the factors affecting the appellant's life into consideration while granting for pain and suffering, however, failed to grant appropriate compensation thereto.

43. It is well-known that the compensation to be awarded for 'pain and suffering' has no fixed arithmetic formula and so, the Courts are bound to



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consider the circumstantial difficulties affecting the claimant/victim due to the occurrence of the accident. Therefore, this Court is of the view that the compensation for 'pain and suffering' in the instant case is liable to be enhanced due to the adversity of the injuries sustained by the appellant and the subsequent mental and physical pain experienced on an everyday basis. Accordingly, the compensation awarded under the head of 'pain and suffering' is enhanced from Rs. 60,000/- to **Rs. 1,00,000/-**.

44. Moving further, the appellant has incurred 61% permanent impairment in both lower limbs due to the accident and the same affects in performing his daily activities to some extent, as also testified by Dr. Gupta/PW-5. As the appellant cannot go back to his earlier healthy-self due to the nature of his injuries, he cannot experience the enjoyment of life as well as the general amenities and benefits of life. Therefore, this Court finds that the learned Tribunal was correct in awarding **Rs. 50,000/-** for the loss of amenities and enjoyment of life, hence, requiring no enhancement.

45. Further, it was deposed by PW-1 that he has incurred Rs. 80,000/- and Rs. 50,000/- for the conveyance and special diet expenses respectively. In his additional evidence, he testified that he has additionally incurred Rs. 70,000/- and Rs. 50,000/- for conveyance and special diet respectively. However, the aforesaid expenses were not admitted in his cross-examination. Additionally, Shri Rajender Kumar/PW-5 (incorrectly numbered by the learned Tribunal) testified that he owns R.K. Tours and Travels and has issued bills pertaining to the appellant's conveyance.



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However, it has been admitted that the carbon copies of the same are not in his possession as the business has been wound up.

46. This Court has perused the conveyance bills placed on record, however, in absence of the carbon copies of Mr. Rajender Kumar/PW-5, to substantiate the same, the authenticity of the bills is not proved. Therefore, this Court cannot take the said bills into consideration while awarding compensation for conveyance.

47. However, despite considering the difficulty of the appellant in leading his daily life, the learned Tribunal has awarded a nominal amount of Rs. 20,000/-, which cannot be classified as just and reasonable. Therefore, in the interest of justice, this Court enhances the said amount from Rs. 20,000/- to **Rs. 50,000/-** under the head of conveyance, given the difficulty the appellant might incur in his future conveyance.

48. As no proof with respect to the special diet has been submitted, nominal compensation of **Rs. 20,000/-** awarded by the learned Tribunal is correct and requires no interference.

49. So far as the attendant charges are concerned, it has been testified by PW-1 that he spent Rs. 4,000/- for attendant charges for eight months. However, no proof pertaining to the said expense has been laid down. Here, it is pertinent to mention the judgment passed by the Hon'ble Supreme Court in *Jithendran v. New India Assurance Co. Ltd.*, (2022) 15 SCC 620, wherein, it was observed that in the absence of any material pertaining to the attendant charges are on record, a conservative estimate of Rs. 5,000/- per month appears to be the bare minimum.



50. Since the appellant was under treatment for two years, this Court deems it appropriate to calculate the expenses for nursing/ attendant charges for two years, amounting to **Rs. 1,20,000/-** [=Rs. 5,000 (*monthly expenses*) x 24 (*months*)] .

51. Although the case of ***R.D. Hattangadi vs. Pest Control (India) Pvt. Ltd. and Ors (Supra)*** specifies that the compensation needs to be awarded under particular heads, the same has been subsequently dealt by the Hon'ble Court in ***Raj Kumar vs. Ajay Kumar (Supra)***, wherein 'mental & physical shock' and 'inconvenience, hardship, discomfort, disappointment frustration and mental stress in life' have been incorporated under the heads of 'pain and suffering' and 'conveyance' respectively.

52. In the present case, the learned Tribunal has already awarded the compensation for 'pain & suffering' and 'conveyance' and awarding additional compensation for 'mental and physical shock and inconvenience, hardships etc.' is unnecessary as the purpose for compensation has already been delivered. Therefore, no additional compensation under the aforementioned heads is required to be.

53. It is also the case of the appellant that the learned Tribunal has failed to grant compensation for disfigurement, however, it is pertinent to note that compensation for 'disfigurement' is awarded when the physical appearance of a particular part is damaged, which requires additional effort in reversing the damage. This Court finds that such is not the case of the appellant and no proof with respect to the same has been placed on record. Therefore, additional compensation for disfigurement cannot be granted.



54. Given the aforesaid reasoning, the compensation awarded to the appellant stands modified and the same shall now be read as under –

S.No	Heads of Compensation	Amount
1.	Medical expenses	Rs. 7,71,458/-
2.	Loss of income during the treatment	Rs. 1,85,328/-
3.	Loss of future income	Rs. 6,34,748/-
4.	Pain and suffering	Rs. 1,00,000/-
5.	Loss of amenities and enjoyment of life	Rs. 50,000/-
6.	Loss of conveyance	Rs. 50,000/-
7.	Loss of special diet	Rs. 20,000/-
8.	Nursing charges	Rs. 1,20,000/-
	TOTAL	Rs. 19,31,534/-

55. Considering the observations made hereinabove, the total compensation awarded to the appellant stands enhanced from Rs. 16,82,700/- to **Rs. 19,31,534/-** along with interest @ 9% per annum.

56. In view of the foregoing discussions of facts and law, the impugned award dated 28th September, 2020 passed by the learned Motor Vehicles Claims Tribunal, Rohini Courts, Delhi in MAC No. 5227/16, is modified to the aforesaid extent and the instant appeal stands partly allowed.

57. The respondent no. 2/insurance company is directed to pay the compensation amount of **Rs. 19,31,534/-** to the appellant within the period



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of four weeks from the date of the receipt of this order, after deducting the amount already paid/deposited.

58. Accordingly, the instant appeal is disposed of along with the pending application(s), if any.

59. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 28, 2024
gs/mk/ryp