



2024:DHC:5593



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Order: 22nd July, 2024**
+ **MAC.APP. 383/2023**
DARSHAN LALAppellant
Through: **Mr. Amit Kumar, Advocate**
(Through VC)
versus
SUNNY & ORS.Respondents
Through: **Mr. Ravi Sabharwal, Advocate for**
R-3/Insurance company

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J

1. The instant appeal has been filed on behalf of the appellant under Section 173 of The Motor Vehicles Act, 1988 ("the Act" hereinafter) seeking setting aside of the impugned judgment and award dated 25th April, 2023 passed by the learned MACT – 01, West, Tis Hazari Courts, Delhi in MACT Case bearing no. 324/2020 ("impugned award" hereinafter) and also enhancement of the compensation amount awarded by the learned Tribunal.

2. The relevant facts leading to the filing of the instant appeal are as follows:

- a. On 19th January, 2020, the appellant namely Sh. Darshan Lal was travelling on his scooty bearing registration no. DL9SAP5620 ("injured vehicle" hereinafter) from his residence to his shop located in Karol Bagh when he met with an accident with a bus bearing no. DL 1PC4163



(“offending vehicle” hereinafter) which was being driven by the respondent no. 1 namely Sh. Sunny. Due to the said accident, the appellant sustained multiple injuries and was admitted in a government hospital for his treatment.

- b. Pursuant to his admission in the hospital, it was opined by the doctor *vide* MLC bearing no. 1851/20 that the injuries sustained by the appellant would require time to heal. Consequently, the appellant applied for a disability certificate. As per the disability certificate dated 24th December, 2021, the disability of the appellant was assessed at 47% on account of locomotor disability and chronic neurological conditions. Further, as per the neurological assessment of the appellant dated 10th September, 2021, the permanent disability of the appellant was assessed at 14% on account of head injury with post traumatic stiffness of left ankle joint.
- c. Subsequently, a claim petition bearing MACT no. 324/2020 was filed by the appellant before the learned Tribunal. In the said claim petition, *vide* judgment and award dated 25th April, 2023, the learned Tribunal awarded compensation of Rs. 5,33,929/- to the appellant after deducting 50% on account of contributory negligence on his part.
- d. Aggrieved by the aforementioned impugned award, the appellant has filed the instant appeal.



2024:DHC:5593



3. Learned counsel appearing on behalf of the appellant submitted that the impugned award is bad in law and liable to be set aside as the same has been passed without taking into consideration the entire facts and circumstances of the case.

4. It is submitted that the learned Tribunal erred in holding contributory negligence on the part of the appellant and due to the said erroneous finding the learned Tribunal further erred in calculating the quantum of the compensation.

5. It is submitted that the findings of the learned Tribunal is against the pleadings and the documents on record as the learned Tribunal has incorrectly concluded that the accident in question took place due to the contributory negligence of the appellant.

6. It is further submitted that the learned Tribunal erred in passing the impugned award since it failed to consider the site map, photographs of the accident, pictures of the offending and the injured vehicle by virtue of which it is clear that the driver of the offending vehicle was solely liable for the accident.

7. It is submitted that the learned Tribunal failed to appreciate the settled position of law reiterated by the Hon'ble Supreme Court in the case of *Mohammad Siddique v. National Insurance Company Ltd.* (2020) 3 SCC 57 wherein, it was held that without any witnesses to prove that the deceased victim acted in a way which caused the accident or worsened their injuries, the victim cannot be considered negligent.

8. It is submitted that the Hon'ble Punjab & Haryana Court in *Agya Kaur and ors v. General Manager*, (1979) SCC OnLine P&H 270, had discussed and observed the fact which can decide the possibility of



2024:DHC:5593



contributory negligence on the part of the injured during a motor vehicle accident and held that there was no contributory negligence in a case where a rickshaw was being driven with extra load and received grievous injuries.

9. It is submitted that the learned Tribunal failed to give due consideration to the mechanical inspection report of the offending vehicle which established the force of impact and extent of damage of the appellant's vehicle.

10. It is further submitted that the mere examination of the photographs and site of the accident is insufficient to determine that the injured vehicle was in the wrong lane and crossed the red light. In order to prove that the injured vehicle was in the wrong lane and crossed a red light, the site map must be critically analyzed which the learned Tribunal failed to consider.

11. It is submitted that the learned Tribunal failed to appreciate that as per the documents pertaining to appellant's disability, the appellant had 47% disability in terms of neuropsychological impairment and 14% permanent disability, which do not permit him to work without any assistance. Therefore, the learned Tribunal incorrectly held that the percentage of functional disability of the appellant was merely 30%.

12. It is submitted that learned Tribunal wrongly considered Rs.14,842/- as the monthly income of the appellant. Further, the learned Tribunal made an error by applying a mere 10% future prospective benefit considering that the age of the appellant exceeded 50 years at the time of the accident. Due to such miscalculation, the total loss of earning capacity or future earnings to be Rs.6,46,510/- was wrongly determined.



2024:DHC:5593



It is further submitted that the functional disability of the petitioner should be considered at 50% along with 15% for future prospects.

13. It is submitted that since the findings of the learned Tribunal are based on surmises and conjectures, and not based on cogent and reliable evidence, therefore, the contributory negligence of the appellant to the tune of 50% is to be set aside and the compensation is to be enhanced.

14. It is submitted that the appellant is still taking treatment from Apollo Hospital and Ganga Ram Hospital and suffers from acute pain and agony.

15. It is submitted that at the time of the accident, the appellant was in the wholesale business of jeans earning Rs.23,000/- per month which the learned Tribunal failed to appreciate. It is further submitted that the learned Tribunal also failed to appreciate in the statement of the Investigating Officer, as per which the income of the appellant was estimated at Rs.30,000/-.

16. It is submitted that while deciding the quantum of loss of amenities of life, the learned Tribunal determined Rs.20,000/- which is against the law as well as the evidence available on record. It is further submitted that the appellant suffered 47% neuropsychological disability and 14% lower limb disability. Moreover, the learned Tribunal wrongly considered the loss of expectation of life at Rs.10,000/-.

17. Therefore, in light of the foregoing submissions, it is submitted that the present appeal may be allowed and reliefs may be granted, as prayed.

18. *Per contra*, learned counsel appearing on behalf of the respondent no. 3 insurance company vehemently opposed the instant appeal and submitted that the same is liable to be dismissed being devoid of any



2024:DHC:5593



merits.

19. It is submitted that the findings of the learned Tribunal are just and fair, and the same have been concluded on the basis of the evidence produced by the appellant and respondent no. 1. It is further submitted that the learned Tribunal has correctly determined that the appellant was also at fault for causing the accident in question.

20. It is submitted that the impugned award is valid in the eyes of law and has been passed by the learned Tribunal after meticulously examining the evidence placed on its record by the appellant and respondent no. 1, and rightly concluded the functional disability of the appellant at 30%.

21. It is submitted that the appellant failed to substantiate his assertion that the injuries caused to him has affected his employment conditions due to which he is unable to perform his job in an efficient manner and thus, the learned Tribunal rightly took 30% as the appellant's functional disability.

22. It is submitted that the appellant could not establish his source of income and the learned Tribunal rightly appreciated the same in order to assess as to how the disability of the appellant would affect his day to day functioning.

23. It is submitted that the appellant was driving his scooty while loading jeans (cargo) and carrying his helmet in his hand. Further, the appellant was driving the scooty in the wrong lane while having a heavy load on his scooty and the same makes it apparent that the learned Tribunal rightly determined the contributory negligence on the appellant's part.

24. It is submitted that the appellant failed to prove that the incident



2024:DHC:5593



took place due to the rash and negligent driving of respondent no.1.

25. Hence, in view of the forgoing submissions, it is submitted that the instant appeal may be dismissed.

26. The appeal is admitted.

27. Heard the learned counsel appearing on behalf of the parties and perused the record.

28. It is the case of the appellant that the learned Tribunal has not considered the documents on record in order to determine the disability of the appellant which is 47% neuropsychological impairment and 14% permanent disability. It has been contended that the learned Tribunal erroneously determined the contributory negligence of the appellant as it was the respondent driver's sole negligence that caused the accident which led to the aforesaid disability which was further wrongly reduced to a mere 30% functional disability of the appellant. The said reduction in the percentage of the appellant's disability by the learned Tribunal is baseless and not supported with any substantial evidence.

29. It has further been contended on behalf of the appellant that the learned Tribunal failed to take into consideration that pursuant to the accident which was caused due to the sole negligence of the offending vehicle's driver, the appellant's ability to perform his job has been grossly affected, thereby, causing him loss of income and sustenance of life. Furthermore, the learned Tribunal has incorrectly ascertained the monthly income of the appellant as Rs.14,842/- and wrongly held that there was contributory negligence.

30. In rival submissions, it has been submitted that that the impugned award has been passed after appreciating the entire evidence and



testimonies produced on record before the learned Tribunal by the appellant and other respondents. It has been contended that the appellant is not entitled to more than 30% disability since the business/profession of the appellant has not been proven before the learned Tribunal. Further, the appellant failed to prove that the accident in question was caused due to the sole negligence of respondent no.1. It has been further contended that at the time of the accident, the appellant was driving his scooty in the lane meant for heavy vehicles such as the offending vehicle.

31. At this juncture, this Court deems it pertinent to peruse the impugned award passed by the learned Tribunal. The relevant extracts of the same are as under:

“..10.3 The petitioner/claimant has examined himself as PW1 to establish rashness and negligence in driving of bus bearing registration No. DL1PC4163. He has deposed in his examination-in-chief vide affidavit Ex.PW1/A that he was going to his shop at Karol Bagh, New Delhi from his residence through Moti Nagar, Delhi on his scooty bearing registration No.DL9SAP5620 and when he reached at Moti Nagar Red Light, the respondent no. 1 came driving the bus in question in rash and negligent manner and hit his scooty. In his cross-examination, he has deposed that he was driving his scooty on right side of the road and bus hit his scooty from behind. He denied the suggestion that he was carrying bundles of jeans on his scooty, was carrying helmet in one of his hand and incident took place because he jumped the red light. He also denied the suggestion in his cross-examination that incident took place on extreme left side of the road and due to his rash and negligent driving of the scooty.

10.4 The respondent no.1 driver of bus bearing the registration No. DL 1PC4163 examined himself to disprove the case of the applicant/petitioner. He has deposed that incident took place due to sole negligence of petitioner as



petitioner was driving the scooty in question loaded with jeans and carrying helmet in one of his hand and further he was not following the traffic rules and regulations. He also denied the suggestion in his cross-examination that he was driving the bus in fast speed at the time of incident and incident happened due to his rash and negligent driving of bus.

10.5 In this matter, DAR was also filed by IO after completing the investigation of matter. Perusal of DAR reveals that matter was reported by one SI Anand Singh, No.800/Traffic, RGC Circle PIS No. 28030988. He reported that he was doing duty at RGC Circle and at about 9:00 AM, the scooty rider was going from Rajouri Garden Ring Road to Moti Nagar through T-joint and at the same time, the bus in question came from Azadpur side in first speed and in rash and negligent manner. The bus hit the scooty at Moti Nagar Red Light. The site plan is also part of said DAR and perusal of same reveals that the incident happened almost at extreme left side of the road which is meant for heavy vehicles like bus in question. The photographs of the place of incident are also part of DAR and the said photographs reveals that the scooty in question was certainly loaded with many bundles of cloths/clothes.

10.6 In the said circumstances, it is clear from FIR lodged by independent person SI Anand Singh that the bus driver was also driving the bus in rash and negligent manner and was negligent in the incident. It is also clear from the site plan and photographs available on record that the petitioner/claimant was also negligent driving his scooty as he was riding the scooty loaded with many bundles of cloths/clothes and took his vehicle in the lane which is meant for heavy vehicles like bus in question. Hence, in the opinion of this Tribunal, it cannot be said that the driver of bus in question was solely responsible for the incident in question.

10.7 In the opinion of this Tribunal, the petitioner/claimant



has equally contributed to the incident in question. In the light of the aforesaid discussion, issue no. 1 is partly decided in favour of the petitioner/claimant and is partly decided in favour of respondents. Petitioner/claimant as well as driver of the offending vehicle are held liable for the incident in the ratio of 50:50.

“11.1 The petitioner is certainly entitled for compensation in view of decision of above issue. Before proceeding further to decide the present issue, it would be apposite to encapsulate the law laid down by Hon'ble Supreme Court of India in its guiding lamp post judgment for ascertaining just compensation in road vehicular injury cases.

*11.2 Hon'ble Supreme Court of India in its division bench decision in matter of **Raj Kumar Vs. Ajay Kumar & Ors. (2011) 1 SCC 343** has held “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.
(See C .K. Subramonia Iyer vs. T. Kunhikuttan Nair
- AIR 1970 SC 376, R. D.Hattangadi Vs. Pest
Control (India) Ltd. - 1 995 (1) SCC 551 and Baker
vs. Willoughby - 1970 AC 467).*

*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. 2010(10) SCALE 298 and Yadava Kumar v. D.M., National Insurance Co. Ltd. - 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.

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 1 00% 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. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 1 00% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may."

11.3 In view of the above law laid down by Hon'ble Supreme Court of India, in routine injury cases, award needs to be passed only under heads of medical expenses, loss of earning during treatment period and damages for pain, suffering and trauma. In cases of serious injuries, where there is specific medical evidence corroborating the claim/evidence of the claimant, award additionally needs to be passed under the acts of loss of future earnings on account of permanent disability suffered, future medical expenses, loss of amenities (including loss of prospects of marriage) and loss of expectation of life. The assessment of future medical expenses would depend upon specific medical evidence/advise for further treatment and costs thereof. The



2024:DHC:5593



determination of damages on account of pain and suffering, loss of amenities and loss of expectation of life would depend upon the age of victim, nature of injury(ies)/deprivation/disability suffered by victim and the effect thereof on life of claimant. The process would involve determination/assessment of lump-sum amounts under those heads. In case of assessment of loss of future earnings on account of permanent disability, the Tribunal needs to first ascertain whether the disability noted/assessed by the medical board is temporary or permanent in nature. If the disability is permanent in nature, then whether it is a total permanent disablement or partial permanent disablement. If the disablement has been referred/expressed in percentage terms, in reference to any specific limb then the effect of such disablement of the limb on the function of entire body. Once, the permanent disability is ascertained, then the Tribunal needs to determine whether such permanent disability has affected or will affect the earning capacity of the claimant. To ascertain same, the Tribunal needs to ascertain the avocation, profession and nature of work of the claimant before the incident. The Tribunal also needs to ascertain his age and then needs to ascertain what activities the claimant could carry on in spite of permanent disability and what he could not do as result of same. The Tribunal - then also needs to ascertain whether the claimant is totality disabled from earning any kind of livelihood or whether in spite of the permanent disability, the claimant could still effectively carry on activities and functions which he was carrying on earlier or whether the claimant is prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions to earn or can continue to earn his livelihood despite permanent disability suffered. After ascertaining the functional disability vide above process, then Tribunal needs to workout the loss of earning capacity per month.

The Tribunal is thereafter required to workout loss of earning capacity per annum. An appropriate multiplier



needs to be ascertained as per judgment of Hon'ble Supreme Court of India matter of "Sarla Verma Vs . DTC" 2009 ACJ 1298 SC according to age of the injured/victim. The total loss of earning capacity then needs to be worked out multiplying appropriate multiplier ascertained with ascertained annual loss of earning capacity. This is a case where permanent disability is claimed and compensation is also demanded qua future loss of earnings on account of permanent disability, hence, this Tribunal now proceeds further step by step to decide the compensation/award under different heads applicable to the present matter in light of above preposition."

DETERMINATION OF INJURIES AND DURATION OF TREATMENT

12.1 It would be appropriate to first ascertain the nature of injuries suffered by the injured/claimant and duration of treatment as they needs to be kept in mind while ascertaining the compensation under different heads applicable. The petitioner has filed on record medical bills as Ex.PW1/1 to prove his nature of injuries. As per discharge summary issued by Sri Balaji Action Medical Institute, the injured has suffered TBI with Poytrauma with chest injury, multiple rib fractures BIL with moderate B/l Hemothoraz and BIL Pneumothorax with surgical emphysema-mediastinal and chest wall(B/L ICD insert done) fracture left transverse process of C7 & D 1 vertebrae, K/C/O T2DM/HTN hypothyridism. He was admitted in hospital on 19.01.2020 and was discharged on 04.02.2020. He was under regular treatment till 26.02.2021.

DETERMINATION OF AGE OF CLAIMANT/INJURED & MULTIPLIER

12.2 The age of the claimant/injured would also be an essential consideration for grant of just compensation under different heads applicable in the present matter, so claimant's age also needs to be ascertained first. As per



2024:DHC:5593



driving license of injured, the date of birth of injured is 22.08. 1966 and the incident took place on 19.01.2020, so the injured/petitioner is taken 54years of age at the time of incident/accident. Since, he falls in age bracket of 51 to 55 years, so, multiplier applicable to this case would be 11.

DETERMINATION OF EDUCATIONAL QUALIFICATION

12.3 No documentary proof has been filed by the petitioner side to show his educational qualification.

DETERMINATION OF MEDICAL EXPENSES

12.4 The claimant/injured has filed medical bills as Ex.PW1/1. The total amount of original bills submitted by petitioner is of around Rs.1,48,244.50/-. Photocopies of Bill, dated 24.06.2020 issued by Specialists Clinic, bill dated 20.03.2020 issued by Crocs/ Asics Vinaayak Distributors and bill dated 29.12.2020 issued by Crocs DSL India have not been proved by the injured. Hence, injured/petitioner is only entitled for a sum of Rs.1.48.244/- (rounding off) on account of medical bills/expenses. Accordingly, petitioner is awarded Rs.1.48.244/on account of medical expenses.

AWARD TOWARDS FUTURE TREATMENT

12.5 Petitioner has not claimed any amount required for future treatment. He has also not filed any document/medical evidence on record to show that he requires any future treatment, hence, he is not entitled for any amount under this head.

PAIN & SUFFERINGS

6 A particular amount cannot be fixed of pain and sufferings applicable to all cases as it varies from case to case basis. {Darshan Lal vs. Sunny & Ors. MACT No.324/2 02 0 No. IB



of 3046] Judicial notice can be taken of the fact that since the petitioner has received number of serious injuries, therefore, petitioner must have suffered acute pain and sufferings owing to the said injuries. Considering the nature of injuries, duration of the treatment of the petitioner in the hospital and the disability(ies) suffered by the injured/petitioner as mentioned in the disability certificate, this Tribunal hereby grant compensation of Rs.50,000/- towards pain and sufferings to the petitioner.

DETERMINATION OF INCOME OF INJURED/PETITIONER

12.7(i) The injured/petitioner/claimant has claimed that he was doing whole sale business of jeans at Tank Road, Karol Bagh, New Delhi and was earning Rs.23,000/- per month. In order to prove his income, the petitioner has exhibited ITRs for assessment year 2019-20 as Ex.PW1/2 and ITRs for assessment year 2020-21 as Ex.PW1/3 on record. But the said ITRs were filed after the incident in question, therefore, the same cannot be considered as proof of income. Hence, he has failed to prove his job/work and income, so, the income of the injured needs to be assessed on the basis of chart available of minimum wages of an Unskilled person of State of NCT of Delhi as on date of incident. The minimum wages for an Unskilled person of State of NCT of Delhi as on date of accident i.e. 19.01.2020 were Rs.14,842/-per month.

12.7(ii) Accordingly, the monthly income of the injured needs to be considered as Rs.14.842/- per month on the date of accident.

DETERMINATION OF LOSS OF INCOME DURING TREATMENT PERIOD

Considering the nature of injuries and duration of the treatment of the injured/petitioner, this tribunal is of the opinion that injured/petitioner must have not been able to



work for about 17 months. Accordingly, this tribunal hereby grant compensation of sum of Rs.1.78.104/- (Rs.14.8421- x 12) towards loss of income during treatment period.

DETERMINATION OF LOSS OF FUTURE EARNINGS

12.9 This Tribunal has received the disability certificate of the petitioner from Guru Gobind Singh Government Hospital, Raghbir Nagar, New Delhi. In the disability certificate, it has been specifically mentioned that the petitioner has suffered 14% permanent disability in relation to left lower limb. This Tribunal has also received disability certificate of injured from Janakpuri Super Speciality Hospital, Janakpuri New Delhi. In the said disability certificate, it has been specially mentioned that the injured Darshan Lal has suffered 47% permanent disability in relation to neuropsychological impairment.

ASSESSMENT OF FUNCTIONAL DISABILITY

12.10 The injured/petitioner has claimed that he was doing whole sale business of jeans at Tank Road, Karol Bagh, New Delhi and was earning Rs.23,000/- per month but as has been previously held he has failed to prove that he was doing wholesale business of jeans at Tank Road, Karol Bagh, New Delhi and was earning Rs.23,000/- per month. The age of victim has been ascertained 54 years at the time of incident. The disability is 61%(14% +47) in total. It is claimed that the same would result in total preventing/hampering the injured/claimant in carrying on the activity which he was carrying on earlier. Since, injured has failed to prove he was doing the wholesale business of jeans prior to the incident, so, in the opinion of this Tribunal, the same could not be considered to have significant effect of function disability in relation to any normal work of the petitioner/claimant or any other job/avocation/profession which could be taken by the petitioner/claimant in future or in any day to day natural



activity. Hence, the functional disability of petitioner needs to be considered as 30%.

DETERMINATION OF FUTURE PROSPECTS APPLICABLE

12.11 The injured was aged more than 50 years at the time of incident and had no permanent job, so the futureprospects/benefits applicable to the present case would be 10%.

ASSESSMENT/DETERMINATION OF ENHANCEDMONTHLY INCOME

12. As has already been held, income of injured asRs. 14,842/- would be applicable in this case and an addition of10% needs to be made qua future prospects. Accordingly, the monthly income of the injured needs to be taken as Rs.16.326/(after rounding off Rs.16,326.2/-) (Rs. 14,842/- + Rs.1484.2which is 10% of Rs.14,842/-).

LOSS OF EARNING CAPACITY/LOSS OF FUTUREEARNING

12.13 The total loss of earning capacity/loss of future earning would come out to be Rs.6.46.510/- (after rounding offRs.6.46.509.6/-) (Rs. 16,326/-x 12 x 11 x 30/100).

AWARD TOWARDS LOSS OF AMENITIES OF LIFE

12.14 Considering the age of the injured, the nature of injuries suffered by the injured/petitioner, the disability certificate of claimant/injured, the duration of treatment of claimant/injured and the fact that the permanent disability MACT No.324/2020suffered by claimant/injured may hamper to some extent in climbing stairs, sports activities etc., this Tribunal hereby grant compensation of Rs.20,000/- on account of loss of amenities of life.

AWARD TOWARDS LOSS OF EXPECTATION OF LIFE

12. 15 Considering the nature of injuries suffered by the injured/petitioner, duration of his treatment and disability (ies)suffered, this Tribunal hereby grant compensation of Rs. 10, 000 on account of loss of expectation of life.

AWARD QUA SPECIAL DIET

12. 16Though, there is no cogent evidence on record of money spent by the petitioner upon special diet, yet



considering the nature of injuries suffered by the injured/petitioner and duration of treatment in the hospitals, this Tribunal is of the opinion that petitioner must have spent some money under this head. Hence, this Tribunal hereby grant compensation of Rs.5,000/- towards expenses incurred on special diet.

AWARD TOWARDS ATTENDANT CHARGES

12. 17 Though, there is no cogent evidence on record for the money spent by the petitioner upon attendant, yet considering the nature of injuries suffered by the petitioner and the duration of the treatment of the petitioner in the hospital this tribunal is of the opinion that petitioner must have spent some money under this head also. Hence, this Tribunal hereby grant compensation of Rs.5,000/- towards attendant charges.

AWARD QUA CONVEYANCE

Tribunal is of the opinion that injured/petitioner must have spent some money under this head. Hence, this Tribunal hereby grant compensation of Rs.5,000/- towards expenses incurred on conveyance.

12.19 IN THE CIRCUMSTANCES OF THE CASE.THIS TRIBUNAL AWARD THE COMPENSATION AS TABULATED HEREIN BELOW: -

<i>S no.</i>	<i>Heads of Compensation</i>	<i>Amount</i>
<i>1</i>	<i>Reimbursement of medical expenses</i>	<i>Rs.1 ,48,244/-</i>
<i>2</i>	<i>Compensation on account of future treatment</i>	<i>Nil</i>
<i>3</i>	<i>Pain and Suffering</i>	<i>Rs.50,000/-</i>
<i>4</i>	<i>Loss of income during treatment period/recovery</i>	<i>Rs.1, 78, 104/-</i>
<i>5</i>	<i>Loss of earning capacity/loss of</i>	<i>Rs.6,46,510/-</i>



2024:DHC:5593



	<i>future earning</i>	
6	<i>Loss of amenities of life</i>	<i>Rs. 20,000</i>
7	<i>Loss of expectation of life</i>	<i>Rs. 10,000</i>
8	<i>Special diet</i>	<i>Rs. 5,000</i>
9	<i>Attendant charges</i>	<i>Rs. 5,000</i>
10	<i>Conveyance</i>	<i>Rs. 5,000</i>
	<i>Total</i>	<i>Rs. 10,67, 858</i>

RELIEF

This Tribunal hereby pass an award of Rs.5.33.929/ (Rupees Five Lakhs Thirty Three Thousand Nine Hundred and Twenty Nine Only) [after deducting 50% on account of contributory negligence] as compensation with interest at the rate of 7% per annum including interim award, if any from the date of filing the DAR/claim petition i.e. 05.01.2021 till the date of the payment of the award amount, in favour of, petitioner/claimant and against the respondents on account of their liability being joint and several..."

32. Upon perusal of the aforementioned impugned award, it is observed that the learned Tribunal adjudicated the MACT Case bearing no. 324/2020 in light of three issues.

33. The first issue was to ascertain as to whether the injured appellant suffered injuries in the accident that took place on 19th January, 2020 at about 9:00 AM due to rash and negligent driving of the respondent no. 1 driver. The second issue was to determine whether the appellant was entitled to compensation.

34. With respect to the first issue i.e. *whether the appellant suffered injuries in the accident that took place at about 9 AM due to the rash and*



2024:DHC:5593



negligent driving of the driver of the offending vehicle, the learned Tribunal held that the appellant had equally contributed to the incident in question.

35. The learned Tribunal noted that the procedure followed by an accident claim tribunal is similar to that of a civil Court wherein facts are required to be established on the preponderance of probabilities and not by strict rules of evidence. The learned Tribunal while evaluating the case of the appellant relied on the examination of the affidavit tendered by the appellant, i.e., Ex. PW1 which stated that he was in the whole sale business of jeans and was earning Rs. 25,000/- per month. In the said affidavit, it is stated that that the accident was caused due to the rash and negligent driving of respondent no.1 The learned Tribunal noted that in the cross examination of the appellant, he deposed that he was driving his scooty on the right side of the road and the bus struck him from behind. The appellant denied the suggestion that he was carrying bundles of jeans on his scooty or that the accident took place on the extreme left side of the road or that his driving was rash and negligent.

36. The learned Tribunal also took note of the statement of respondent no. 1 driver wherein he denied the case of the appellant. He deposed that the accident took place due to the sole negligence of the appellant as he was driving his scooty with multiple loads of jeans and carrying his helmet in one hand.

37. Further, the learned Tribunal also perused the Detailed Accident Report (“DAR” hereinafter) filed by the investigating officer which revealed that one SI Sh. Anand Singh was present at the site of the accident. The statement of SI Sh. Anand Singh revealed that the



2024:DHC:5593



offending vehicle (bus) in question was being driven in a rash and negligent manner. The learned Tribunal noted that the FIR lodged by the independent person SI Sh. Anand Singh states that the bus was being driven in a rash and negligent manner and the scooty was being driven with multiple loads of jeans in the lane reserved for heavy vehicles such as the bus in question. Thus, the learned Tribunal partly decided the claim petition in favour of the appellant and partly decided the issue in favour of the respondent no.1, thereby, ascribing equal responsibility for the accident on drivers of the injured vehicle and the offending vehicle.

38. In regard to the second issue i.e., *whether the appellant is entitled to compensation*, the learned Tribunal held that the appellant was entitled to compensation.

39. It observed that before awarding compensation to the victim, it must first determine the injuries and duration of treatment, age of the injured and its multiplier, educational qualification, medical expenses and then award compensation.

40. With respect to the injuries suffered by the appellant, the learned Tribunal analysed the discharge summary issued by Sri Balaji Action Medical Institute and concluded that the injured had suffered multiple chest injuries and rib fractures and was admitted in the hospital on 19th January, 2020 and discharged on 4th February, 2020.

41. The learned Tribunal noted that as per the driving licence of the appellant, his age at the time of the accident was 54 years. With respect to his educational qualifications, no documentary proof was submitted. The claimant had filed several medical bills amounting to a total of Rs.1,48,244/-.



2024:DHC:5593



42. Upon the aforementioned determinations, the learned Tribunal proceeded to award compensation to the appellant under the heads of award towards future treatment, and pain and suffering, wherein it noted that the appellant did not file any evidence on record to show that he required any future treatment and was thus granted a compensation amount of Rs.50,000/- towards pain and suffering.

43. Subsequently, the learned Tribunal determined the income of the injured appellant in support of which the appellant had filed Ex. PW1/2, Ex. PW1/2, i.e., income tax returns for the years 2019-2020 and 2020-2021. However, since they were filed after the incident in question, they were not considered as valid proofs of income. Accordingly, the income of the appellant was considered based on the income chart for minimum wages of an unskilled person which was Rs.14,842/- since no educational qualifications were placed on record by the appellant.

44. While determining the loss of income during treatment period, the learned Tribunal noted that the appellant would not have been able to work for 17 months and accordingly granted compensation for a sum of Rs.1,78,104/- (Rs.14,842 x 12) towards loss of income during treatment period.

45. Further, *whilst* determining loss of future earnings and assessing functional disability, the learned Tribunal noted that it received two disability certificates – one holding a 14% permanent disability in relation to left lower limb and the other holding 47% permanent disability in relation to neuropsychological impairment. With regard to the same, the learned Tribunal held that since the appellant has failed to prove that he was in the wholesale business of jeans, his disability cannot be considered



2024:DHC:5593



to have significant effect on functional disability in relation to any normal work or job. Thus, the functional disability considered by the learned Tribunal was 30%.

46. The learned Tribunal further determined future prospects applicable and assessed the enhancement of monthly income and loss of earning capacity to the tune of Rs.16,326/- and Rs.6,46,510/- respectively along with a compensation of Rs.20,000/- towards loss of amenities of life.

47. The learned Tribunal granted a compensation of Rs.10,000/- on account of loss of expectation of life, a compensation of Rs.5,000/- for attendant charges, a compensation for conveyance of Rs.5,000/- and a compensation of Rs.5,000/- on account of a special diet considering the nature of injuries. Total compensation amount was calculated to be Rs.10,67,858/-.

48. With respect to the award, the learned Tribunal passed an award of Rs.5,33,929/- after deducting 50% on account of contributory negligence as compensation with an interest @7% per annum including interim award from the date of filing the claim petition i.e. 5th January, 2021 till the date of payment of the award amount in favour of the appellant. Accordingly, respondent no. 3 (insurance company) was directed to deposit the aforementioned amount in favour of the petitioner.

49. In view of the observations made in preceding paragraphs, it is observed by this Court that the instant appeal has been filed in order to vitiate the finding of 'contributory negligence' by the learned Tribunal and to further enhance the amount of compensation. The appellant's bone of contention lies in the fact that the learned Tribunal erroneously



ascertained contributory negligence on his part which led to award of less compensation. The appellant further contends due to the accident he has suffered major injuries which have affected his ability to perform at his job in an efficient and productive manner.

50. Thus, the two issues before this Court are whether the finding of 50% contributory negligence on part of the appellant as ascertained by the learned Tribunal is liable to be set aside and whether the amount of compensation warrants enhancement.

Issue no. 1 – Whether the learned Tribunal erred in determining contributory negligence on appellant's part?

51. Before delving into the merits of the instant appeal, this Court deems it apposite to state the settled position of law regarding contributory negligence which was discussed by the Hon'ble Supreme Court in *Pramod Kumar Rasikbhai Jhaveri v. Karmey Kunvargi Tak*, (2002) 6 SCC 45. In the said judgment, the Hon'ble Court held that contributory negligence arises when there has been some act on part of the claimant. It is made out that as per the settled principle of law, contributory negligence comes into play when the act of the claimant significantly contributes to the harm or damage suffered by him. The damage must have been caused as a result of an action or omission on part of the claimant.

52. It is pertinent to note that in order to ascertain contributory negligence, the claimant's act or omission must have a significant impact on the resulting damage and not a trivial or negligible one. The behavior of the claimant must be such that there was a failure to take reasonable care. The relevant extract of *Pramod Kumar Rasikbhai Jhaveri (Supra)*



are reproduced herein below:

“8. The question of contributory negligence arises when there has been some act or omission on the claimant’s part, which has materially contributed to the damage caused, and is of such nature that it may properly be described as “negligence”. Negligence ordinarily means breach of a legal duty to care, but when used in the expression “contributory negligence” it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of wither himself or his property, so that he becomes blameworthy in part as “author of his own wrong”. ”

53. Further, in the case of ***Rajni v. Union of India, (2017) SCC OnLine Del 7442***, a Co-ordinate Bench of this Court discussed the principles of contributory negligence wherein it stated that the victim must have failed to take reasonable care for his own personal safety in the circumstances prevailing at the time of the accident, such that he is blameworthy to the extent that he contributed to his own injury. The relevant paragraphs of the said judgment are as under:

“8. The law with respect to the contributory negligence is well settled. Contributory negligence connotes a failure of the victim to take reasonable care for his own personal safety in the circumstances prevailing at the time of the accident, such that he is blameworthy to the extent that he contributed to his own injury. A person is guilty of contributory negligence if he ought to have objectively foreseen that his failure to act prudently could result in hurting himself and failed to take reasonable measures to guard against that foreseeable harm. Contributory negligence is a partial defence that reduces the quantum of damages payable to plaintiff if he fails to safeguard his own interest.”



54. Upon perusal of the aforementioned judicial *dicta*, it is noted that for a Court to hold contributory negligence in a particular case, it must be proven that the victim of the accident must have acted or omitted to act in a manner that had a significant role to play in the cause of the accident. To hold contributory negligence in a particular case, it is necessary for the victim to have had a major contribution in the cause of the accident. The principle of contributory negligence places responsibility for an accident on all the parties that have contributed in the causation of the accident. It seeks to fairly ascribe responsibility to each and every party whose act or omission has caused the accident in question.

55. Since, the issue in the instant case pertains to the aspect of contributory negligence on the part of the appellant, wherein, it was observed by the learned Tribunal that the appellant was carrying certain load on his scooty, it is important to peruse the relevant provisions of law which include The Motor Vehicles Act, 1988 and The Motor Vehicles (Driving) Regulations, 2017. It is important to bear in mind that the legislative intent behind the Motor Vehicles Act, 1988 is to provide relief to victims of accidents. The Act is a beneficial legislation which has been framed with the objective of providing relief to the victims, their families, in case of genuine claimants. With respect to the facts and circumstances of the instant appeal, it is apposite to refer to Section 194 (1A) of the Act which states the provision as per which, a driver of the motor vehicle is not allowed to carry load in a manner that extends the body of the vehicle laterally. The relevant portion of the said provision is as under:

“194. Driving vehicle exceeding permissible weight –



..(1A) Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven when such motor vehicle is loaded in such a manner that the load or any part thereof or anything extends laterally beyond the side of the body or to the front or to the rear or in height beyond the permissible limit shall be punishable with a fine of twenty thousand rupees, together with the liability to pay charges for off-loading of such load:

Provided that such motor vehicle shall not be allowed to move before such load is arranged in a manner such that there is no extension of the load laterally beyond the side of the body or to the front or to the rear or in height beyond the permissible limit:

Provided further that nothing in this sub-section shall apply when such motor vehicle has been given an exemption by the competent authority authorised in this behalf, by the State Government or the Central Government, allowing the carriage of a particular load...”

56. Upon perusal of the aforementioned provision of The Motor Vehicles Act, 1988, it is evident that in case cargo is placed on a motor vehicle which extends laterally beyond the side /front/ rear/ height of the body beyond the permissible, it shall be an offence as per the Act. The perpetrator shall be punished with a fine of Rs. 20,000/- with the liability to pay charges for the offloading of the load.

57. Furthermore, Regulation 35 of The Motor Vehicles (Driving) Regulations, 2017 states that it is the responsibility of the driver to ensure that loads, including load restraints and loading equipment are stowed correctly and safely in a vehicle such that they do not fall or slip. The relevant regulation has been reproduced below:

“35. Projection of loads.—(1) The driver shall at all times ensure that loads, including load restraints and loading equipment, in the vehicle are stowed and restrained in such



2024:DHC:5593



manner that these cannot slip, fall over, roll around, fall off the vehicle or produce avoidable noise, even in an emergency braking situation or if the vehicle swerves suddenly.

(2) No driver shall drive in any public place a motor vehicle which is loaded in a manner which is likely to cause danger to any person.

(3) The load or any part thereof, or any other object in the vehicle shall not extend laterally beyond the sides of the body or to the front or to the rear, or exceed in height or weight the limits specified in the certificate of registration of the vehicle.

58. On reading of the above mentioned, it is evident that it is the responsibility of the driver to ensure that loads including load restraints should be properly stowed and restrained in a manner where it cannot slip, fall over, roll around or fall off the vehicle or produce avoidable noise. Further, no driver is permitted to drive a motor vehicle which is loaded in a manner that is likely to cause danger to any person in a public place. It is the position of law that any load or any part of the load in a vehicle shall not extend laterally beyond the sides/front/rear/ exceed in height/weight from the limits specified in the registration certificate of the vehicle.

59. Upon perusal of the aforementioned statutes, the position of law that is inferred is that whoever drives a motor vehicle which is loaded in such a manner that the load or any part of the vehicle extends laterally beyond the side or front or rear or in height beyond the permissible limit of the body, shall be punished with a fine of Rs.25,000/- and the charges for offloading.



60. It is also apposite to note that UK Courts have taken an interesting approach in their interpretation of contributory negligence. In the case of ***Badger v The Ministry of Defence* [2005] EWHC 2941 (QB)**, the High Court of Queen's Bench held that contributory negligence requires the foreseeability of harm to oneself. Reasonable foreseeability of the risk of harm is a prerequisite of a finding of contributory negligence, but it follows from the fact that the test for fault is objective that it is not necessary to show that the claimant personally foresaw harm. In this case, the Court has taken into account Section 1 (1) of the Law Reform (Contributory Negligence) Act 1952. It is further stated that if the damage in question was at least partly the result of the fault on the part of the defendant, then the Court must consider certain questions in the plea of contributory negligence. The relevant paragraphs have been reproduced below:

"5. Section 1(1) of the Law Reform (Contributory Negligence) Act 1954 is as follows: Where any person suffers damage as a result partly of his own fault and partly of the fault of any other person or persons the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.

6. It can be seen that, if the damage (or injury) in question was at least partly the result of fault on the part of the defendant, the following questions fall to be considered when contributory negligence is pleaded:

(a) Was there fault on the part of the claimant?

(b) If so, did the damage or injury that he suffered result partly from that fault?

(c) If so, what was the extent of his responsibility for that damage or injury?



(d) Having regard to the answer to (c), what is the reduction in the damages recoverable that is just and equitable?

7. So far as fault is concerned, it is hornbook law that there is no question of breach of a duty of care (which by definition is owed by a person to another person or persons) having to be owed by the claimant. However, as in the case of negligence, the question of fault is to be determined objectively. The question is not whether the claimant's conduct fell below the standard reasonably to be expected of him, but whether it fell below the standard reasonably to be expected of a person in his position: did his conduct fall below the standard to be expected of a person of ordinary prudence? These propositions were stated more elegantly by Lord Denning MR (with whose judgment the other members of the Court of the Court of Appeal agreed) in *Froom v Butcher* [1976] QB 286, 291:

Negligence depends on a breach of duty, whereas contributory negligence does not. Negligence is a man's carelessness in breach of duty to others. Contributory negligence is a man's carelessness in looking after his own safety. He is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable prudent man, he might be hurt himself.

*...11. Reasonable foreseeability of the risk of harm is a prerequisite of a finding of contributory negligence, but it follows from the fact that the test for fault is objective that it is not necessary to show that the claimant personally foresaw harm. In *Jones v Livox Quarries* [1952] 2 QB 608, 615, Denning LJ (as he then was) said:*

Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable, prudent man, he might be hurt himself; and in his



reckonings he must take into account the possibility of others being careless.

...15. Once relevant fault on the part of the claimant has been established, a reduction on account of his fault in the damages recoverable is obligatory. In Boothman v British Northrop Ltd [1972] KIR 113, Stephenson LJ said, in a judgment with which the other members of the Court of Appeal agreed:

Speaking for myself, I do not find that the words of section 1(1) of the Law Reform (Contributory Negligence) Act 1945 give any support to the view that the court can disregard negligence on the part of a plaintiff contributing to an accident if it thinks it just and equitable so to do. What the section says is that “the damages recoverable in respect thereof” – that is, in respect of damage suffered by any person “as the result partly of his own fault and partly of the fault of any other person” – “shall be reduced to such extent as the court thinks just and equitable having regard to the claimant’s share of the responsibility for the damage”.

It has been held that the principle of de minimis (pertaining to minimal things) applies to this as to other branches of the law and that where the contribution of a plaintiff’s negligence is virtually negligible it should be disregarded and the damages should be awarded him in full. If one looks at the words of section 1 (1) of the Act of 1945 they do not seem to leave much room for an application of the de minimis principle. But they certainly, in my view, do not encourage, and I very much doubt if they permit, not a reduction “to such extent as the court thinks just and equitable” but no reduction at all because the court thinks it just and equitable that there should be no reduction. The judge having found (as I think, rightly) contributory negligence on the part of the plaintiff, I do not think it is open to Mr Carman to argue that even if that finding stands he should not have his damages reduced at all.”



2024:DHC:5593



61. Now advertent to the merits of the issue in hand.
62. In order to deal with issue no. 1, it is important to ascertain as to which party is responsible for the accident and in order to determine the party responsible for the accident, the learned Tribunal perused the affidavit Ex. PW1/1 and his cross examination along with the testimonies of the respondent no. 1 driver as well as the DAR and the statement of SI Sh. Anand Singh who lodged the FIR.
63. The learned Tribunal concluded that the scooty was loaded with many bundles of cloth/clothes at the time of the accident. It was held that the appellant was also responsible for the accident due to his negligent driving while carrying a cargo with many bundles of clothes and in the lane meant for heavy vehicles like buses. Further, relying upon the DAR and the photographs of the accident annexed to the DAR, it was observed by the learned Tribunal that the appellant was carrying multiple load of jeans with him at the time of the accident which when carried would have been laterally beyond the side of the body of the motor vehicle.
64. This Court is of the view that as per the site plan, the accident occurred almost at extreme left side of the road which admittedly is for the heavy vehicles such as the bus in question. Further, the photographs annexed along with the DAR also reveal the place of the accident and it further shows that the injured vehicle (Scooty) was carrying a load. The above can be ascertained from the FIR that was lodged by one independent person, i.e., SI Sh. Anand Singh. In the FIR also, it was submitted that the bus was being driven in a speedy, rash and negligent manner, and that the appellant was driving his vehicle in violation of the traffic rules and regulations, and the conduct of both the drivers



(appellant as well as the respondent no. 1) caused the accident.

65. In view of the foregoing observations, it is apparent that the appellant herein has committed a direct violation of the statutory provisions; *firstly*, by carrying load of jeans on his scooty, and *secondly*, by driving his vehicle in a lane which was admittedly meant for heavy vehicle. The same can be deduced from the fact that the photographs of the accident, which is a part of the Lower Court Record, clearly denotes that the jeans were scattered at the location of the accident.

66. Further, it is pertinent to note that the testimony of SI Sh. Anand Singh, who was doing duty at RGC Circle and reported the matter to the Investigating Office, clearly states that the bus driver was driving in a rash and negligent manner. This means that there was sufficient evidence before the learned Tribunal to ascertain the contributory negligence on the appellant's part. This can also be supported from the observations made by this Court in the foregoing paragraphs *qua* Section 194 (1A) of the Act and Regulation 35 of the Motor Vehicles (Driving) Regulations, 2017 which prohibits an individual from carrying load in a manner that extends the body of the vehicle laterally such as in the instant case.

67. As discussed above, in order to state that there was contributory negligence on the part of the victim as well, the injured must have failed to take reasonable care for his own personal safety in the circumstances prevailing at the time of the accident and the said failure to take reasonable care has to be to the extent that he contributed to his own injury.

68. In the instant case as well, the record reveals that the appellant himself was negligent while driving his scooty, hence, he was also at fault



2024:DHC:5593



for the accident. In light of the same, this Court is of the considered view that the learned Tribunal did not err in holding the appellant negligent as it is apparent from the face of the Lower Court's Record that the appellant did not adhere to the traffic rules and regulations which establishes negligence on his part that led to the accident and the appellant has been unable to prove to the contrary.

69. Taking into consideration the Lower Court's Record, principle of contributory negligence and various statutory provisions, this Court upholds the aspect of contributory negligence of the appellant and it is held that there does not exist sufficient reason to set aside 50% contributory negligence on part of the appellant.

70. Accordingly, issue no. 1 stands decided.

Issue no. 2 - whether the appellant is entitled to enhancement of compensation?

71. It has been contended by the appellant that the learned Tribunal failed to provide him with adequate compensation and wrongly considered the percentage of disability. The same being erroneous is liable to be set aside and the compensation ought to be enhanced.

72. Further, in the case of *Sidram v. United India Insurance Co. Ltd.*, (2023) 3 SCC 439, the Hon'ble Supreme Court held that the primary object of awarding damages is to make good the loss suffered as a result of wrong done in a manner that is fair, reasonable and equitable. The relevant paragraphs have been reproduced below:

“40. In Raj Kumar [Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161] this Court has explained in the following terms the general principles relating to compensation in injury cases



and assessment of future loss of earnings due to permanent disability : (SCC pp. 347-52, paras 5-19)

“General principles relating to compensation in injury cases
5. The provision of the Motor Vehicles Act, 1988 (“the 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 the 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. [See C.K. Subramania Iyer v. T. Kunhikuttan Nair [C.K. Subramania Iyer v. T. Kunhikuttan Nair, (1969) 3 SCC 64] , R.D. Hattangadi v. Pest Control (India) (P) Ltd. [R.D. Hattangadi v. Pest Control (India) (P) Ltd., (1995) 1 SCC 551 : 1995 SCC (Cri) 250] and Baker v. Willoughby [Baker v. Willoughby, 1970 AC 467 : (1970) 2 WLR 50 (HL)] .]

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

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.



(iii) *Future medical expenses.*

Non-pecuniary damages (General damages)

(iv) *Damages for pain, suffering and trauma as a consequence of the injuries.*

(v) *Loss of amenities (and/or loss of prospects of marriage).*

(vi) *Loss of expectation of life (shortening of normal longevity).*

In routine personal injury cases, compensation will be awarded only under Heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the Heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

7. Assessment of pecuniary damages under Item (i) and under Item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses—Item (iii)—depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages—Items (iv), (v) and (vi)—involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decisions of this Court and the High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability—Item (ii)(a). We are concerned with that assessment in this case.

Assessment of future loss of earnings due to permanent disability

8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found



existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the Disabilities Act" for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body



have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent 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 the 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. [Arvind Kumar



Mishra v. New India Assurance Co. Ltd., (2010) 10 SCC 254 : (2010) 4 SCC (Civ) 153 : (2010) 3 SCC (Cri) 1258] and Yadava Kumar v. National Insurance Co. Ltd. [Yadava Kumar v. National Insurance Co. Ltd., (2010) 10 SCC 341 : (2010) 4 SCC (Civ) 168 : (2010) 3 SCC (Cri) 1285])

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 permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent



disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

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

15. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as



otherwise there may be a duplication in the award of compensation. Be that as it may.

16. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular, the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to “hold an enquiry into the claim” for determining the “just compensation”. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the “just compensation”. While dealing with personal injury cases, the Tribunal should preferably equip itself with a medical dictionary and a handbook for evaluation of permanent physical impairment (for example, Manual for Evaluation of Permanent Physical Impairment for Orthopaedic Surgeons, prepared by American Academy of Orthopaedic Surgeons or its Indian equivalent or other authorised texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the First Schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen.

17. If a doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and, if so, the percentage.

18. The Tribunal should also act with caution, if it proposed



to accept the expert evidence of doctors who did not treat the injured but who give “ready to use” disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily give liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or discharge certificate will not be proof of the extent of disability stated therein unless the doctor who treated the claimant or who medically examined and assessed the extent of disability of the claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local hospitals/medical colleges) and refer the claimant to such Medical Board for assessment of the disability.

19. We may now summarise the principles discussed above:

- (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.*
- (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).*
- (iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning*



capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”

41. *Later, in another judgment i.e. Jakir Hussein v. Sabir [Jakir Hussein v. Sabir, (2015) 7 SCC 252 : (2015) 3 SCC (Civ) 584 : (2015) 3 SCC (Cri) 72 : (2015) 2 SCC (L&S) 427], this Court had to consider the correctness of a compensation assessment based on the High Court's analysis of the injury to the victim (a driver who suffered permanent injury to his arm, impairing movement as well as the wrist, which rendered him incapable of driving any vehicle). The High Court had assessed permanent disablement at 30%, even though the doctor had certified it to be 55%. This Court, reversing the High Court order [Jakir Hussain v. Sabir Misc. Appeal No. 3414 of 2010, order dated 24-1-2013 (MP)], observed inter alia that : (Jakir Hussein case [Jakir Hussein v. Sabir, (2015) 7 SCC 252 : (2015) 3 SCC (Civ) 584 : (2015) 3 SCC (Cri) 72 : (2015) 2 SCC (L&S) 427], SCC p. 260, paras 15-16)*

“15. ... Due to this injury, the doctor has stated that the appellant had great difficulty to move his shoulder, wrist and elbow and pus was coming out of the injury even two years after the accident and the treatment was taken by him. The doctor further stated in his evidence that the appellant got delayed joined fracture in the humerus bone of his right hand with wiring and nailing and that he had suffered 55% disability and cannot drive any motor vehicle in future due to the same. He was once again operated upon during the pendency of the appeal before the High Court and he was hospitalised for 10 days. The appellant was present in person in the High Court and it was observed and noticed by the High Court that the right hand of the appellant was completely crushed and deformed. In view of the doctor's evidence in this case, the Tribunal and the High Court have



erroneously taken the extent of permanent disability at 30% and 55%, respectively for the calculation of amount towards the loss of future earning capacity. No doubt, the doctor has assessed the permanent disability of the appellant at 55%. However, it is important to consider the relevant fact, namely, that the appellant is a driver and driving the motor vehicle is the only means of livelihood for himself as well as the members of his family. Further, it is very crucial to note that the High Court has clearly observed that his right hand was completely crushed and deformed.

16. In Raj Kumar v. Ajay Kumar [Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161] , this Court specifically gave the illustration of a driver who has permanent disablement of hand and stated that the loss of future earnings capacity would be virtually 100%. Therefore, clearly when it comes to loss of earning due to permanent disability, the same may be treated as 100% loss caused to the appellant since he will never be able to work as a driver again. The contention of the respondent Insurance Company that the appellant could take up any other alternative employment is no justification to avoid their vicarious liability. Hence, the loss of earning is determined by us at Rs 54,000 p.a. Thus, by applying the appropriate multiplier as per the principles laid down by this Court in Sarla Verma v. DTC [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] , the total loss of future earnings of the appellant will be at Rs 54,000 × 16 = Rs 8,64,000.

42. In Anthony v. Karnataka SRTC [Anthony v. Karnataka SRTC, (2020) 7 SCC 161 : (2020) 4 SCC (Civ) 93 : (2020) 3 SCC (Cri) 129] , where the victim was a painter by profession, a three-Judge Bench had followed Raj Kumar [Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161] and Nagarajappa v. Oriental Insurance Co. Ltd. [Nagarajappa v. Oriental Insurance Co. Ltd., (2011) 13 SCC 323 : (2012) 3 SCC (Civ) 553 : (2012) 2 SCC (Cri)



624] *The High Court [Karnataka SRTC v. Anthony, 2016 SCC OnLine Kar 6207]* had assessed the injury to be 25% permanent disability, although the treating doctor had said that the injury incurred by the bus passenger (who was earning Rs 9000 per month) was 75% of the left leg and 37.5% for the whole body. In *Raj Kumar [Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161]*, the physical disability of the upper limb was determined as 68% in proportion to 22-23% of the whole body. The High Court had assessed the injury as 25% and granted compensation. However, this Court assessed the injury on the basis that the disability was 75%, stating as follows : (Anthony case [*Anthony v. Karnataka SRTC, (2020) 7 SCC 161 : (2020) 4 SCC (Civ) 93 : (2020) 3 SCC (Cri) 129*], SCC pp. 163-64, para 8)

“8. PW 3 had assessed the physical functional disability of the left leg of the appellant at 75% and total body disability at 37.5%. The High Court has considered it proper to assess the physical disability at 25% of the whole body only. There is no discussion for this reduction in percentage, much less any consideration of the nature of permanent functional disability suffered by the appellant. The extent of physical functional disability, in the facts of the case has to be considered in a manner so as to grant just and proper compensation to the appellant towards loss of future earning. The earning capacity of the appellant as on the date of the accident stands completely negated and not reduced. He has been rendered permanently incapable of working as a painter or do any manual work. Compensation for loss of future earning, therefore has to be proper and just to enable him to live a life of dignity and not compensation which is elusive. If the 75% physical disability has rendered the appellant permanently disabled from pursuing his normal vocation or any similar work, it is difficult to comprehend the grant of compensation to him in ratio to the disability to the whole body. The appellant is therefore held entitled to compensation for loss of future earning based on his 75% permanent physical functional disability recalculated with



the salary of Rs 5500 with multiplier of 14 at Rs 6,93,000/-.

43. The question of amount of compensation payable to one suffering injury as a result of motor vehicle accident was considered in Syed Sadiq v. United India Insurance Co. Ltd. [Syed Sadiq v. United India Insurance Co. Ltd., (2014) 2 SCC 735 : (2014) 2 SCC (Civ) 192 : (2014) 4 SCC (Cri) 607] , when this Court had to apply the correct standard for awarding compensation for loss of future prospects for a vegetable vendor, whose right leg had to be amputated, as a result of a motor accident. The High Court had considered [Syed Sadiq v. G. Thippaiah, 2011 SCC OnLine Kar 3937] the disability to be 65%. This Court held as follows : (Syed Sadiq case [Syed Sadiq v. United India Insurance Co. Ltd., (2014) 2 SCC 735 : (2014) 2 SCC (Civ) 192 : (2014) 4 SCC (Cri) 607] , SCC pp. 740-41, paras 7-8)

“7. Further, the appellant claims that he was working as a vegetable vendor. It is true that a vegetable vendor might not require mobility to the extent that he sells vegetables at one place. However, the occupation of vegetable vending is not confined to selling vegetables from a particular location. It rather involves procuring vegetables from the wholesale market or the farmers and then selling it off in the retail market. This often involves selling vegetables in the cart which requires 100% mobility. But even by conservative approach, if we presume that the vegetable vending by the appellant claimant involved selling vegetables from one place, the claimant would require assistance with his mobility in bringing vegetables to the marketplace which otherwise would be extremely difficult for him with an amputated leg. We are required to be sensitive while dealing with manual labour cases where loss of limb is often equivalent to loss of livelihood. Yet, considering that the appellant claimant is still capable to fend for his livelihood once he is brought in the marketplace, we determine the disability at 85% to determine the loss of income.

8. The appellant claimant in his appeal further claimed that he had been earning Rs 10,000 p.m. by doing vegetable



vending work. The High Court however, considered the loss of income at Rs 3500 p.m. considering that the claimant did not produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganised sector doing his own business is expected to produce documents to prove his monthly income.”

44. In *Arvind Kumar Mishra* [*Arvind Kumar Mishra v. New India Assurance Co. Ltd.*, (2010) 10 SCC 254 : (2010) 4 SCC (Civ) 153 : (2010) 3 SCC (Cri) 1258], the appellant at the time of accident was a final year engineering (Mechanical) degree student in a reputed college. He was a brilliant student and had passed all his semester examinations with distinction. He suffered grievous injuries and remained in a coma for about two months; his studies were disrupted as he was moved to different hospitals for surgeries. For many months, his condition remained serious; his right hand was amputated and vision seriously affected. This Court accepted his claim and held that he was permanently disabled to the extent of 70%. In *Mohan Soni v. Ram Avtar Tomar* [*Mohan Soni v. Ram Avtar Tomar*, (2012) 2 SCC 267 : (2012) 1 SCC (Civ) 747 : (2012) 1 SCC (Cri) 641], SCC at p. 272 in a case of injury entailing loss of a leg, this Court held that medical evidence of the extent of disability should not be mechanically scaled down : (*Mohan Soni case* [*Mohan Soni v. Ram Avtar Tomar*, (2012) 2 SCC 267 : (2012) 1 SCC (Civ) 747 : (2012) 1 SCC (Cri) 641], SCC pp. 270-73, paras 8, 10 & 13-14)

“8. On hearing the counsel for the parties and on going through the materials on record, we are of the view that both the Tribunal and the High Court were in error in pegging down the disability of the appellant to 50% with reference to Schedule I of the Workmen's Compensation Act, 1923. In the context of loss of future earning, any physical disability resulting from an accident has to be judged with reference to the nature of work being performed by the person suffering the disability. This is the basic premise and once that is



grasped, it clearly follows that the same injury or loss may affect two different persons in different ways. Take the case of a marginal farmer who does his cultivation work himself and ploughs his land with his own two hands; or the puller of a cycle-rickshaw, one of the main means of transport in hundreds of small towns all over the country. The loss of one of the legs either to the marginal farmer or the cycle-rickshaw-puller would be the end of the road insofar as their earning capacity is concerned. But in case of a person engaged in some kind of desk work in an office, the loss of a leg may not have the same effect. The loss of a leg (or for that matter the loss of any limb) to anyone is bound to have very traumatic effects on one's personal, family or social life but the loss of one of the legs to a person working in the office would not interfere with his work/earning capacity in the same degree as in the case of a marginal farmer or a cycle-rickshaw-puller.

10. This Court in *K. Janardhan* case [*K. Janardhan v. United India Insurance Co. Ltd.*, (2008) 8 SCC 518 : (2008) 2 SCC (L&S) 733] , set aside the High Court judgment and held that the tanker driver had suffered 100% disability and incapacity in earning his keep as a tanker driver as his right leg was amputated from the knee and, accordingly, restored the order passed by the Commissioner of Workmen's Compensation. In *K. Janardhan* [*K. Janardhan v. United India Insurance Co. Ltd.*, (2008) 8 SCC 518 : (2008) 2 SCC (L&S) 733] this Court also referred to and relied upon an earlier decision of the Court in *Pratap Narain Singh Deo v. Srinivas Sabata* [*Pratap Narain Singh Deo v. Srinivas Sabata*, (1976) 1 SCC 289 : 1976 SCC (L&S) 52] in which a carpenter who suffered an amputation of his left arm from the elbow was held to have suffered complete loss of his earning capacity.

13. Any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim could make up for



the loss of income by changing his vocation or by adopting another means of livelihood. The party advocating for a lower amount of compensation for that reason must plead and show before the Tribunal that the victim enjoyed some legal protection [as in the case of persons covered by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995] or in case of the vast multitude who earn their livelihood in the unorganised sector by leading cogent evidence that the victim had in fact changed his vocation or the means of his livelihood and by virtue of such change he was deriving a certain income.

14. The loss of earning capacity of the appellant, according to us, may be as high as 100% but in no case it would be less than 90%. We, accordingly, find and hold that the compensation for the loss of the appellant's future earnings must be computed on that basis. On calculation on that basis, the amount of compensation would come to Rs 3,56,400 and after addition of a sum of Rs 30,000 and Rs 15,000 the total amount would be Rs 4,01,400. The additional compensation amount would carry interest @ of 9% p.a. from the date of filing of the claim petition till the date of payment. The additional amount of compensation along with interest should be paid to the appellant without delay and not later than three months from today.”

45. One more decision, Sandeep Khanuja v. Atul Dande [Sandeep Khanuja v. Atul Dande, (2017) 3 SCC 351 : (2017) 2 SCC (Civ) 276 : (2017) 2 SCC (Cri) 178] , too had dealt with the precise aspect of assessing the quantum of permanent disablement. The victim was aged about 30 years, working as a chartered accountant for various institutions for which he was paid professional fees. The injuries suffered by him resulted in severe impairment of movement; as he had problems in climbing stairs, back trouble while sleeping, etc. A rod was implanted in his leg. He suffered 70% permanent disability, and mental and physical agony. This Court enhanced the compensation, observing the proper manner to calculate the extent of disability. This



Court held as under : (SCC pp. 358-61, paras 13-16)

“13. In the last few years, law in this aspect has been straightened by this Court by removing certain cobwebs that had been created because of some divergent views on certain aspects. It is not even necessary to refer to all these cases. We find that the principle of determination of compensation in the case of permanent/partial disablement has been exhaustively dealt with after referring to the relevant case law on the subject in Raj Kumar v. Ajay Kumar [Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161] in the following words : (SCC pp. 348-50, paras 8-11)

‘Assessment of future loss of earnings due to permanent disability

*8.****

9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the



percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced shows 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.

11. What requires to be assessed by the Tribunal is the effect of the permanent 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 the 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.'

14. 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, MACT approached the issue in the right direction by taking into consideration the aforesaid test. However, we feel that the conclusion of MACT, on the application of the aforesaid test, is erroneous. A very myopic view is taken by MACT in taking the view that 70% permanent disability suffered by the appellant would not impact the earning capacity of the appellant. 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 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. We are of the opinion that in a case like this and having regard to the injuries suffered by the appellant, there is a definite loss of earning capacity and it calls for grant of compensation with the adoption of multiplier method ...

15. In Arvind Kumar Mishra case [Arvind Kumar Mishra v. New India Assurance Co. Ltd., (2010) 10 SCC 254 : (2010) 4 SCC (Civ) 153 : (2010) 3 SCC (Cri) 1258] , after following the judgment in Kerala SRTC v. Susamma Thomas [Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176 : 1994 SCC (Cri) 335] , the Court chose to apply multiplier of 18 keeping in view the age of the victim, who was 25 years at the time of the accident.



16. In the instant case, MACT had quantified the income of the appellant at Rs 10,000 i.e. Rs 1,20,000 p.a. Going by the age of the appellant at the time of the accident, multiplier of 17 would be admissible. Keeping in view that the permanent disability is 70%, the compensation under this head would be worked out at Rs 14,28,000. MACT had awarded compensation of Rs 70,000 for permanent disability, which stands enhanced to Rs 14,28,000. For mental and physical agony and frustration and disappointment towards life, MACT has awarded a sum of Rs 30,000, which we enhance to Rs 1,30,000.”

46. In *Arvind Kumar Mishra* [*Arvind Kumar Mishra v. New India Assurance Co. Ltd.*, (2010) 10 SCC 254 : (2010) 4 SCC (Civ) 153 : (2010) 3 SCC (Cri) 1258] , this Court observed as under : (SCC pp. 256-57, paras 9-10)

“9. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered.

10. In some cases for personal injury, the claim could be in respect of lifetime's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases— and that is now recognised mode as to the proper measure of compensation—is taking an appropriate multiplier of an appropriate multiplicand.”

47. In *Pappu Deo Yadav v. Naresh Kumar* [*Pappu Deo*



Yadav v. Naresh Kumar, (2022) 13 SCC 790 : 2020 SCC OnLine SC 752] , it was held that courts should not adopt a stereotypical or myopic approach, but instead, view the matter taking into account the realities of life, both in the assessment of the extent of disabilities, and compensation under various heads. In this case, the loss of an arm, in the opinion of the court, resulted in severe income earning impairment upon the appellant. As a typist/data entry operator, full functioning of his hands was essential to his livelihood. The extent of his permanent disablement was assessed at 89%; however, the High Court [United India Insurance Co. Ltd. v. Pappu Deo Yadav, 2018 SCC OnLine Del 11348] halved it to 45% on an entirely wrong application of some “proportionate” principle, which was illogical and is unsupportable in law. What is to be seen, as emphasised by decision after decision, is the impact of the injury upon the income generating capacity of the victim. The loss of a limb (a leg or arm) and its severity on that account is to be judged in relation to the profession, vocation or business of the victim; there cannot be a blind arithmetic formula for ready application.

48. With the aforesaid broad principles in mind, we proceed to examine the appellant's claim for enhancement of the compensation awarded to him by the High Court.”

73. Upon perusal of the aforementioned, it is the settled position of law that due consideration must be placed on the occupation of the victim and how the functional disability is likely to affect said occupation before awarding compensation to the victim. It is crucial to take into consideration whether the permanent disability of the victim has an adverse effect on the occupation of the victim and thereby, his earning capacity. It is imperative for the occupation of the victim to be understood as a composite role and not a single task that the occupation



requires.

74. As per the impugned award, the appellant has been awarded compensation on account of loss of income during treatment period/recovery as well as loss of earning capacity/loss of future earnings.

75. However, it is pertinent to note that the learned Tribunal concluded that the appellant failed to prove that he was doing the whole sale business of jeans at Tank Road, Karol Bagh, New Delhi and was earning Rs.23,000/- per month. The learned Tribunal noted that though the appellant had produced his income tax return for the years 2019-2020 and 2020-2021, they were both filed after the accident.

76. It is imperative for this Court to note that the appellant has submitted the proof of income tax returns for the period subsequent to the accident and therefore, the absence of such evidence for the time period of occurrence of the said accident compels this Court to infer the failure on part of the appellant to substantiate his claim of said earning at the time of accident. Thus, this Court does not find any infirmity with the findings of the learned Tribunal in determining the appellant's income and it is held that the learned Tribunal rightly took the minimum wages for an unskilled person of State of NCT of Delhi and the same is in accordance with the settled position of law.

77. In *Chandra alias Chanda alias Chandraram and Another vs. Mukesh Kumar Yadav and Others*, (2022) 1 SCC 198, the Hon'ble Supreme Court held that in case the income of the appellant cannot be determined, the notifications in relation to minimum wages serves as a yardstick to determine the earning of the victim. The relevant paragraph has been reproduced below:



“9.It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs.15000/per month. Possessing such licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. Though the wife of the deceased has categorically deposed as AW1 that her husband Shivpal was earning Rs.15000/ per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs.15000/- per month.”

78. Another contention *qua* the determination of the compensation amount has been made with respect to the degree of disability of the appellant where the learned Tribunal had noted that sufficient documents had been placed on record to show that the disability of the petitioner was determined as 61%, however, since the appellant failed to prove that he was in the wholesale business of jeans, it was observed by the learned Tribunal that the appellant's permanent disability is unlikely to affect any other work or job he is engaged in, thus, placing his disability at 30%.

79. This Court observes that the appellant had applied for a certificate



2024:DHC:5593



of disability which had been issued by the hospital, thereby, noting a permanent disability of 47% on account of neuropsychological impairment and an additional disability of 14% on account of stiffness of left ankle joint (total 61%). However, the learned Tribunal awarded compensation based on 30% functional disability without providing sufficient reasoning for the same. Accordingly, the learned Tribunal by way of multiplier method held that the appellant is entitled to Rs.6,46,510/- towards loss of earning capacity/loss of future earnings.

80. This Court is of the considered view that there needs to be sufficient reasoning accorded when the functional disability is reduced even though the evidence on record shows that it is higher. The mere determination of the appellant as unskilled labor is insufficient to award half the disability benefit to the appellant. Thus, it is observed by this Court that the learned Tribunal has erroneously given the functional disability of 30% where the evidence on record proves the disability of the appellant to be 61%, therefore, the compensation awarded to the appellant is liable to be modified in terms of the settled position of law

81. It is apposite to mention here that this Court is not interfering with the quantum of compensation being awarded under any other head of compensation as no evidence or argument has been put forth by the appellant to invite such interference of this Court.

82. Further, in light of the appellant failing to prove that his income was Rs.23,000/- at the time of the accident, this Court is not interfering with the determination of income of the appellant by the learned Tribunal.

83. In the instant appeal, this Court has meticulously examined the Disability Certificate dated 22nd December, 2021 of the appellant, which



2024:DHC:5593



highlights that the appellant has 47% permanent disability towards neuropsychological impairment and Disability Certificate dated 10th September, 2021 which denotes 14% disability towards head injury with post traumatic stiffness of left ankle joint, totaling to 61%.

84. In light of the principle laid down by the Hon'ble Supreme Court in *Sid ram (Supra)* that it is the duty of the adjudicating authority to consider the relationship between the functional disability and the occupation of the victim. In light of the aforementioned principle, this Court is of the view that the learned Tribunal has wrongly reduced the functional disability of the appellant from 61% to 30% without considering the effect of the functional disability of the victim with his occupation. It is true that the appellant has not proved that he was in the wholesale business of jeans, however, he must have been engaged in some work in order to sustain his livelihood. This Court notes that his functional disability is likely to impact whichever work he is engaged in. Therefore, the functional disability of the appellant has to be taken to be 61%, which is equivalent to his actual disability and not 30%.

85. In view of the aforesaid discussions, it is held that the learned Tribunal erred in considering the functional disability of the appellant at 30% and the same is set aside.

86. Accordingly, this Court modifies the loss of future income as follows:

- a. **Monthly income : Rs. 14,842/-**
- b. **Future income per month: Rs. 14,842 + (10% x 14,842) = Rs. 14,842 + 1,484.2 = Rs. 16,326.2/- (round off = Rs. 16,326/-)**
- c. **Percentage of disability suffered by the appellant : 61%**



2024:DHC:5593



- d. Annual income : Rs. 16,326 x 12 = Rs. 1,95,912/-
- e. Multiplier- 11 (since the appellant was 54 years during the time of the accident)
- f. Loss of earning capacity/loss of future earning = 1,95,912 x 11 x 61% = 13,14,569.52 (rounding off to Rs. 13,14,570/-)

87. In the circumstances of the case, the award of compensation is tabulated herein below:

S no.	Heads of Compensation	Amount
1	Reimbursement of medical expenses	Rs.1 ,48,244/-
2	Compensation on account of future treatment	Nil
3	Pain and Suffering	Rs.50,000/-
4	Loss of income during treatment period/recovery	Rs.1, 78, 104/-
5	Loss of earning capacity/loss of future earning	Rs. 13,14,570/-
6	Loss of amenities of life	Rs. 20,000
7	Loss of expectation of life	Rs. 10,000
8	Special diet	Rs. 5,000
9	Attendant charges	Rs. 5,000
10	Conveyance	Rs. 5,000
	Total	Rs. 17,35,918/-



2024:DHC:5593



88. Accordingly, the impugned award stands modified in terms of amount awarded by the learned Tribunal towards loss of future earning and the same is enhanced from **Rs.6, 46,510/- to Rs.13,14,569.52/-**.

89. In view of the aforesaid discussions, this Court awards Rs.

8, 67,959/- (after deducting 50% on account of contributory negligence) as compensation along with interest @ 7 % per annum including interim award, if any, from the date of filing of the claim petition before the learned Tribunal till the realization of the said amount in favour of the appellant and against the respondents on account of their liability being joint and several. This Court directs respondent no. 3 to pay the appellant the difference in the compensation as against the amount awarded by the learned Tribunal to the appellant within a period of thirty days from today after adjusting the amount already deposited/paid

90. In light of the foregoing discussions on law as well as facts of the instant case, the impugned award dated 25th April, 2023 passed by the learned MACT – 01, West, Tis Hazari Courts, Delhi in MACT Case bearing no. 324/2020 stands modified in view of the aforesaid terms.

91. Accordingly, the instant appeal is partly allowed and stands disposed of along with pending applications, if any.

92. The order to be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 22, 2024
dy/aa/ryp

Click here to check corrigendum, if any