



2024:DHC:6044



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 13th August, 2024.**

+ **MAC.APP. 295/2021**

RAMJEET RATHAURAppellant

Through: **Mr. Varun Sarin, Ms. Parul Dutta and
Ms. Babita Rawat Advocates.**

versus

BIJENDER SINGH & ORS.Respondents

Through: **Mr. R. K. Tripathi with Mr. Jarnail
Singh Tuli, Advocates.**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant appeal under Section 173 of the Motor Vehicles Act, 1988 has been filed on behalf of the appellant challenging the award dated 10th June, 2020 (hereinafter as the 'impugned award') passed by the learned Motor Vehicles Claims Tribunal, South East, Saket District Court, New Delhi (hereinafter as the 'Tribunal') in MAC No. 4462/2016, seeking the following reliefs:

“i. allow the appeal of the appellant herein seeking enhancement of compensation and modify the impugned judgment dated 10.06.2020 passed by the Court of Dr. Hardeep Kaur, Presiding Officer, Motor Accident Claims Tribunal: South East, Saket District Court, New Delhi in the matter of Ramjeet Rathaur v. Bijender Singh & Ors. in Suit No. 4462/16; and



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ii. pass any such other and further orders may be passed as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case."

2. The brief facts of the case are that on 29th October, 2015 at around 11:30 AM, Mr. Ramjeet Rathaur, the appellant/claimant was riding his scooter bearing registration no. DL-3-SDE-6774 and going to Bhogal Shastri Market from his residence. When the appellant reached Mathura Road near Sewa Sadan Okhla Tank, New Delhi, a bus bearing registration no. HR-38-U-6589 (hereinafter as the 'offending vehicle'), which was being driven in a rash and negligent manner by Mr. Bijender Singh (hereinafter as the 'respondent no. 1'), suddenly hit the scooter from behind. The appellant fell down from the scooter on the road and got crushed under the offending vehicle, thereby sustaining grievous injuries.
3. The appellant was immediately rushed to Indraprastha Apollo Hospital for medical treatment, where it was declared that the appellant suffered grievous injuries.
4. Thereafter, an FIR bearing no. 823/15 was registered at Police Station Sarita Vihar and accordingly, chargesheet was filed under sections 279/338 of the Indian Penal Code, 1860 against the respondent no.1.
5. The appellant filed a Claim Petition bearing no. 4462/2016 before the learned Tribunal seeking compensation for the grievous injuries sustained due to the rash and negligent driving of the offending vehicle by respondent no. 1.
6. A Detailed Accident Report (hereinafter as the 'DAR') has been filed



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before the learned Tribunal and replies to the same were also filed by the respondent no. 1 and 2.

7. Respondent no. 3 has given a legal offer pertaining to the DAR to the appellant for a sum of Rs.72,500/-, which was rejected by the appellant as the same is on the lower side of the compensation sought.

8. Thereafter, by placing reliance on the testimonies of the witnesses and evidence placed on record, the learned Tribunal passed the impugned order dated 10th June, 2020 holding that the respondent no. 1 was driving the offending vehicle in a rash and negligent manner causing grievous injuries to the appellant. In accordance with the same, the learned Tribunal awarded a compensation of Rs.29,04,442/- (exclusive of interest from 8th November, 2016 to 28th July, 2017) to the appellant, to be recoverable from the respondent no. 3.

9. Aggrieved by the compensation awarded by the learned Tribunal in the impugned order, the appellant filed the instant appeal before this Court seeking to set aside the same.

10. Learned counsel appearing on behalf of the appellant submitted that the learned Tribunal erred in considering 42% functional disability when the appellant has sustained 84% permanent impairment in the right lower limb and genitourinary system.

11. It is submitted that the learned Tribunal failed to consider that the appellant was running a *dhaba*, earning a monthly income of Rs. 25,000/- and erroneously taken the income of the appellant as Rs.9,178/- per month based on the minimum wages of unskilled worker despite producing the



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Trade License/ Registration Certificate issued by the Department of Food Safety on record.

12. It is submitted that the learned Tribunal erred in granting appropriate compensation under the heads of loss of income and loss of future income as the income of the appellant is wrongly determined while computing the compensation under these heads.

13. It is further submitted that the learned Tribunal did not consider the vocational background of the appellant, thereby not granting compensation for future prospects.

14. It is submitted that the learned Tribunal erred in granting lower compensation for medical expenses despite the availability of extensive medical records.

15. It is submitted that the learned Tribunal has not awarded appropriate compensation under the heads of mental & physical shock and pain & suffering ignoring the gravity of injuries sustained by the appellant.

16. It is submitted that the learned Tribunal failed to consider the difficulties of the appellant in leading a daily life by offering unreasonable compensation under the heads of loss of amenities and conveyance.

17. It is submitted to the effect that the learned Tribunal failed to consider the impact of the injuries sustained by the appellant with respect to the expenses for special diet, future assistance and disfigurement, thereby granting minimal compensation under these heads.

18. It is further submitted that the learned Tribunal failed to award compensation for the loss of life expectancy and future medical expenses



despite the deposition of witnesses explicitly stating the same.

19. In view of the foregoing submissions, it is submitted that instant appeal may be allowed and impugned order be modified *qua* the compensation amount.

20. *Per contra*, the learned counsel appearing on behalf of the respondents submitted that the learned Tribunal has rightly assessed the compensation by considering 42% functional disability, as reliance was placed on the testimony of the witnesses that the appellant's upper right limb is unaffected and that he can perform activities while sitting.

21. It is submitted that the learned Tribunal was correct in taking the minimum wages of the unskilled worker as appellant's income, since no proof was placed on record reflecting that he was earning Rs. 25,000/- per month and that the loss of income and future income have been computed accurately.

22. It is submitted to the effect that the appellant is not liable for additional compensation for future prospects, future medical expenses and loss of life expectancy as no proof of the same was placed on record.

23. It is further submitted that the learned Tribunal has accurately computed the compensation for medical expenses as the medical records and the testimony of R3W1 are in consonance with each other.

24. It is further submitted that the enhancement sought for non-pecuniary expenses such as pain & suffering, loss of amenities, conveyance, special diet, attendant's charges, disfigurement, mental & physical shock etc. is not required, as the learned Tribunal had taken a generous route in awarding the



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compensation and therefore, enhancement for the same will make it unreasonable.

25. In view of the aforementioned submissions, it is submitted that the instant appeal being devoid of any merit may be dismissed.

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

27. The instant appeal is admitted.

28. It is the case of the appellant that the gravity of the injuries and the situational difficulties which come along with it were not taken into account by the learned Tribunal while granting compensation and the same requires to be enhanced. Hence, it has been prayed to enhance/ modify the impugned order.

29. In rival submissions, it has been contended that the appellant is not entitled to enhancement of the compensation as the same has been reasonably awarded by the learned Tribunal and that the instant appeal be dismissed.

30. Therefore, the question for adjudication before this Court is whether the learned Tribunal erred in awarding appropriate compensation to the appellant *vide* impugned order dated 10th June, 2020.

31. Before going into the merits of the case, it is apposite for this Court to peruse the findings recorded by the learned Tribunal in its impugned order and the operative portion of the same is reproduced hereunder –

<i>Sl. no.</i>	<i>Pecuniary loss:-</i>	<i>Quantum</i>
1.	(i) <i>Expenditure on treatment : As per deposition of R3W1 (Billing Clerk, Indraprasth Hospital)</i>	<i>Rs. 12,00,230/-</i>



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	<i>namely Devandant Sharma's testimony, injured has paid Rs. 12,11,230/- to the hospital for medical treatment.</i>	
	<i>(ii) Expenditure on Conveyance : The claimant has not filed any bill for conveyance. The nature of injuries are grievous and petitioner suffered 84% permanent physical impairment in relation to right lower limb and genitourinary system. By guss work, compensation can be awarded for conveyance.</i>	<i>Rs. 50,000/-</i>
	<i>(iii) Expenditure on special diet :There is no prescription for special diet. The nature of injuries are grievous and petitioner suffered 84% permanent physical impairment in relation to lower limb and genitourinary system. By guess work, compensation can be awarded for special diet.</i>	<i>Rs.50,000/-</i>
	<i>(iv) Cost of nursing / attendant : Even in the absence of documentary proof, compensation for attendant's charges is to be given even if services were rendered by family members.</i>	<i>Rs.50,000/-</i>
	<i>(v) loss of income : Petitioner has claimed that at the time of accident, he was running a dhaba in Bhogal, Jangpura, Delhi and earning Rs. 25,000 per month. However, petitioner did not file any document regarding his income or employment and therefore, income of petitioner will be taken as per minimum wages for unskilled workman applicable in Delhi at the time of accident which was Rs. 9,178/- per month.</i> <i>The injured has suffered 84% permanent physical impairment in relation to right lower limb and genitourinary system.</i> <i>The Predecessor of this Tribunal observed during examination of PW-1 that petitioner has</i>	<i>Rs. 4,95,612/-</i>



	<i>appeared on wheel chair and he is wearing an orthopedic belt around his waist due to plates in his waist. Considering the nature of injury, disability report and medical documents this Tribunal awards him compensation for loss of wages from the date of accident till the date of decision of this case (for about 54 months) which is $9178 \times 54 = \text{Rs. } 4,95,612/-$.</i>	
	<i>(vi) Cost of artificial limb (if applicable):</i>	<i>Not Applicable</i>
	<i>(vii) Any other loss / expenditure :</i>	<i>Not Applicable</i>
2.	<i>Non-Pecuniary loss :</i>	
	<i>(i) Compensation of mental and physical shock : As the claimant has suffered 84% permanent physical impairment in relation to right lower limb and genitourinary system, he would have undergone mental and physical shock.</i>	<i>Rs. 1,00,000/-</i>
	<i>(ii) Pain and suffering : Compensation for pain and suffering is to be awarded keeping in mind the nature of injuries suffered by the claimant.</i>	<i>Rs. 1,00,000/-</i>
	<i>(iii) Loss of amenities of life : The claimant has suffered 84% permanent physical impairment in relation to right lower limb and genitourinary system.</i>	<i>Rs. 1,00,000/-</i>
	<i>(iv) Disfiguration : The claimant has suffered 84% permanent physical impairment in relation to right lower limb and genitourinary system.</i>	<i>Rs. 1,00,000/-</i>
	<i>(v) Loss of marriage prospects : Petitioner was married at the time of accident.</i>	<i>Nil</i>
	<i>(vi) Loss of earnings, inconvenience, hardships, disappointment, frustration, mental stress, dejection and unhappiness in future life etc.</i>	<i>Already covered above.</i>
3.	<i>Disability resulting in loss of earning capacity</i>	
	<i>(i) Percentage of disability assessed and nature of disability as permanent or temporary</i>	<i>The claimant has suffered 84% permanent</i>



		<i>physical impairment in relation to right lower limb and genitourinary system.</i>
	<i>(ii) Loss of amenities or loss of expectation of life span on account of disability : The claimant has suffered 84% permanent physical impairment in relation to right lower limb and genitourinary system.</i>	<i>Already covered</i>
	<i>(iii) Percentage of loss of earning capacity in relation to disability:</i> <i>Claimant has suffered grievous injury in the accident which led to 84% permanent physical impairment in relation to right lower limb and genitourinary system.</i> <i>In Raj Kumar Vs. Ajay Kumar 2011 (1) SCC 343 the Hon'ble Supreme Court laid down a three step approach to decide compensation for the injured persons who have suffered permanent disability as under:</i> <i>i) Tribunal should see as to what the injured can do inspite of permanent disability and what the injured cannot do.</i> <i>ii) Tribunal should see the age of the injured and what the injured used to do before the accident.</i> <i>iii) Tribunal should see if claimant is totally disabled from earning any kind of livelihood or whether he can carry out that activity which he was doing earlier or if he could do some other kind of activity to earn his livelihood.</i> <i>In the present case, injured has stated that he was running a dhaba in Jangpura but he failed to prove the same. Injured has suffered 84%</i>	<i>42 %</i>



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	<i>permanent physical impairment in relation to right lower limb and genitourinary system. Dr. Sanjai Singh who was examined as PW-2 relied upon the Disability Certificate as Ex.PW2/A and gave observation that the disability is permanent in nature and it could not be changed. He deposed that patient is on Foley's Catheter and he will be life long on this. It needs to be changed in every 15 days to prevent infection. For change of Foley's catheter assistance of a doctor is required. It is only for urine. The patient has wheel chair mobility. Without assistance patient cannot do his daily activities. There is no effect on life expectancy due to this problem but if patient did not maintain hygiene urinary infection may occur. During cross examination PW-2 admitted that upper limb of the patient is working satisfactory and the patient can do any sitting job while sitting on wheel chair. As per opinion of the doctor, due to accident, his working capacity has been reduced. In the circumstances, his functional disability is treated as 42 % for the whole body.</i>	
	<i>(iv) Loss of future Income: Injured was 44 years old at the time of accident, hence multiplier of 14 will apply.</i>	<i>42 % (9,178 x 12) x 14 = Rs. 6,47,600/-</i>
	<i>Total Compensation</i>	<i>Rs. 29,04,442/-</i>
	<i>Interest</i>	<i>9% p.a. from the date of filing of DAR i.e. 21.01.2016 till realization (excluding interest from 08.11.2016 to 28.07.2017).</i>



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20. *Since there is no statutory defence, therefore, the compensation will be payable by the insurance company of offending vehicle with interest @ 9% from the date of filing of DAR i.e. 21.01.2016 till realization (excluding interest from 08.11.2016 to 28.07.2017) which comes out Rs. 29,04,442/- + Rs. 9,58,227/- = Rs. 38,62,669/-."*

32. While addressing the issue of compensation, the learned Tribunal has relied upon the testimonies of the witnesses i.e., PW-1, PW-2, R3W1 and R3W2 in determining the intensity of the injuries suffered by the appellant as well as the disability certificate on record, thereby ascertaining the functional disability as 42%. Considering the nature of injuries, medical records, disability report etc. along with the situational difficulties faced by the appellant, the learned Tribunal has granted compensation amounting to Rs. 29,04,442/-.

33. In light of the same, this Court finds it pertinent to address the compensation awarded by the learned Tribunal by firstly addressing the pecuniary expenses and then the non-pecuniary expenses.

34. In order to assess whether the compensation awarded under various heads in case of grievous injury is reasonably assessed, this Court finds it imperative to refer to the case of ***Raj Kumar vs. Ajay Kumar, (2011) 1 SCC 343***, wherein the Hon'ble Supreme Court of India had broadly listed out various heads under which compensation needs to be awarded for normal as well as serious injuries. Moreover, it addressed the multiple factors to be taken into consideration while awarding compensation under each of those heads. The relevant portion of the said judgment is as follows –



“General principles relating to compensation in injury cases

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

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

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

Pecuniary damages (Special Damages)

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

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

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

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



(iii) *Future medical expenses.*

Non-pecuniary damages (General Damages)

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

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

(vi) *Loss of expectation of life*

(shortening of normal longevity).

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

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



difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a).

We are concerned with that assessment in this case.

Assessment of future loss of earnings due to permanent disability

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

7. The percentage of permanent disability is expressed by the



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

8. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability.

Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.



What requires to be assessed by the Tribunal is the effect of the 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 percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation

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

9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual



extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent 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.”

35. Upon perusal of the aforesaid case, the assessment of pecuniary damages is usually based on the evidence placed on record as it includes reimbursement of the amount spent and medical records of the treatment, whereas the assessment of non-pecuniary damages is very subjective and depends on the nature of injuries and surrounding circumstances of the appeal.

36. Therefore, the factors which play a primary role in determining pecuniary expenses are the medical expenses, income of the appellant and extent of disability suffered by him.

37. As per the case of **Raj Kumar vs. Ajay Kumar (supra)**, while



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determining the medical expenses incurred by the appellant, the available medical records need to be taken into consideration for reimbursing the appellant for the medical expenses.

38. In the examination of the appellant/ PW-1, it was stated that he has been hospitalized for a prolonged period of time i.e., from 13th November, 2015 to 10th May, 2016, wherein the appellant underwent multiple surgeries as well as tests conducted by the concerned doctors for the treatment of the grievous injuries. Moreover, it was also testified that he was admitted to the hospital for further treatment on 2nd June, 2017 for three days; on 30th July, 2017 for ten days; on 1st September, 2017 for three days; on 9th November, 2017 for four days and on 22nd December, 2017 for four days. He further testified that he has spent more than Rs. 35,00,000/- for his treatment, special diet and conveyance.

39. However, during his cross-examination, he deposed that a bill of Rs. 43,20,384/- has been raised, out of which the appellant paid a sum of Rs. 1,19,300/- and the remaining was paid by the government. He further testified that he is the bearer of the EWS card and that a bill of Rs. 74,216.30/- was raised out of which Rs. 63,716/- was not charged by the hospital due to the EWS card, and that he paid Rs. 10,000/- for the said bill.

40. Further, R3W1, who is a billing clerk at the Indraprasth Apollo Hospital, in his examination testified that during the period of 29th October, 2015 to 13th November, 2015, a bill of Rs. 16,74,523.02 was raised, out of which the appellant paid a sum of Rs. 9,92,000/- and from 13th November, 2015 to 10th May, 2017, a bill of Rs. 43,20,384.04 was raised, out of which



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the appellant paid Rs. 2,19,300/-. The said bills were placed on record.

41. While awarding medical expenses, the learned Tribunal solely relied upon the testimony of R3W1 and awarded Rs. 12,11,230/-.

42. It is observed by this Court that a vast set of medical bills and medical documents are placed on record. Upon perusal of the same as well as the testimonies of PW1 and R3W1, this Court finds that the sole testimony of R3W1 does not shed enough light on the exact amount spent on the medical treatment. However, the same is supported by bills on record.

43. Therefore, for computing the medical expenses, this Court has relied upon the testimony of R3W1, PW-1 and additional medical bills on record, amounting to **Rs. 13,45,233/-**. The break-up of the same is given hereunder

DETAILS	AMOUNT
Bill No. DEL-ICR-30651 dated 13 th November, 2015 [from 29 th October, 2015 to 13 th November, 2015]	Rs. 9,92,000/-
Bill No. DEL-IFR-868 dated 10 th May, 2017 [from 13 th November, 2015 to 10 th May, 2017]	Rs. 2,19,300/-
Miscellaneous Bills from 16 th May, 2017 to 26 th May, 2018	Rs. 94,224/-
Additional Miscellaneous Bills	Rs. 39,710/-
Total	Rs. 13,45,234/-



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44. In light of the same, this Court is of the opinion that **Rs. 13,45,234/-** shall be granted to the appellant for medical expenses by placing reliance on the testimony of R3W1 as well as the additional medical expenses on record.

45. In *Raj Kumar vs. Ajay Kumar (supra)*, the Court has mentioned that the loss of future medical expenses can be given only when it is believed that the claimant is in need of future medical treatments.

46. In the testimony of Dr. Sangai Singh, Senior Resident, AIIMS Trauma Centre/ PW-2, it was stated that the appellant is on Foley's catheter, which needs to be changed every 15 days in order to prevent infection and that he shall be needing it for the rest of his life. It is further testified that while changing the Foley's catheter, which is used only for urine, the assistance of the doctors is required.

47. The factual reality of the appellant has been explained by PW-2 in her deposition, where the appellant will need medical assistance and attention of the doctors for the future course of life as the Foley's catheter is a permanent requirement and that it needs to be changed every 15 days to avoid infection. Considering the possibilities of future medical difficulties as well as future medical treatments, based on the testimony of PW-2, this Court grants a sum of **Rs. 2,00,000/-** to the appellant for the future medical expenses.

48. In his testimony, the PW-1 deposed that he was running a *dhaba* at Side No. 1561, Shastri Market Jangpura Bhogal, New Delhi, wherein he was earning a sum of Rs. 25,000/- per month. In order to prove the same, the appellant relied on the Trade License issued by the Department of Food Safety.



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49. The income of the appellant cannot be ascertained as the same is not reflected in the Trade License document, and therefore, in absence of any proof of income, this Court finds that the learned Tribunal was correct in taking the minimum wages of unskilled labor while determining the appellant's income, which is Rs. 9,178/- per month at the time of the accident.

50. While assessing the loss of income during the treatment, the compensation is based on the income lost during the treatment underwent by the appellant. The learned Tribunal was generous in taking the period of treatment as fifty-four months, from the date of the accident to the date of the impugned order passed, as the appellant was still getting medical treatment at the time of passing of the impugned order.

51. Therefore, this Court finds that the learned Tribunal was correct in taking the period of loss of income as fifty-four months and therefore, the grant of **Rs. 4,95,612/-** by the learned Tribunal is approved by this Court.

52. However, to ascertain the loss of future income, it is imperative for this Court to firstly determine the functional disability sustained by the appellant.

53. The Hon'ble Supreme Court has reiterated in various cases, most prominent being *Raj Kumar vs. Ajay Kumar (supra)*, and *Sandeep Khanuja v. Atul Dande and Anr., (2017) 3 SCC 351*, wherein emphasis has been laid on the adverse impact of the permanent disability on claimant's earning capacity for computing the compensation for loss of future income.

54. As per the testimony of PW-2, the disability certificate has been



prepared by the Board of Assessment of Disability of AIIMS, Delhi, in which he was a member. The disability certificate specifies that the appellant has suffered 84% permanent impairment in his right lower limb and genitourinary system of his body. The testimony of PW-2 also indicates the multiple injuries incurred by the appellant, affecting his daily activities, thereby requiring constant assistance in doing the same. In his cross examination, the PW-2 testified that the upper limb of the right leg is unaffected and that he is capable of doing any work provided that he is sitting.

55. It is pertinent to note that in the testimony of PW-1, the appellant stated that he has studied only till 5th standard, thereby indicating that no formal education has been obtained by him. Moreover, the appellant is an unskilled worker. Given that the appellant has not obtained a formal education and is an unskilled worker, who now requires a wheelchair for mobility and frequent hospital visits for his condition, affecting his future earning capacity, this Court finds that the 42% functional disability taken by the learned Tribunal is incorrect, as the same cannot justify the actual circumstantial difficulties faced by the appellant in leading his daily life.

56. Therefore, in light of the aforementioned cases, this Court is of the opinion the 84% permanent impairment in his right lower limb and genitourinary system has an impact on the appellant's earning capacity, which has a similar effect on his entire bodily disability. Therefore, placing reliance on the testimonies of PW-1, PW-2 and the disability certificate, 84% functional disability needs to be taken into consideration for



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determining the loss of future income as the chances of are bleak.

57. In light of this, the loss of future income, which is calculated based on the income earned per annum, age as well as the functional disability sustained by the appellant, is now calculated as follows –

Income earned per annum	Rs. 9,178/- x 12 months = Rs. 1,10,136
Multiplier (age of 44 at the time of accident)	14
Functional disability incurred	84%
Total loss of future income	Rs. 12,95,199/-

58. Based on the aforementioned computation, this Court enhances the compensation awarded under the head of loss of future incomes to **Rs. 12,95,199/-** to be granted to the appellant.

59. It is the case of the appellant that the learned Tribunal has failed to award compensation for future prospects despite the 84% permanent impairment in the right lower limb and genitourinary system and undergoing vigorous surgeries, ultimately being restricted to wheelchair for mobility.

60. It is important to mention that as per the case of *Sidram vs. The Divisional Manager, United India Insurance Co. Ltd. and Ors., 2022 INSC 1204*, the Hon'ble Supreme Court stated that it is a well settled law that in cases of permanent disability, the claimant is entitled to both the loss of future income as well as future prospects, indicating that the both are different.



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61. It is pertinent to observe the findings of the Hon'ble Supreme Court in *National Insurance Co. Ltd vs Pranay Sethi*, AIR 2017 SC 5157, wherein an elaborative scheme for computation of future prospects have been discussed. The relevant portion of the same is reproduced hereinunder

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“61.

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

62. The disability certificate on record reflects that the appellant suffers 84% permanent impairment in his right lower limb and genitourinary system, which affects his earning capacity in the future as he is unable to perform his daily activities without seeking assistance from others. Moreover, the fact that he can move around only in a wheelchair and frequent visits to the hospitals, shall have a huge impact on his future prospects.

63. Therefore, since the appellant was 44 years of age at the time of the accident and was an unskilled worker, this Court relies on *Pranay Sethi (supra)*, for awarding an additional 25% of his established income, amounting to **Rs. 1,37,670/-** [= Rs. 1,10,136 (*annual income*) + 27,534 (25% of *annual income*)].



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64. It is pertinent to mention that while awarding non-pecuniary expenses, the Court needs to consider the different circumstances based on the impact of the accident caused as observed by the Hon'ble Supreme Court in the case of *R.D. Hattangadi vs. Pest Control (India) Pvt. Ltd. and Ors., AIR 1995 SC 755*. It has been further observed that when the compensation is to be awarded for pain and suffering and loss of amenities of life, the special circumstance of the claimant needs to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life.

65. The appellant has incurred 84% permanent impairment in his right lower limb and genitourinary system, with 84% functional disability, thereby affecting his day-to-day activities, wherein his conveniences is seriously compromised due to the accident caused by the respondent no. 1 while driving the offending vehicle in a rash and negligent manner. Moreover, the appellant's mobility is restricted to the wheelchair as well as the inconvenience in using the Foley's catheter for urinary purposes.

66. In light of the same, this Court is of the view that the learned Tribunal was right in awarding **Rs. 1,00,000/-** for loss of amenities, however, finds it imperative to enhance the compensation amount for loss of conveyance, by granting **Rs. 1,00,000/-** for the same.

67. Although no proof of requiring a special diet has been placed on record, given the grievous injuries sustained by the appellant, which has not only affected him earlier but will be affecting him in the future, and considering that the genitourinary system is affected, this Court finds it



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reasonable to enhance the compensation under the head of loss of special diet, therefore granting a sum of **Rs. 1,00,000/-** to the appellant.

68. It has been stated by the PW-2 in his testimony that the appellant cannot do his daily activities without the necessary assistance being provided. Upon perusal of the records, no material was provided as to the incurrence of attendant/ nursing charges. Considering the magnitude of the injuries sustained by the appellant as well as placing reliance on the testimony of PW-2, this Court is of a considered view that the assistance may have been provided by an assistant or the family members during the treatment and that the same is required in the future as well. It is pertinent to mention the judgment passed by the Hon'ble Supreme Court in *Jithendran v. New India Assurance Co. Ltd., (2022) 15 SCC 620*, wherein it was observed that in absence of any material pertaining to the attendant charges are on record, a conservative estimate of Rs. 5,000/- per month appears to be the bare minimum. Therefore, an annual expense of Rs. 60,000/- along with the multiplier of 14 (since the appellant was 44 years at the time of the accident), this Court grants an amount of **Rs. 8,40,000/-** for nursing/ attendant charges.

69. The appellant suffered multiple injuries in the accident with 84% permanent impairment in the right lower limb and genitourinary system, thereby undergoing multiple surgeries. For the cause of accident, the appellant had to endure being in the hospital for a prolonged period of time and was not in a position to earn any income during his treatment. Moreover, due to the gravity of the injuries sustained, his ability to earn a future income



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is also very limited. Additionally, the appellant's mobility being restricted to wheelchair as well as the frequent visits to the hospital do not facilitate the appellant with the enjoyment of fruits of this life.

70. In light of the situational difficulties incurred by the appellant, this Court is of the view that the learned Tribunal was right in granting **Rs.1,00,000/-** for mental & physical shock, however, finds it apposite to increase the compensation for pain & suffering, by granting **Rs. 1,35,000/-**.

71. Consequently, due to the multiple injuries sustained by the appellant with 85% permanent impairment in the right lower limb and genitourinary system, this Court finds that the learned Tribunal has accurately awarded **Rs. 1,00,000/-** for disfigurement, therefore, requires no enhancement for the same.

72. Although the learned Tribunal has not awarded any compensation for loss of life expectancy, it is the case of the appellant that the same should be granted given the facts and circumstances.

73. It is pertinent for this Court to peruse the testimony of PW-2, wherein it was stated that although the appellant will not be having a loss in life expectancy, the same will be affected if hygiene is compromised as a result of which urinary infection might get activated.

74. Given that there is a possibility of getting a urinary infection, as the same cannot be absolutely discarded based on the testimony of PW-2, this Court shall award a sum of **Rs. 75,000/-** for the loss of life expectancy.

75. Based on the aforementioned reasoning, this Court lays down the amount of compensation under different heads, after making the requisite



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corrections –

S.No	Heads of Compensation	Amount
1.	Medical expenses	Rs. 13,45,234/-
2.	Loss of future medical expenses	Rs. 2,00,000/-
3.	Loss of income during the treatment	Rs. 4,95,612/-
4.	Loss of future income	Rs. 12,95,199/-
5.	Future Prospects	Rs. 1,37,670/-
6.	Loss of conveyance	Rs. 1,00,000/-
7.	Loss of special diet	Rs. 1,00,000/-
8.	Nursing/ Attendant charges	Rs. 8,40,000/-
9.	Mental and physical shock	Rs. 1,00,000/-
10.	Pain and suffering	Rs. 1,35,000/-
11.	Loss of amenities	Rs. 1,00,000/-
12.	Disfiguration	Rs. 1,00,000/-
13.	Loss of life expectancy	Rs. 75,000/-
	TOTAL	Rs. 50,23,715/-

76. Considering the observations made hereinabove, it is held that this Court has enhanced the total compensation awarded to appellant from Rs. 29,04,442/- to **Rs. 50,23,715/-** along with interest @ 9% per annum.

77. In view of the foregoing discussions of facts and law, the impugned order dated 10th June, 2020 passed by the learned Motor Vehicles Claims Tribunal, South East, Saket District Court, New Delhi in MAC No.

Signature Not Verified

Digitally Signed By: PRAVEEN
KUMAR BABBAR
Signing Date: 20.08.2024
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4462/2016, is modified as per the aforementioned terms. The instant appeal stands partly allowed.

78. The respondent no. 3 is directed to pay the compensation amount of **Rs. 50,23,715/-** to the appellant within thirty days of receipt of this order, after deducting the amount already paid/deposited.

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

80. The judgment be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 13, 2024

rk/sm/av