



2024:DHC:6228



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

% **Date of order: 20th August, 2024**

+ **MAC.APP. 898/2017 & CM APPL. 30302/2018**

RANJEET SINGH TOMARAppellant

Through: **Ms. Harsh Lata, Mr. Jaswant Singh & Manjot Singh, Advocates.**

versus

MANJIT & ORSRespondent

Through: **Ms. Seema Gulati, Advocate for the Insurance Company.**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant appeal has been filed by the appellant under Section 173 of the Motor Vehicles Act, 1988 assailing the quantum of compensation awarded by the learned Presiding Officer, Motor Accident Claims Tribunal, South East District, Saket, New Delhi vide the impugned judgment-cum award dated 13th February, 2017 in suit No. 248/2012.

2. The brief facts that led to the filing of the instant appeal are as follows:

- a. The appellant was on his way back to his house from Punjab along with other passengers in a car bearing No. HR-37-A-6249 on 18th July, 2011 at around 03:45 AM. Upon reaching Gannaur, Sonapat, Haryana, the appellant's vehicle collided



with a TATA 1109 truck bearing no. PB-11-AR-9427 which was improperly parked in the middle of the road without any signals or lights in a negligent manner, leading to a severe impact that caused multiple injuries to the appellant. The appellant was initially taken to a District Hospital, Sonapat, where he was admitted for two hours before being referred to PGI Rohtak for one day and then transferred to AIIMS Hospital for further treatment.

- b. Pursuant to the above, a criminal case bearing FIR no. 217/2011 under section 279/337/338/304-A/427 of the Indian Penal Code, 1860 was registered at Police Station Gannaur against the respondent no. 2/driver of the offending vehicle.
 - c. The appellant eventually filed a claim before the learned Tribunal in Suit no. 248/2012. The learned Tribunal, vide the impugned judgment dated 13th February, 2017, awarded a compensation of Rs.7,40,221/- along with the interest @ 9% per annum from the date of the filing of the appeal till the date of realization of the amount as compensation.
 - d. Being aggrieved by the aforesaid impugned judgment, the appellant has filed the instant appeal for enhancement of the quantum of compensation.
3. Learned counsel appearing on behalf of the appellant submitted that the impugned judgment passed by the learned Tribunal is against the settled



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position of law and the learned Tribunal has failed to take into consideration the material available on its record.

4. It is submitted that the learned Tribunal erred by failing to account for the appellant's multiple grievous injuries, including facial injuries, CSF rhinorrhea, a left eye injury, a left fifth metatarsal fracture, and an ankle fracture. These injuries required two surgeries—one for dental repairs and another for his eyes, during which a plate was inserted in his face and plastic surgery was performed. Given the severity of these injuries and the extensive medical interventions required, the compensation awarded is insufficient and does not reflect the true extent of the appellant's suffering and medical needs.

5. It is submitted that the learned Tribunal overlooked the need for further surgery to remove the plates from the appellant's jaw and face, with an estimated cost of Rs.1,69,000/- (Ex. PW1/14) presented in evidence. Furthermore, the learned Tribunal failed to grant compensation for future treatment and did not account the expenses of Rs.65,000/- incurred for dental treatment, despite the submission of relevant prescriptions and bills as Ex. PW1/2 and Ex. PW1/3. It is submitted that these omissions demonstrate a significant shortfall in the compensation granted, which does not adequately address the appellant's ongoing medical expenses and needs.

6. It is submitted that the learned Tribunal erred by assigning a 3% functional disability for calculating the appellant's loss of income, despite the severity of his injuries, including eye, facial, and dental injuries. Given the nature of these injuries, which cause significant social embarrassment



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and disfigurement, the functional disability should have been assessed at a minimum of 7.5% or higher as per the disability certificate. It is submitted that the learned Tribunal's assessment does not adequately reflect the comprehensive impact of the injuries on the appellant's daily life and overall functionality.

7. It is submitted that the learned Tribunal awarded inadequate compensation of Rs. 20,000/- for pain and suffering and Rs. 15,000/- for special diet, conveyance, and attendant charges. Given that the appellant sustained multiple grievous injuries requiring over a month of hospitalization and additional treatment, these amounts are insufficient and do not reflect the full extent of the appellant's suffering and expenses.

8. It is further submitted that the learned Tribunal erred in awarding insufficient quantum of compensation towards the heads of loss of amenities and enjoyment of life, compensation for disfigurement, and loss of income due to treatment.

9. Therefore, in the view of the foregoing submissions, the learned counsel for the appellant prayed that the instant appeal may be allowed and reliefs be granted as prayed for.

10. *Per Contra*, the learned counsel appearing on behalf of the respondent no.3/National Insurance Company Limited vehemently opposed the arguments advanced by the learned counsel appearing on behalf of the appellant submitting to the effect that the impugned judgment passed by the learned Tribunal does not merit any interference and is passed in accordance with the settled position of law. It is pertinent to mention here that the



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respondent has not placed on record its reply or written submissions, and therefore, this Court has taken the contentions of the respondent from the Lower Court's Record.

11. It is submitted on behalf of the respondent insurance company that the learned Tribunal has rightly taken into consideration the factual scenario and accordingly, awarded a just amount of compensation to the appellant.

12. It is contended that the appellant is not entitled for enhancement of compensation as the quantum of compensation awarded by the learned Tribunal to the appellant is "just compensation" by taking into account the various factors such as the medical bills, disability certificate etc.

13. It is submitted that the learned Tribunal has rightly reckoned the disability @ 3% for calculating the future loss of income and the total amount of compensation awarded is just, fair and reasonable.

14. It is contended that the instant appeal is filed with *mala fide* intentions to pressurize the respondent no. 3 to capitulate to the unlawful demands of the appellant.

15. In view of the aforesaid submissions, the learned counsel for the respondent no. 3 prays that the instant appeal being devoid of any merit, may be dismissed.

16. Heard the learned counsel for the parties and perused the material on record.

17. The appeal is admitted.

18. By way of the present appeal, the appellant has initially claimed medical expenses of Rs. 65,000/- for dental surgery. The appellant has



further challenged the impugned judgment, contending that the appellant suffered a disability assessed at 7.5% due to the loss of aesthetics. The appellant argued that the learned Tribunal erred in assessing the functional disability at 3% in ascertaining the compensation under the heads of future loss of income, despite the disability certificate indicating that the appellant has suffered a 7.5% disability which is same as permanent disability due to loss of aesthetics.

19. In rival submissions, the respondent insurance company has refuted the contentions advanced by the appellant contending to the effect that the instant appeal is meritless and the learned Tribunal has awarded just and fair compensation which is on the higher side. The instant case is nothing but a gross abuse of the process of law, and thus, the same may be dismissed.

20. At this juncture, this Court finds it apposite to peruse the findings recorded by the learned Tribunal in ascertaining the quantum of compensation in its impugned judgment and the relevant portion of the same is reproduced hereunder:

“22. Loss of future income: Petitioner in his examination filed copy of Adhar Card (Ex. PWI/13) wherein his birth of year is mentioned as 1966. Therefore, he is around 45 years of age at the time of accident 18.07.2011. It is natural that with this disability and injuries the petitioner entire future career/earning capacity has been destroyed. Present injury will also diminish his earning capacity. As per disability certificate, petitioner suffered 7.5% disability, in view of the judgment of Delhi High Court titled as "Laxmi Narain Vs. Trilochan Singh & Ors., FAO No. 289/99, dated 04.05.2009, Delhi", the total



functional disability towards whole body is assessed around 3%.

23. Future prospects:- LR of deceased is not entitled for future prospects as salary of deceased is assessed under Minimum Wages Act. {(relied upon Ram Dayal & Anr Vs Ram Nibash & Ors passed by Hon'ble High Court of Delhi on 21.01.2016 by Hon'ble Justice Sh. R.K.Gauba in MAC App. 1012/2015 wherein it is stated that

"The question of future prospects is still at large. The Supreme court, in the case of Sarla Verma (Supra), interalia, held that in the case of self employment or those on a fixed salary, the element of future prospects can not be factored in. This view was affirmed by the three judge bench of the Supreme court in Reshma Kumari V. Madan Mohan (2013) 9 SCC 65. Though by a subsequent judgment of another three judges bench of the Supreme court in the case of Rajesh & Ors V Rajbir Singh & Ors., (2013) 9 SCC 54 and National Insurance Company Ltd V. Pushpa & Ors (2015) 9 SCC 166, a divergent view was taken, the matter has since been referred to a large bench".

(a) Annual income = Rs. 8112/- X 12 = Rs. 97,344/-

(b) loss of future earning per annum (3 % of the prior annual income) = Rs. 97344/- X 3% = Rs. 2,920.32/-

(c) Petitioner is found to be around 45 years of age at the time of accident,. Therefore, applicable multiplier as per Sarla Verma Case is 14.

(d) Loss of future earnings = Rs. 2,920.32/- X 14 = Rs. 40,884.48/-. (round figure as Rs. 40,885/-)

Thus, a sum of Rs. 40,885/- is granted towards loss of future income.



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26. The total compensation is assessed for injured as under:-

1	Compensation for Medical expenses	Rs. 6,30,000/-
2	Compensation for pain & suffering	Rs. 20,000/-
3	Compensation for special diet, conveyance and attendant charges	Rs. 15,000/-
4	Loss of future earning capacity /future income	Rs. 40,885/-
5	Compensation for loss of amenities and enjoyment of life	Rs. 5000/-
6	Compensation for disfigurement	Rs. 5000/-
7	Loss of income during treatment	Rs. 24336/-
	Total	Rs. 7,40,221/-

27. The petitioner is hereby awarded Rs. 7,40,221/- (Rupees Seven Lacs Forty Thousand Two Hundred Twenty One Only) with interest @9% per annum from the date of filing of the present petition, till the date of realization of the amount in favour of petitioners and against the respondents on account of their liability being joint and several..”

21. As per the aforesaid excerpts of the impugned judgment, whilst computing the quantum of compensation payable towards loss of future income, the learned Tribunal computed the functional disability of the appellant as 3% instead of 7.5% as per the disability certificate by placing reliance on the **judgment dated 4th May, 2005** of this Court passed in the case of **Laxmi Narain v. Trilochan Singh & Ors., FAO no. 289/1999**. Accordingly, the learned Tribunal, by way of multiplier method, held that the appellant is entitled to Rs. 40,885/- towards loss of future income. Further, with regard to the other heads, the learned Tribunal awarded Rs.6,30,000/- for compensation for medical expenses, Rs. 20,000/- for



compensation for pain and suffering, Rs. 15,000/- for compensation for special diet, conveyance and attendant charges, Rs. 40,885/- for loss of future earning capacity/future income, Rs. 5,000/- for compensation for loss of amenities and enjoyment of life, Rs. 5,000/- for compensation for disfigurement and Rs. 24,336/- for loss of income during treatment.

22. Therefore, the issue before this Court is to ascertain as to whether the learned Tribunal has rightly granted the compensation under the head of loss of future income by assessing the functional disability of the appellant at the rate of 3% or not and whether the medical expenses has been awarded rightly, and whether the compensation awarded under the non-pecuniary heads is just or not.

Issue of loss of future income

23. Before adverting to the merits of the aforesaid issue, this Court shall delve into the concept of “functional disability”.

24. The concept of functional disability pertains to the extent of disability affecting an individual's professional capacity due to an accident. For instance, if both a driver and an office worker sustain similar leg injuries, the functional disability of the driver would be significantly greater. This is because the injury would more severely impact the driver's ability to perform his job compared to the office worker, who may still be able to perform desk duties.

25. The connection between permanent and functional disability is intricate, as functional disability represents the practical limitations imposed by a permanent condition. The degree to which this affects an individual's



earning capacity depends on the specific nature of their job and the real-world implications of their disability.

26. Functional disability specifically addresses how the permanent disability affects the individual's ability to perform their job-related tasks and, consequently, their earning capacity. It is the practical manifestation of permanent disability in the context of a person's work and daily life, therefore, the Courts are tasked with carefully assessing these factors to ensure that compensation for loss of earning capacity.

27. The Hon'ble Supreme Court in the case of ***Sandeep Khanuja v. Atul Dande and Anr.***, (2017) 3 SCC 351 enunciated that whilst awarding compensation, the Court has to assess whether the permanent disability caused has any adverse effect on the earning capacity of the claimant. The relevant paragraph of the judgment is quoted hereunder:-

“The crucial factor which has to be taken into consideration thus is to assess whether the permanent disability has any adverse effect on the earning capacity of the injured. We feel that the conclusion of the MACT on the application of the aforesaid test is erroneous. A very myopic view is taken by the MACT in taking the view that 70% permanent disability suffered by the appellant would not impact the earning capacity of the appellant. The MACT thought that since the appellant is a chartered accountant he is supposed to do sitting work and therefore his working capacity is not impaired..... 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 physically able. Movements of the appellant have been restricted to a large extent and that too at a young age.”



28. The Hon'ble Supreme Court has also laid down in the case of ***Raj Kumar Vs Ajay Kumar and Anr, (2011) 1 SCC 343***, that where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation for loss of future earnings would depend upon the impact and effect of the permanent disability on his earning capacity. The relevant extract of the judgment is reproduced herein below:

“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 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 cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in the 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.”

29. In the light of the above-mentioned judgments of the Hon’ble Supreme Court, it is clear that 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.
30. It is pertinent for the Motor Accident Claim Tribunals to consider the impact of the disability of a claimant on his earning capacity while adjudicating the compensation payable to the claimant under the heads of loss of future income. Since there is no straightjacket rule for ascertaining the functional disability, the Tribunals are required to adjudicate the same on case-to-case basis.
31. Now advertent to the merits of the instant issue.
32. The appellant contends that the learned Tribunal erred in computing the loss of future income by taking 3 % as functional disability, whereas in actuality, the appellant suffered 7.5 % disability (same as permanent disability due to loss of aesthetics).
33. In the instant appeal, this Court has meticulously examined the Disability Certificate of the appellant, issued by the Medical Record Department and Training Centre Safdarjung Hospital, as per which the appellant has a disability of 7.5% due to loss of aesthetics.



34. With regard to the above, it is observed by this Court that the disability recorded by the learned Tribunal due to loss of aesthetics is 3 %. It is a settled law that in assessing functional disability, the Court must evaluate the impact of the actual disability on the appellant's earning capacity, as previously discussed.

35. The appellant herein has sustained a 7.5% disability due to loss of aesthetics. The expression “aesthetic impairment” means any damage to beauty, to aesthetics and the physical appearance of the person. This type of disability does not impede the appellant’s ability to perform job-related tasks or impact their professional capacity.

36. Therefore, this disability has neither a direct nor an indirect effect on the appellant’s earning potential. While this type of disability primarily affects physical appearance and do not directly impact the earning capacity of the individual, the learned Tribunal has nonetheless granted compensation under the non-pecuniary heads to address the loss of aesthetics suffered by the appellant.

37. Consequently, this Court is of the view that the learned Tribunal has rightly decided the functional disability of the appellant in determining the future loss of income and the appellant's contention *qua* the same are rejected since no evidence has been produced by him to prove otherwise.

Issue of medical expenses

38. The appellant has contended that the learned Tribunal has failed to accommodate the expenses incurred for dental surgery i.e., Rs. 65,000/- while granting medical expenses.



39. Upon reviewing the Lower Court's Record and going through the medical bills placed before the learned Tribunal, it is clear that the appellant incurred a total of Rs. 5,62,158/- for various treatments, and Rs. 67,327/- specifically for dental surgery, thus, amounting to a total sum of Rs. 6,29,485/.

40. With regard to the aforesaid contention pertaining to the non-accommodation of Rs. 65,000/-, it is observed by this Court that the learned Tribunal has rightly awarded Rs. 6,30,000/- towards medical expenses, which encompasses the dental surgery costs, and the same is evident from a bare perusal of the table of medical bills containing heads of expenses. Given the thorough review and accurate summation of expenses by the Tribunal, this court finds no reason to interfere with the amount awarded under the medical expenses.

Issue of non-pecuniary loss sustained by the appellant

41. It is further observed that the appellant underwent hospitalization for a period of 27 days at Apollo Hospital, as reflected in the discharge summary. In addition, the appellant was subjected to cosmetic treatment and dental surgery necessitated by the injuries sustained in the accident.

42. This Court has considered the certificate issued by the Medical Record Department and Training Centre, Safdarjung Hospital, which states that the appellant has suffered a 7.5% disability due to the loss of aesthetics.

43. As discussed above, the term "aesthetic impairment" pertains to any detriment to physical appearance, encompassing damage to beauty and aesthetics. It is understood that such impairment constitutes permanent



damage to the appearance of the victim, which, while not affecting the functional/earning capacity of the individual, unfortunately, impacts the societal perception of the person suffering from this disability.

44. In societal contexts, beauty is often equated with worth, fostering the misguided notion that physical appearance is a primary determinant of value. Consequently, the appellant may be subject to societal embarrassment due to this impairment.

45. While it is indeed true that no amount of financial compensation can fully redress the trauma and suffering endured by the injured party and their family, the law provides for monetary remedies as a means to address such grievances.

46. It is, therefore, incumbent upon this Court to interpret and apply the established principles of law concerning monetary compensation in a manner that assists the injured party and their family in mitigating their loss.

47. In light of the aforementioned considerations, and taking into account the pain, suffering, and social embarrassment experienced by the appellant during the course of his treatment, this Court finds it just and proper to enhance the award under the '*non-pecuniary heads*' by increasing the amount therein three-fold. The amount in the non-pecuniary heads shall now read as follows:

S.No.	HEAD	AMOUNT
1.	Compensation for pain & suffering.	Rs. 60,000/-
2.	Compensation for special diet, conveyance, and	Rs. 45,000/-



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	attendant charges.	
3.	Compensation for loss of amenities and enjoyment of life.	Rs. 15,000/-
4.	Compensation for disfigurement.	Rs. 15,000/-

48. Accordingly, the total compensation awarded to the appellant stands modified and the same shall now read as under:-

S.No.	HEAD	AMOUNT
1.	Compensation for Medical expenses.	Rs. 6,30,000/-
2.	Compensation for pain & suffering.	Rs. 60,000/-
3.	Compensation for special diet, conveyance, and attendant charges.	Rs. 45,000/-
4.	Loss of future earning capacity /future income.	Rs. 40,885/-
5.	Compensation for loss of amenities and enjoyment of life.	Rs. 15,000/-
6.	Compensation for disfigurement.	Rs. 15,000/-
7.	Loss of income during treatment.	Rs. 24,336/-
	Total	Rs.8,30,221/-

49. At this juncture, it is pertinent to mention that the appellant had sought compensation under the heads of future/extra medical expenses as well, which was incurred during the pendency of this appeal.

50. In pursuance of the above, the Predecessor Bench of this Court, vide order dated 22nd October, 2019, granted Rs. 1,89,000/- along with the interest @ 9% p.a. from 1st October, 2017 for future/extra medical expenses.

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By: DAMINI YADAV
Signing Date: 21.08.2024
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Therefore, this Court does not find any reason to adjudicate upon or deal with the said contention any further. The relevant extracts of the aforesaid order is as under:

“Ms. Seema Gulati, the learned counsel for the insurance company states upon instructions that the insurer is ready and willing to pay the amount of Rs. 1,84,169/- as reimbursement towards medical expenses.

This money was expended by the appellant way back on 08.09.2017 and 23.09.2017, therefore, the same would be payable alongwith interest @ 9% per annum from 01.10.2017 till its realisation.

Let the said monies be paid to the beneficiary(ies) of the Award in terms of the scheme of disbursement specified therein within three weeks from the date of receipt of copy of this order.”

51. In light of the above, it is held that the total compensation awarded to the appellant by the learned Tribunal is enhanced from Rs. 7,40,221/- to a total compensation of Rs. 8,30,221/- along with interest @ 9% per annum.

52. In view of the aforesaid discussions on facts and law, the impugned judgment dated 13th February, 2017 passed in Suit no. 248/2012 by the learned PO- MACT-02(South East District), Saket, stands modified in aforesaid terms.

53. The respondent insurance company is directed to pay the aforesaid compensation to the claimant/appellant within four weeks from today. The amount already paid/deposited shall stand excluded from the enhanced compensation.



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54. Accordingly, the instant appeal is partly allowed to the aforesaid extent and stands disposed of along with the pending application, if any.

55. The order to be uploaded on the website forthwith

CHANDRA DHARI SINGH, J

AUGUST 20, 2024
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[Click here to check corrigendum, if any](#)

Signature Not Verified

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By: DAMINI YADAV
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