2020 INSC 553

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2567 OF 2020

PAPPU DEO YADAV **...Appellant(s)**

VERSUS

NARESH KUMAR AND ORS. **...Respondent(s)**

J U D G M E N T

S. RAVINDRA BHAT, J.

1. The appellant questions a decision of the High Court of Delhi[1]. On 18.05.2012, the appellant was injured in a motor accident while travelling to Hapur as a passenger in a bus, having paid the requisite fare. At about 1.30 pm when the bus reached village Sadikpur, PS-Hafizpur, Hapur, Uttar Pradesh, the driver of the offending bus (the first respondent) sought to overtake the bus in which the appellant was travelling, from the wrong side, and zipped the appellant's bus, scratching it. This rash and negligent act caused a dent in the bus where the appellant was seated, as a result of which he suffered injuries. The appellant was removed to Dr. Khan's Rehan hospital and thereafter, AIIMS Trauma Center. The appellant claimed compensation, impleading the owner, the driver of the vehicle, and the insurer. During the course of proceedings before the Motor Accident Claims Tribunal, he applied for ascertainment of his disability. The disability report (Ex. PW-l/9 dated 01.04.2014 issued by Pandit

[1] dated 13.09.2018, in M.A.C. APP. 520/ 2016

Madan Mohan Malviya Hospital, during the motor vehicles compensation claim proceedings) showed that he suffered 89% disability in relation to his right upper limb, which had to be amputated. The report also went on to say that the condition was *"non progressive, not likely to improve. Reassessment is not recommended"*. A first information report (FIR) regarding the accident was registered (FIR No. 57/12), as case Crime No. 255/12, Hazifpur Police Station, Hapur, Uttar Pradesh, under Sections 279 and 338 of the Indian Penal Code, 1860.

2. The appellant, at that time unmarried, was working as a data entry operator/typist at Tis Hazari Courts. Prior to the injury, he earned an amount of ₹ 12,000 per month. He had applied for grant of compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988, (hereafter "the Act") claiming a sum of ₹ 50 lakhs with interest at the rate of 12% per annum against the first respondent, (the driver of the bus at the time of the accident), the second respondent (owner of the vehicle), and third respondent (the insurer). The Motor Accident Claims Tribunal (hereafter the "Tribunal") rejected the insurer's objection regarding its jurisdiction and further held that the appellant had suffered serious injuries due to rash and negligent driving of the respondent. It awarded compensation in the following terms:

1.	Compensation for medical expenses	11,000
2.	Compensation for pain and suffering	30,000
3.	Compensation for special diet, attendant and conveyance charges	30,000
4.	Loss of future earning capacity/ income	11,66,400
5.	Loss of amenities and enjoyment of life	15,000

6.	Compensation for disfigurement	25,000
7.	Loss of income during treatment	48,000
8.	Future medical expenses	1,00,000
9.	TOTAL	14,25,400

3. While assessing loss of earning capacity, the Tribunal took the appellant's income to be ₹ 8000 per month, and added 50% towards future prospects. At the time of the accident, the appellant was only 20 years of age. Therefore, a multiplier of 18 was applied. The physical disability was assessed to be 45%, by the Tribunal. The High Court, to which the claimant appealed (and the insurer cross appealed), revised this head of compensation by doing away with the addition of 50% towards future prospects, and reassessed the compensation for loss of earning capacity as ₹ 7,77,600 (₹8000 x 12 x 45% x 18). The total compensation was reassessed by the High Court to be ₹14,36,600, after enhancing the compensation for disfigurement, diet, attendant and conveyance, loss of amenities and enjoyment of life, and pain and suffering. Further, an interest of 9% per annum was imposed. In reducing the amount awarded for loss of future prospects, the High Court noticed this court's judgments in *National Insurance Company Ltd. v. Pranay Sethi & Ors.*[2] and *Jagdish v. Mohan & Ors*[3] both by three-judge benches of this court.

4. The appellant argues that the impugned judgment is in material error, in misreading this court's judgments in *Pranay Sethi & Ors*[4] which was later

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[2] (2017) 16 SCC 860.

[3] (2018) 4 SCC 571

[4] *Supra* n.2

followed in *Jagdish*[5] by a three judge Bench, which had ruled that the benefit of future prospects should not be confined only to those who have a permanent job and would extend to self-employed individuals, and in case of self- employed persons an addition of 40% of established income should be made where the age of the victim at the time of the accident was below 40 years. It was urged that the decision in *Anant s/o of Sidheshwar Dukre v. Pratap s/o Zhamnnappa Lamzane & Anr.*[6] relied on by the High Court, did not assess future prospects. However, that *per se* did not preclude claims by persons incurring permanent disablement as a consequence of motor accidents, from seeking such heads of compensation. It is urged that the High Court misread and created a distinct category of cases where addition in income towards "future prospects" can only be given in case of death, and not for injury, which cannot be the intention of this court as no such observation is made. It was argued that the High Court should have reassessed and not reduced 'the loss of future earning capacity' of the appellant from ₹ 11,66,400/- (determined by the tribunal) to ₹ 7,77,600/- on the wrongly depressed income of ₹ 8000/-. Learned counsel submitted that the assessment of monthly income should have been Rs.12,000/- and not Rs.8,000/. It was submitted that the courts below ignored the fact that in 2012, persons earning Rs.12, 000/- per month did not have to file income tax returns or pay tax. The High Court further erred in assessment of physical permanent disability of injured as 45%, even though it was 100%.

5. Counsel for the insurer, who contested the appeal, urged this court not to interfere with the impugned judgment, and stated that the assessment of compensation was made by the High Court in conformity with this Court's decisions. It was highlighted that permanent disability of loss of one arm,

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[5] *Supra* n.3

[6] 2018 (9) SCC 450

cannot lead to loss of earning capacity of up to 90% and consequently, the assessment of compensation on the head of loss of earning capacity was correctly fixed at 45%. He also argued that as far as income is concerned, although the appellant relied on the independent testimony of a lawyer (who stated that he used to pay him about ₹ 300/- per day), there was no proof of payment of income tax to support the claim that the appellant earned ₹ 12,000/- per month. The production of the PAN card *ipso facto* did not establish income at the level claimed. Further, the counsel urged that the impugned judgment correctly appreciated the law, and loss of alleged future earning capacity was turned down.

6. The principle consistently followed by this court in assessing motor vehicle compensation claims, is to place the victim in as near a position as she or he was in before the accident, with other compensatory directions for loss of amenities and other payments. These general principles have been stated and reiterated in several decisions.[7]

7. Two questions arise for consideration: one, whether in cases of permanent disablement incurred as a result of a motor accident, the claimant can seek, *apart from* compensation for future loss of income, amounts for future

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[7] *Govind Yadav* v. *New India Insurance Co. Ltd.* [*Govind Yadav* v. *New India Insurance Co. Ltd.*, (2011) 10 SCC 683. This court referred to the pronouncements in *R.D. Hattangadi* v. *Pest Control (India) (P) Ltd.*, (1995) 1 SCC 551; *Nizam's Institute of Medical Sciences* v. *Prasanth S. Dhananka* (2009) 6 SCC 1; *Reshma Kumari* v. *Madan Mohan* (2009) 13 SCC 422; *Raj Kumar* v. *Ajay Kumar*, (2011) 1 SCC 343. *Govind Yadav* spelt out these principles by stating that the courts should,

> *"in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."*

These decisions were also followed in *ICICI Lombard General Insurance Co. Ltd. v. Ajay Kumar Mohanty*, (2018) 3 SCC 686.

prospects too; and two, the extent of disability. On the first question, the High Court no doubt, is technically correct in holding that *Pranay Sethi*[8] involved assessment of compensation in a case where the victim died. However, it went wrong in saying that later, the three-judge bench decision in *Jagdish*[9] was not binding, but rather that the subsequent decision in *Anant*[10] to the extent that it did not award compensation for future prospects, was binding. This court is of the opinion that there was no justification for the High Court to have read the previous rulings of this court, to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading of *Pranay Sethi*[11] is illogical, because it denies altogether the possibility of the living victim progressing further in life in accident cases - and admits such possibility of future prospects, in case of the victim's death.

8. This court has emphasized time and again that "just compensation" should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident, (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face their lives. In *Santosh Devi v. National Insurance Company Limited*[12], this Court held that:

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[8] *Supra* n.2

[9] *Supra* n.3

[10] *Supra* n.6

[11] *Supra* n.2

[12] (2012) 6 SCC 421

"14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma's case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be nave to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.

15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families.

16. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac.

17. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the

> *latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc.*
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> *18. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."*

9. In *Jagdish*[13] the victim, a carpenter, suffered permanent disablement, and his claim for compensation including for loss of future prospects was considered by a three-judge bench (which included, incidentally, the judges who had decided *Pranay Sethi*[14]). This court held that:

> *"13. In the judgment of the Constitution Bench in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680], this Court has held that the benefit of future prospects should not be confined only to those who have a permanent job and would extend to self-employed individuals. In the case of a self-employed person, an addition of 40% of the established income should be made where the age of the victim at the time of the accident was below 40 years. Hence, in the present case, the appellant would be entitled to an enhancement of Rs 2400 towards loss of future prospects.*

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[13] *Supra*.n.3

[14] *Supra* n.2

14. In making the computation in the present case, the court must be mindful of the fact that the appellant has suffered a serious disability in which he has suffered a loss of the use of both his hands. For a person engaged in manual activities, it requires no stretch of imagination to understand that a loss of hands is a complete deprivation of the ability to earn. Nothing—at least in the facts of this case—can restore lost hands. But the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity.

15. The Tribunal has noted that the appellant is unable to even eat or to attend to a visit to the toilet without the assistance of an attendant. In this background, it would be a denial of justice to compute the disability at 90%. The disability is indeed total. Having regard to the age of the appellant, the Tribunal applied a multiplier of 18. In the circumstances, the compensation payable to the appellant on account of the loss of income, including future prospects, would be Rs 18, 14,400. In addition to this amount, the appellant should be granted an amount of Rs 2 lakhs on account of pain, suffering and loss of amenities. The amount awarded by the Tribunal towards medical expenses (Rs 98,908); for extra nourishment (Rs 25,000) and for attendant's expenses (Rs 1 lakh) is maintained. The Tribunal has declined to award any amount towards future treatment. The appellant should be allowed an amount of Rs 3 lakhs towards future medical expenses. The appellant is thus awarded a total sum of Rs 25,38,308 by way of compensation. The appellant would be entitled to interest at the rate of 9% p.a. on the compensation from the date of the filing of the claim petition. The liability to pay compensation has been fastened by the Tribunal and by the High Court on the insurer, owner and driver jointly and severally which is affirmed. The amount shall be deposited before the Tribunal within a period of 6 weeks from today and shall be paid over to the appellant upon proper identification."

10. The recent decision in *Parminder Singh v. New India Assurance Co. Ltd*[15], involved an accident victim who underwent surgery for hemiplegia[16]. According to the treating medic, he could not work as a labourer or perform any agricultural work, or work as a driver (as he was wont to); the assessment of his disability was at 75%, and of a permanent nature. The court held that:

> *"**5.2.** On the basis of the affidavit filed by the employer of the appellant, we accept that the income of the appellant was Rs 10,000 p.m. at the time of the accident, for the purpose of computing the compensation payable to him.*
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> ***5.1.** The appellant has however, produced an affidavit by his employer in this Court. As per the said affidavit, the appellant was earning Rs 10,000 p.m. at the time of the accident.*
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> ***5.3.** Taking the income of the appellant as Rs 10,000 p.m., with future prospects @ 50% as awarded by the High Court, the total income of the appellant would come to Rs 15,000 p.m.*
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> ***5.4.** The appellant was 23 years old at the time when the accident occurred. Applying the multiplier of 18, the loss of future earnings suffered by the appellant would work out to Rs 15,000 × 12 × 18 = Rs 32,40,000.*
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> ***5.7.** In K. Suresh v. New India Assurance Co. Ltd* (2012) 12 SCC 274, *this Court held that*[17]*:*
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> > *"10. It is noteworthy to state that an adjudicating authority, while determining the quantum of compensation, has to keep in view the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have*

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[15] (2019) 7 SCC 217

[16] *Weakness of one half of the body on the left side; in this case, caused by an accident.*

[17] *at page 279, para 10*

> *earned. Hence, while computing compensation the approach of the Tribunal or a court has to be broad-based. Needless to say, it would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the fundamental criterion of "just compensation" should be inhered."*

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> ***5.9.*** *In the present case, it is an admitted position that it is not possible for the appellant to get employed as a driver, or do any kind of manual labour, or engage in any agricultural operations whatsoever, for his sustenance. In such circumstances, the High Court has rightly assessed the appellant's functional disability at 100% insofar as his loss of earning capacity is concerned. The appellant is, therefore, awarded Rs 32,40,000 towards loss of earning capacity."*

11. Yet later and more recently in an accident case, which tragically left in its wake a young girl in a life-long state of paraplegia, this court, in *Kajal v. Jagdish Chand*,[18] reiterated that in addition to loss of earnings, compensation for future prospects too could be factored in, and observed that:

> *"**14.** In Concord of India Insurance Co. Ltd. v. Nirmala Devi [Concord of India Insurance Co. Ltd. v. Nirmala Devi, (1979) 4 SCC 365 : 1979 SCC (Cri) 996 : 1980 ACJ 55] , this Court held : (SCC p. 366, para 2)*
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> > *"2. ... the determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales."*
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> ***15.** In 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] , dealing with the different heads of compensation in injury cases this Court held thus : (SCC p. 556, para 9)*

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[18] (2020) 4 SCC 413.

"9. Broadly speaking while fixing the amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include : (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in the future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for loss of expectation of life i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

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 laid down the heads under which compensation is to be awarded for personal injuries : (SCC p. 348, para 6)*

"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."

17. *In K. Suresh v. New India Assurance Co. Ltd. [K. Suresh v. New India Assurance Co. Ltd., (2012) 12 SCC 274 : (2013) 2 SCC (Civ) 279 : (2013) 4 SCC (Cri) 638] , this Court held as follows : (SCC p. 276, para 2)*

"2. ... There cannot be actual compensation for anguish of the heart or for mental tribulations. The quintessentiality lies in the pragmatic computation of the loss sustained which has to be in the realm of realistic approximation. Therefore, Section 168 of the Motor Vehicles Act, 1988 (for brevity "the Act") stipulates that there should be grant of "just compensation". Thus, it becomes a challenge for a court of law to determine "just compensation" which is neither a bonanza nor a windfall, and simultaneously, should not be a pittance."

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Loss of earnings

20. *Both the courts below have held that since the girl was a young child of 12 years only notional income of Rs 15,000 p.a. can be taken into consideration. We do not think this is a proper way of assessing the future loss of income. This young girl after studying could have worked and would have earned much more than Rs 15,000 p.a. Each case has to be decided on its own evidence but taking notional income to be Rs 15,000 p.a. is not at all justified. The appellant has placed before us material to show that the minimum wages payable*

to a skilled workman is Rs 4846 per month. In our opinion, this would be the minimum amount which she would have earned on becoming a major. Adding 40% for the future prospects, it works to be Rs 6784.40 per month i.e. 81,412.80 p.a. Applying the multiplier of 18, it works out to Rs 14,65,430.40, which is rounded off to Rs 14,66,000."

12. In view of the above decisive rulings of this court, the High Court clearly erred in holding that compensation for loss of future prospects could not be awarded. In addition to loss of future earnings (based on a determination of the income at the time of accident), the appellant is also entitled to compensation for loss of future prospects, @ 40% (following the *Pranay Sethi* principle).

13. The factual narrative discloses that the appellant, a 20-year-old data entry operator (who had studied up to 12th standard) incurred permanent disability, i.e. loss of his right hand (which was amputated). The disability was assessed to be 89%. However, the tribunal and the High Court re-assessed the disability to be only 45%, on the assumption that the assessment for compensation was to be on a different basis, as the injury entailed loss of *only* one arm. This approach, in the opinion of this court, is completely mechanical and entirely ignores realities. Whilst it is true that assessment of injury of one limb or to one part may not entail permanent injury to the whole body, the inquiry which the court has to conduct is the resultant loss which the injury entails to the earning or income generating *capacity* of the claimant. Thus, loss of one leg to someone carrying on a vocation such as driving or something that entails walking or constant mobility, results in severe income generating impairment or its extinguishment altogether. Likewise, for one involved in a job like a carpenter or hairdresser, or machinist, and an experienced one at that, loss of an arm, (more so a *functional* arm) leads to near extinction of income generation. If the age of the victim is beyond 40, the scope of rehabilitation too diminishes. These individual factors are of crucial importance which are to be borne in mind while determining the

extent of permanent disablement, for the purpose of assessment of loss of earning capacity.

14. In *Neerupam Mohan Mathur v. New India Assurance Company*[19], this court considered the case of a victim, whose injury was assessed to 70% as loss of earning capacity for amputation of the arm; he was a postgraduate diploma holder in mechanical engineering, 32 years of age and earning about ₹ 3000/- per month. This court held, approving the High Court's order (which had adopted the formula from the Workmen's Compensation Act, to determine 70% for the purpose of deciding loss of earning capacity) as follows:

> *"**12.** In the present case, the percentage of permanent disability has not been expressed by the doctors with reference to the full body or with reference to a particular limb. However, it is not in dispute that the claimant suffered such a permanent disability as a result of injuries that he is not in a position of doing the specialised job of designing, refrigeration and air conditioning. For the said reason, the claimant's services were terminated by his employer but that does not mean that the claimant is not capable to do any other job including the desk job. Having qualification of BSc degree and postgraduate diploma in Mechanical Engineering, he can perform any job where application of mind is required than any physical work.*
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> ***13.** In view of the forgoing discussion we find no grounds made out to interfere with the finding of the High Court which determined the percentage of loss of earning capacity to 70% adopting the percentage of loss of earning capacity as per the Workmen's Compensation Act. The total loss of income was thus rightly calculated by the High Court at Rs 6, 04,800."*

15. Later, in another judgment, i.e. *Jakir Hussein v. Sabir*[20] 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

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[19] (2013) 14 SCC 15

[20] (2015) 7 SCC 252

incapable of driving any vehicle). The High Court had assessed permanent disablement at 30% though the doctor had certified it to be 55%. This court, reversing the High Court order, observed *inter alia* that:

> *"... 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.*
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> ***16.*** *In Raj Kumar v. Ajay Kumar [(2011) 1 SCC 343, 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 per annum. Thus, by applying the appropriate multiplier as per the principles laid down by this Court in 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."

16. Recently, in *Anthony Alias Anthony Swamy v. Managing Director, K.S.R.T.C*[21] where the victim was a painter by profession, a three-judge bench had followed *Raj Kumar v. Ajay Kumar*[22] and *Nagarajappa v. Divisional Manager, Oriental Insurance Company Limited*[23]. The High Court 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 ₹ 9000/- per month) was 75% of the left leg and 37.5% for the whole body. In *Raj Kumar*[24], 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:

***"9.** 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*

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[21] (2020) SCC OnLine SC 493.

[22] (2011) 1 SCC 343

[23] (2011) 13 SCC 323.

[24] *Supra* n.22

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. 5,500/- with multiplier of 14 at Rs. 6,93,000/-."

17. The question of amount of compensation payable to one suffering injury as a result of motor vehicle accident was considered in *Syed Sadiq & Ors. v. Divisional Manager, United Insurance Company Limited* [25], 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 the disability to be 65%. This court held as follows:

"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 whole-sale 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 market place 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 market place, 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 [pic]10,000/- p.m. by doing vegetable vending work. The High Court however, considered the loss of income at [pic]3500/- p.m. considering that the claimant did not produce any

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[25] (2014) 2 SCC 735

document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganized sector doing his own business is expected to produce documents to prove his monthly income."

18. In *Arvind Kumar Mishra v. New India Assurance Co. Ltd*[26], 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*[27] again a case of injury entailing loss of a leg, the court held that medical evidence of the extent of disability should not be mechanically scaled down:

"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*

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[26] (2010) 10 SCC 254

[27] (2012) 2 SCC 267 at page 272

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.

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10. *This Court in K. Janardhan case [(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 [(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 [(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.*

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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 at the rate of 9% per annum 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."*

19. One more decision, *Sandeep Khanduja v. Atul Dande*[28] 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; 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:

> *"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*

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[28] 2017 (3) SCC 351

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

the earning capacity of the appellant.... 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, as held by this Court in Yadava Kumar v Divisional Manager, National Insurance Co. Ltd [2010 (10) SCC 341]:

> *"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.*
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> *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." In that case, after following the judgment in Kerala SRTC v. Susamma Thomas (1994) 2 SCC 176, the Court chose to apply multiplier of 18 keeping in view the age of the victim, who as 25 years at the time of the accident.*

In the instant case, the MACT had quantified the income of the appellant at ₹10,000, i.e. ₹1,20,000 per annum. 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 ₹14,28,000. The MACT had awarded compensation of ₹70,000 for permanent disability, which stands enhanced to ₹14,28,000. For mental and physical agony and frustration and disappointment towards life, the MACT has awarded a sum of ₹30,000, which we enhance to ₹1,30,000."*

20. 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 the present 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 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 emphasized 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. On an overview of the principles outlined in the previous decisions, it is apparent that the income generating capacity of the appellant was undoubtedly severely affected. Maybe, it is not to the extent of 89%, given that he still has the use of one arm, is young and as yet, hopefully training (and rehabilitating) himself adequately for some other calling. Nevertheless, the assessment of disability cannot be 45%; it is assessed at 65% in the circumstances of this case.

21. This court is also of the opinion that the courts below needlessly discounted the evidence presented by the appellant in respect of the income earned by him. Working in the informal sector as he did, i.e. as a typist/data

entry operator in court premises in Delhi, his assertion about earning ₹12,000/- could not be discarded substantially, to the extent of bringing it down to ₹ 8,000/- per month. Such self employed professionals, it is noticeable, were not obliged to file income tax returns for AY 2011-2012, when no levy existed for anyone earning less than ₹ 1,60,000/- per annum.[29] The advocate who deposed about the earnings of the appellant was believed to the extent that the tribunal fixed the appellant's monthly earnings at ₹ 8,000/-. If one takes into account contemporary minimum wages for skilled workers (which was in the range of ₹ 8,500/-) the realistic figure would be ₹10,000/- per month. Adding future prospects at 40%[30], the income should be taken as ₹14,000 for the purpose of calculation of compensation. Accordingly, this court finds that the compensation payable for the disability of loss of an arm (assessed at 65%) would be ₹19,65,600/- (i.e., ₹ 14,000/- x 12 x 65% x 18) or Rupees Nineteen lakhs sixty five thousand six hundred only.

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

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29 First Schedule, Finance Act, 2011.

30 By applying the ratio in Pranay Sethi.

unsettling. If courts nit-pick and award niggardly amounts oblivious of these circumstances, there is resultant affront to the injured victim.

23. The High Court's assessment of amounts payable under other heads (such as compensation for medical expenses, compensation for pain and suffering, compensation for special diet and attendant, conveyance charges, loss of amenities and enjoyment of life, disfigurement and loss of income during treatment), do not call for interference. In view of the above conclusions, the impugned judgment is hereby modified; the sum of ₹19,65,600/- shall be substituted in place of the amount of ₹7,77,600/-, considering the enhancement towards loss of earning capacity and future prospects.

24. The appeal is partly allowed; the impugned judgment stands modified in the above terms. There shall be no order on costs.

.....J
[L. NAGESWARA RAO]

.....J
[KRISHNA MURARI]

.....J
[S. RAVINDRA BHAT]

New Delhi,
September 17, 2020.