Karnataka High Court K. Narasimha Murthy vs The Manager, Oriental Insurance ... on 21 February, 2004 Equivalent citations: 2004 ACJ 1109, ILR 2004 KAR 2471, 2004 (3) KarLJ 288 Author: S Nayak Bench: S Nayak, R M Reddy JUDGMENT S.R. Nayak, J. 1. In a bodily-injury case, the injured person being dissatisfied with the award of Rs. 1,48,200/- with interest at the rate of 9% per annum, has preferred this appeal under Section 173(1) of the Motor Vehicles Act, 1988 (For short, 'the Act'). 2. The determination of the quantum of compensation by the decision-maker in this case is niggardly and reflects conservatism to the core and an outstanding orthodoxy in legal reasoning. Values of life and limb have not received due consideration at the hands of the decision-maker. Compensation awarded by the MACT is very much mean and totally unfair 'in the views of reasonable men in general and of Judges in particular', if we can borrow that phrase from Sachs L.J., in Jones v. Griffith . Salmon L.J., in Fletcher v. Autocar and Transporters Limited, said: ". . . the damages awarded should be such that the ordinary sensible man would not instinctively regard them as either mean or extravagant, but would consider them to be sensible and fair. . . .". The damages are not consolation money and they are given for the loss already incurred and to be incurred in the future for the harm actually sustained in the accident. 3. The appellant sustained certain grievous injuries in an accident occurred on 21-4-1996 at about 6.30 p.m. on the footpath of Puttenahalli bus stop on Bangalore-Doddaballapur road involving a motor vehicle i.e., Ambassador car bearing registration No. MET 7885 owned by the 2nd respondent and insured by the 1st respondent. The appellant, claiming that, on the date of the accident he was 31 years of age and serving as Police Constable in the Central Reserve Police Force (CRPF) in No. 58 Battalion in Bangalore, and due to the injuries sustained by him in the accident he was reduced totally non-functional, filed claim petition under Section 166 of the Act before the IX Additional Small Causes Judge, Member, MACT-7, Bangalore (for short, 'MACT') and claimed compensation of Rs. 10,00,000/-. The quantum of compensation claimed in the claim petition has been amended from Rs. 10,00,000/- to Rs. 25,00,000/-in this appeal by the appellant by filing I.A. No. 2 of 2001 and the same was ordered by us on 10-2-2004. 4. The claim petition was opposed by the Insurance Company by filing written statement and other respondents did not contest the petition. In the written statement filed by the Insurance Company, all .material averments made in the claim petition are denied except the fact that the motor vehicle involved in the accident was insured with it. It was also contended in the written statement that the 2nd respondent was not the owner of the vehicle involved in the accident on the date of the accident and its driver had no valid and effective driving licence as on the date of the accident. 5. In the premise of the above pleadings, the MACT framed the following issues for trial: "1. Whether the petitioner proves that on 21-4-1996 at about 6.30 p.m. when he was sitting on footpath at Puttenahalli bus stop on Bangalore-Doddaballapura road, Ambassador Car No. MET 1885 came in a high speed rashly and negligently and dashed against him as a result he sustained injuries as stated in the wound certificate? 2. Whether the petitioner is entitled to compensation. If so, how much and from whom?" 6. In support

of his claim, the appellant examined himself as P.W. 1, Dr. N. Ramesh as P.W. 2 and Dr. Sarala Mahobia as P.W. 3 and produced 43 documents marked as Exhibits P. 1 to P. 43. On behalf of the respondents, none was examined nor any document was produced. 7. The MACT, on appreciation of evidence, oral and documentary, held issue No. 1 in favour of the appellant-claimant and awarded compensation of Rs. 1,48,200/-. 8. We have heard Sri A.K. Bhat, learned Counsel for the appellant and Sri M. Sowri Raju, learned Standing Counsel for the 1st respondent-Insurance Company. Sri A.K. Bhat, would contend that in assessing 'loss of future earning', the MACT has wrongly taken the percentage of permanent disability at 6%, whereas, the Disability Certificate would show 54% permanent disability to the whole body. Sri Bhat would contend that compensation of Rs. 61,200/- towards 'loss of future income' is a pittance, because, in terms of functional disability, the disability sustained by the appellant in the accident is total and 100%. Sri Bhat would also contend that even the compensation awarded under the heads 'pain and suffering' and 'food and nourishment' 'loss of income during the laid-off period', 'conveyance expenses', 'attendant charges' and 'loss of amenities of life' is very less. 9. Sri M. Sowri Raju, learned Standing Counsel for the 1st respondent-Insurance Company, on the other hand, would contend that simply because the appellant has sustained 54% permanent disability to the whole body, it cannot be said that he is totally disabled to earn any income. Elaborating the contention, Sri Sown Raju would contend that the permanent disability might disentitle him to be a personnel in combat force, but that disability will not come in the way of the appellant from doing some light manual work or clerical work and earn income. In that view of the matter, Sri Sown Kaju would contend that the MACT has not committed any error or illegality in not taking functional disability at 100%. Sri Sown Raju would also contend that the compensation awarded under various heads is reasonable and just. In support of his submission, Sri Sowri Raju would place reliance on Full Bench judgment of this Court in Shivalinga Shivanagowda Patil and Ors. v. Erappa Basappa Bhavihala and Ors. and judgment of a Division Bench of this Court in R. Venkatesh v. P. Saravanan and Ors.. Sri Sowri Raju would also contend that since the appellant was discharged from service after completing 10 years of service in CRPF, he is getting pension at the rate of Rs. 1,500/- per month and that sum has to be deducted from his income while assessing 'loss of income'. 10. In reply, Sri A.K. Bhat would contend that pension is a wage earned during his service to which the appellant is entitled as a matter of right. Therefore, while assessing 'future loss of income' the quantum of pension the appellant is receiving from CRPF is not liable to be deducted from salary of the appellant. Sri Bhat would also point out that if the appellant were to continue in service of CRPF for the remaining 23 years of service, he would have earned at least three promotions. Therefore, it is fair and just that while assessing 'future loss of income' the MACT ought to have taken the income of the appellant at least at the rate which is equivalent to double of the actual salary drawn by him on the date of accident/his discharge from service of CRPF. Sri Bhat would also contend that Exhibits P. 30 and P. 43-documents produced in the case would clearly go to show that the appellant has sustained

100% functional disability and, therefore, while assessing 'future loss of income' the appellant should have been treated as totally disabled person. Sri Bhat would also highlight that since as per medical evidence, the appellant, after sitting, cannot get up without support from others and he is permanently and completely incapacitated for any kind of service either in CRPF or elsewhere, the appellant securing any job is very remote and, even if he secures any light job, he cannot perform such job without assistance of others to ensure his mobility and without pain and discomfort. 11. Having heard the learned Counsels for the parties, the only question that arises for decision is whether compensation of Rs. 1,48,200/-awarded by the MACT with interest at 9% p.a., in the facts and circumstances of the case and evidence on record, is just and reasonable compensation and, if not, what is just and reasonable compensation? 12. The appellant on the date of accident, that is on 21-4-1996, was 31 years of age and serving in CRPF as a Police Constable. Despite the injuries sustained by appellant in the accident, he was continued in the service of CRPF by entrusting light clerical work to him till 16-3-2000 by the administration of CRPF with the sole intention to allow the appellant to complete 10 years of qualifying service in order to entitle him to pension under the Pension Regulations. He was discharged from service on 16-3-2000. The Medical Invalidation Board has opined that the appellant is completely and permanently incapacitated for service of any kind in CRPF due to the grievous and permanent injuries sustained by him in the accident. The appellant was drawing monthly salary of Rs. 5,088/-as per salary certificate marked as Ex. P. 9. 13. As could been seen from the office Order No. P. III-63/2000-GC-BLR-Pension dated, 12th March, 2000 issued by the office of the Additional DIGP, Group Centre, CRPF, Bangalore, marked as Exhibit P. 43, the Medical Invalidation Board has categorically opined that the appellant is completely and permanently incapacitated for service of any kind in CRPF. At this stage itself, it is also relevant to notice that the Medical Invalidation Board was constituted to assess the suitability of the appellant for retention of service not only as police constable in CRPF but also otherwise. The words "further retention in service or otherwise" occurring in Ex. P. 43 are quite significant. In the endorsement issued by the Assistant Commandant (Adm. Cops GC, CRPF, Bangalore) dated 20th September, 1999, marked as Exhibit P. 30, it is stated that- "he (the appellant) cannot get up after sitting without support". It is also stated that the appellant "has developed restriction of movement of both knee joints and shortening of right leg". Exhibit P. 30 makes clear that the administration of CRPF allowed the appellant to continue in service despite the total unsuitability for service in CRPF with the sole compassionate intention that if the appellant completes 10 years of service, he would be entitled to pension in terms of the Pension Regulations governing the service in CRPF. In Ex. P. 30 it is stated thus: "He should be sent for Medical Invalidation Board after completion of 10 years pensionable service. He has completed 10 years of service on 7-8-1999. His qualifying service may be worked out and action for Medical Invalidation Board taken as and when he completed 10 years of pensionable service". 14. Exhibits P. 26 to P. 28 and P. 30 are the discharge summaries issued by the Bowring Hospital, Bangalore. As per Ex. P. 26, the appellant

was in-patient in Bowring Hospital from 22-4-1996 to 19-10- 1996. As per Ex. P. 27, the appellant was in-patient in Bowring Hospital from 2-1-1997 to 25-1-1997. As per Ex. P. 28, the appellant was in- patient in Bowring Hospital from 20-5-1997 to 26-5-1997. The appellant was also in-patient in the G.C. Hospital, CRPF, Yelahanka, Bangalore between 19-10-1996 and 13-5-1997 and again, he was readmitted as in-patient from 26-5-1997 and discharged on 23-7-1997 and he was advised complete bed rest till 20-10-1997. It appears that when the appellant was in-patient in G.C. Hospital, CRPF, Yelahanka, the authorities of that hospital referred the appellant to Bowring Hospital. As per Ex. P. 31, discharge summary, the appellant was in-patient for a total period of 279 days. It has come in the evidence that as on the date of accident, the appellant was 31 years of age on the date of the accident and on the date of discharge from service, that is on 16-3-2000, he was 35 years of age. 15. In the premise of the above established facts, the MACT has awarded Rs. 25,000/- for pain, shock, mental agony and suffering; Rs. 10,000/- for food and nourishment during the laid-off period; Rs. 5,000/-for conveyance; Rs. 12,000/- for attendant charges; Rs. 25,000/- for loss of amenities of life; Rs. 61,200/- towards loss of future income taking the permanent disability at 6% and Rs. 10,000/- towards future medical expenses. The MACT has thus awarded compensation of Rs. 1,48,200/-with interest at 9% per annum from the date of petition, till payment / deposit. 16. The Courts and Tribunals, in bodily injury cases, while assessing compensation, should take into account all relevant circumstances, evidence, legal principles governing quantification of compensation. Further, they have to approach the issue of awarding compensation on the larger perspectives of justice, equity and good conscience and eschew technicalities in the decision-making. There should be realisation on the part of the Tribunals and Courts that the possession of one's own body is the first and most valuable of all human rights, and that all possessions and ownership are extensions of this primary right, while awarding compensation for bodily injuries. Bodily injury is to be treated as a deprivation which entitles a claimant to damages. The amount of damages varies according to gravity of injuries. Deprivation sustained as a consequence of bodily injuries may bring with it three consequences, namely, (i) loss of earning and earning capacity, (ii) expenses to pay others for what otherwise he would do for himself, and (iii) loss or diminution in Ml pleasures and joys of living. Though it is impossible to equate money with human suffering, agony and personal deprivation, the Tribunals and Courts should make an honest and serious attempt to award damages so far as money can compensate the loss. Loss of curing and earning should adequately be compensated. Therefore, while considering deprivation, the Tribunals and Courts should have due regard to the gravity and degree of deprivation as well as the degree of awareness of the deprivation. It is trite, in awarding damages in personal injury cases, the compensation awarded by the Court should be substantial, it should not be merely token damages. 17. In R.D. Hattangadi v. Pest Control (India) Private Limited and Ors., speaking about the heads of compensation, the Apex Court held thus: "Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special dam-

ages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include; (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life". 18. Viscount Dunedin in Admiralty Comrs v. S.S. Valeria, has observed thus: "The true method of expression, I think, is that in calculating damages you are to consider what is the pecuniary consideration which will make good to the sufferer, as far as money can do so, the loss which he has suffered as the natural result of the wrong done to him". 19. Lord Blackburn in Livingstone v. Rawyards Coal Company, has held thus: "Where any injury is to be compensated by damages, in settling the sum of money to be given. . . . you should as nearly as possible get at that sum of money which will put the person who has been injured. . . . in the same position as he would have been in if he had not sustained the wrong". 20. Of course, both the above cases were about damage to property. But, we have referred to the above observations of Viscount Dunedin and Lord Blackburn to show that in a case where a property or a thing cannot be replaced or repaired or restored, the Court, at least, should make an attempt to give a fair equivalent in money, so far as the money can be equivalent, and in that, 'make good' the damage. In applying the above observations of Viscount Dunedin and Lord Blackburn to personal injuries, it must be recognised that the primary rule is compensation. The rule 'Restitutio in integrum' which is a derivative of the main rule that compensation is measured by the cost of repair or restoring the original position-applies only if and so far as the original position can be restored. If it cannot, the Law must endeavour to give a fair equivalent in money. 21. Lord Morris in his memorable speech in H. West and Sons, pointed out this aspect in the following words: "Money may be awarded so that something tangible may be procured to replace of like nature which has been destroyed or lost. But, the money cannot renew a physical frame that has been battered and shattered. All the Judges and Courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Further, more it is eminently desirable that so far as possible comparative injuries should be compensated by comparable awards". 22. In the above case. Their Lordships of the House of Lords, observed that the bodily injury is to be treated as a deprivation which entitles plaintiff to the damage and that the amount of damages varies according to the gravity of the injury. Their

Lordships emphasised that in personal injury cases the Courts should not award merely token damages but they should grant substantial amount which could be regarded as adequate compensation. 23. In Ward v. James, speaking for the Court of Appeal in England, Lord Denning while dealing with the question of awarding compensation for personal injury laid down three basic principles: "Firstly, assessability: In cases of grave injury, where the body is wrecked or brain destroyed, it is very difficult to assess a fair compensation in money, so difficult that the award must basically be a conventional figure, derived from experience or from awards in comparable cases. Secondly, uniformity: There should be some measure of uniformity in awards so that similar decisions may be given in similar cases, otherwise, there will be great dissatisfaction in the community and much criticism of the administration of justice. Thirdly, predictability: Parties should be able to predict with some measure of accuracy the sum which is likely to be awarded in a particular case, for by this means cases can be settled peaceably and not brought to Court, a thing very much to the public good". 24. In deciding on the quantum of damages to be paid to a person for the personal injury suffered by him, the Court is bound to ascertain all considerations which will make good to the sufferer of the injuries, as far as money can do, the loss which he has suffered as. a natural consequence of the wrong done to him. 25. In Basavaraj v. Shekar, a Division Bench of this Court held: "If the original position cannot be restored - as indeed in personal injury or fatal accident cases it cannot obviously be - the law must endeavour to give a fair equivalent in money, so far as money can be an equivalent and so 'make good' the damage". 26. Therefore, the general principle which should govern the assessment of damages in personal injury cases is that the Court should award to injured person such a sum of money as will put him in the same position as he would have been in if he had not sustained the injuries. But, it is manifest that no award of money can possibly compensate an injured man and renew a shattered human frame. 27. Lord Morris of Borthy Gest in Parry v. Cleaver, said: "To compensate in money for pain and for physical consequences is invariably difficult but. . . no other process can be devised than that of making a monetary assessment". 28. The necessity that the damages should be full and adequate was stressed by the Court of Queen's Bench in Fair v. London and North Western Railway Company. In Rushton v. National Coal Board, Singleton L.J. said: "Every member of this Court is anxious to do all he can to ensure that the damages are adequate for the injury suffered, so far as they can be compensation for an injury, and to help the parties and others to arrive at a fair and just figure". 29. Field, J. said, in Phillips v. South Western Railway Company, held: "You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always recollect that this is the only occasion on which compensation can be given. The plaintiff can never sue again for it. You have, therefore, now to give him compensation, once and for all. He has done no wrong; he has suffered a wrong at the hands of the defendants and you must take care to give him full fair compensation for that which he has suffered". 30. In Fowler v. Grace, Edmund Davies, L.J., said that 'it is the manifest duty of the Tribunal to give as perfect

a sum as was within its power'. There are many losses which cannot easily be expressed in terms of money. If a person, in an accident, loses his sight, hearing or smelling faculty or a limb, value of such deprivation cannot be assessed in terms of market value because there is no market value for the personal asset which has been lost in the accident, and there is no easy way of expressing its equivalent in terms of money. Nevertheless a valuation in terms of money must be made, because, otherwise, the law would be sterile and not able to give any remedy at all. Although accuracy and certainty were frequently unobtainale, a fair assessment must be made. Although undoubtedly there are difficulties and uncertainties in assessing damages in personal injury cases, that fact should not preclude an assessment as best as can, in the circumstances be made. 31. In re the Mediana, the plaintiffs were deprived by the use of a lightship, but sustained no pecuniary loss as another lightship was kept in reserve. Yet it was held that the plaintiffs were entitled to substantial damages for the loss of the use of their ship for a period, and Lord Halsbury L.C. answered the objection that assessment was too uncertain by observing that: "Of course the whole region of inquiry into damages is one of extreme difficulty. You very often cannot even lay down any principle upon which you can give damages; nevertheless, it is remitted to the jury, or those who stand in place of the jury, to consider what compensation in money shall be given for what is a wrongful act. Take the most familiar and ordinary case: how is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by any arithmetical calculation establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident ... But, nevertheless, the law recognises that as a topic upon which damages may be given". 32. In personal injury cases, the Court is constantly required to form an estimate of chances and risks which cannot be determined with precision. It is because, the law will disregard possibilities which are slight or chances which are nebulous; otherwise, all the circumstances of the situation must be taken into account, whether they relate to the future which the plaintiff would have enjoyed if the accident had not happened, or to the future of his injuries and his earning power after the accident. Damages are compensation for an injury or loss, that is to say, the full equivalent of money so far as the nature of money admits; and difficulty or uncertainty does not prevent an assessment. 33. It is well-settled principle that in granting compensation for personal injury, the injured has to be compensated (1) for pain and suffering; (2) for loss of amenities; (3) shortened expectation of life, if any; (4) loss of earnings or loss of earning capacity or in some cases for both; and (5) medical treatment and other special damages. In personal injury actions the two main elements are the personal loss and pecuniary loss. Chief Justice Cockburn in Fair's case, supra, distinguished the above two aspects thus: "In assessing the compensation the jury should take into account two things, first, the pecuniary loss the plaintiff sustains by the accident : secondly, the injury he sustains in his person, or his physical capacity of enjoying life. When they come to the consideration of the pecuniary loss they have to take into account not only his present loss, but his incapacity to earn a future improved income". 34. McGregor on Damages (14th

Edition), para 1157, referring to the heads of damages in personal injury actions states: "The person physically injured may recover both for his pecuniary losses and his non-pecuniary losses. Of these the pecuniary losses themselves comprise two separate items, viz., the loss of earnings and other gains which the plaintiff would have made had he not been injured and the medical and other expenses to which he is put as a result of the injury, and the Courts have sub-divided the non-pecuniary losses into three categories, viz., pain and suffering, loss of amenities of life and loss of expectation of life". 35. Besides, the Court is well-advised to remember that the measures of damages in all these cases 'should be such as to enable even a tort feasor to say that he had amply atoned for his misadventure'. The observation of Lord Devlin that the proper approach to the problem or to adopt a test as to what contemporary society would deem to be a fair sum, such as would allow the wrongdoer to 'hold up his head among his neighbours and say with their approval that he has done the fair thing', is quite apposite to be kept in mind by the Court in assessing compensation in personal injury cases. 36. In the premise of the above noticed well-settled principles, norms and rules governing assessment of damages in personal injury cases, let us proceed to consider the contention of learned Counsel for the appellant that the compensation awarded by the MACT, in the facts and circumstances of the case and evidence on record, is very much on lower side. Ex. P. 30 and Ex. P. 43 undeniably and clearly show that the appellant has sustained 100% functional disability though as per P.W. 3, he has sustained only 54% physical disability in respect of the whole body. The Medical Invalidation Board constituted by the administration of CRPF has certified that the appellant is completely and permanently incapacitated for service of any kind in CRPF due to injuries and multiple fractures sustained by him on both legs in the accident. In Ex. P. 30 it is stated that the appellant cannot get up after sitting without support. In other words, in order to have free movement of the body, it has become absolutely necessary for the appellant to have the services of another. 37. In R. Venkatesh's case, supra, this Court while dealing with a personal injury case where due to certain crushing injuries sustained by the claimant therein, his left lower limb was amputated, held that in terms of functional disability, the disability sustained by the claimant is total and 100% though only the claimant's left lower limb was amputated. In paragraph 9 of the judgment, the Court held thus: "As a result of the amputation, the claimant had been rendered a cripple. He requires the help of crutches even for walking. He has become unfit for any kind of manual work. As he was earlier a loader doing manual work, the amputation of his left leg below knee, has rendered him unfit for any kind of manual work. He has no education. In such cases, it is well-settled that the economic and functional disability will have to be treated as total, even though the physical disability is not 100 per cent". 38. We can also derive support for our opinion from the judgment of Gujarat High Court in A.S. Sharma v. Union of India. In that case, Gujarat High Court held thus: "The assessment of damages in a case of personal injuries must be made on the basis as to what is the resultant impact and effect on the earnings or the capacity to earn. It is not entirely right to always make the future loss of income co-extensive with the extent of

permanent disability. It is not an algebraic or mathematical formula which can be applied anywhere regardless of the avocation or profession or business of the injured-claimant. It is a problem which has to be approached from the point of view as to what is the resultant effect on the actual earnings or on the earning capacity. Thereafter, it is required to be quantified in terms of money for just and reasonable amount of compensation. On the basis of the evidence as to the permanent disablement, whether complete or partial, the assessment has to be made as to what effects the said disability would have on the entire functioning of the body and how it would consequently affect the earnings or the capacity to earn". 39. Sri Sown Raju, learned Counsel for the Insurance Company would, however, submit that notwithstanding the injuries sustained by the appellant, he is capable of doing light manual work or clerical work and this fact is proved by his own evidence recorded on 23-9-1999 and also by the established fact that the appellant was doing clerical work in CRPF between 23-7-1997 and 16-3-2000 and, therefore, while deciding on loss of earning capacity of the appellant after accident, the Court should take into account his capacity to do any other work after the accident. In support of the above contention, Sri Sowri Raju would place strong reliance on the following observations of this Court in paragraph 25 of the judgment in Shivalinga Shivanagowda Patil's case, supra. ". . . , Determination of the loss of earning capacity has to be with reference to"all the work" which the workman was capable of performing at the time of accident resulting in such disablement and not with reference to the work which the workman was performing at the time of the accident. However, this is subject to the condition that in case of the workman establishes by acceptable evidence that after the injury not only he is not able to do the work which he was performing before the accident but he is not able to do any other work, the loss of earning capacity could be assessed on the basis of such evidence". 40. The contention of Sri Sown Kaju is not acceptable to us for more than one reason. Firstly, it is not correct to state that the appellant after the accident was capable of doing light manual work or clerical work. The argument of Sri Sowri Raju is based on the fact that notwithstanding the accident, the appellant was allowed to work and he was entrusted with some clerical work in the establishment of CRPF between 23-7-1997 and 16-3-2000. It is true that the appellant was in employment of the CRPF from 23-7-1997 till 16-3-2000 on which date he was discharged from service on the recommendation of the Medical Invalidation Board. It needs to be emphasized at this stage itself that notwithstanding the fact that the appellant had sustained 100% functional disability, out of compassion and in order to help the appellant, it appears, the higher-ups in the administrative echelon of the CRPF allowed the appellant to complete 10 years of service in order to see that he would be entitled to pension in terms of the Pension Regulations. It is not just and fair that the Court should put that circumstance against the appellant to hold that despite the injuries sustained by him in the accident, he is capable of doing light manual work or clerical work. We need not dilate on this aspect further, because, Exs. P. 30 and P. 43 would conclusively show and loudly tell us that the appellant has sustained 100% functional disability in the accident. In addition, P.W. 2-Doctor also in his deposition recorded on 16-11-1999 has

stated that when he examined the appellant on 22-10-1999, the appellant was complaining pain in the left lower limb and also knee; the appellant was limping towards left side and he had difficulty in squatting. It was also stated by P.W. 2 that the appellant could squat on the floor with crossed legs and that too with pain. P.W. 2 has also stated that the appellant might develop osteoarthritis, and the appellant is disabled to use Indian toilet without pain and difficulty. 41. It is said that the appellant is only SSLC and he does not possess any skill or experience or training to undertake any other work, manual or otherwise. After SSLC, the appellant joined CRPF as a Police Constable and he was trained in combating and to perform other duties and functions attached to the post of Police Constable. Since the appellant lacks skill or training or experience to undertake any other work, it is highly improbable and unlikely that the appellant will be able to secure any job even assuming that despite the injuries sustained by him, he is able to perform some light manual work or ordinary clerical work by squatting on the floor with pain and discomfort. Further, it needs to be emphasized that it is not the right of the tortfeasor or a person who has taken over the liability of the tortfeasor in terms of and under the Act to dictate that the injured person should do some other work, manual or otherwise, it does not matter, may be with pain and discomfort, in order to minimize his or its liability. Such insistence is untenable in law and if such is the case, it would violate basic human rights of the injured person. In this case, the appellant is reduced to such a state that he is unable to do any work, manual or otherwise, without subjecting himself to pain and suffering, agony and discomfort. In an accident, if a man is disabled for a work which he was doing before the accident, that he has no talents, skill, experience or training for anything else and he is unable to find any work, manual or clerical, such a man for all practical purposes has lost all earning capacity he possessed before and he is required to be compensated on the basis of total loss. In reaching this conclusion we may derive support from the judgments in Daniels v. Sir Robert Mc Alpine and Sons Limited and Blair v. FJC Lilley (Marine) Limited. Secondly, the physical incapacity to earn income sustained by the appellant is not temporary, but permanent and complete as per Exhibit P. 43. Thirdly, it cannot be said that since the appellant has sustained only 54% permanent physical disability in respect of the whole body as per P.W. 3, the Court should take into account functional disability also at 54% only while assessing the loss of earning capacity. Such hypothesis does not stand to reason nor can it be accepted as valid in terms of law. An injured person is compensated for the loss which he incurs as a result of physical injury and not for physical injury itself. In other words, compensation is given only for what is lost due to accident in terms of an equivalent in money insofar as the nature of money admits for the loss sustained. In an accident, if a person loses a limb or eye or sustains an injury, the Court while computing damages for the loss of organs or physical injury, does not value a limb or eye in isolation, but only values totality of the harm which the loss has entailed the loss of amenities of life and infliction of pain and suffering: the loss of the good things of life, joys of life and the positive infliction of pain and distress. 42. Lord Reid in Baker v. Willoughby, said:"A man is not compensated for the physical injury; he is

compensated for the loss which he suffers as a result of that injury. His loss is not in having a stiff leg; it is in his inability to lead a full life, his inability to enjoy those amenities which depend on freedom of movement and his inability to earn as much as he used to earn or could have earned. . .". 43. In conclusion, we hold that the appellant has sustained 100% permanent functional disability in his earning capacity, and, on that basis, we proceed to quantify the financial loss of the appellant. In estimating the financial or pecuniary loss, the Court must first form an opinion, from the evidence and probabilities in the case of the nature and extent of the loss. While estimating the loss of earnings, the Court must first decide what the claimant would have been earned if the accident had not happened, allowing for any future increase or decease in the rate of earnings. It is also necessary for the Court to decide how long the loss will continue, whether there is incapacity for life or for a shorter period. The Court should also make an estimate of the amount, if any, which the claimant could still earn in future, notwithstanding disabilities sustained by him in the accident. Further, in a case where the claimant claims medical and nursing expenses, the Court must find as a fact what expenses have already been incurred and must estimate from the evidence the expenses which will be incurred in future. 44. In this case, the appellant was in-patient for a total period of 279 days in Bowring Hospital, Bangalore and G.C. Hospital, CRPF, Yelahanka. Medical records go to show that the appellant sustained fracture of both the bones of both legs and of right humerus and he had to be hospitalised for more than 9 months with agonising pain and discomfort. Taking into account the severity of the injuries sustained by the appellant and nature and length of medical treatment in two hospitals and pain, shock and mental agony inflicted on the appellant, we think it just and proper to award a sum of Rs. 50,000/- towards 'pain and suffering'. 45. The appellant was in-patient for a total period of 279 days of which most of the period v/as spent in Bowring Hospital, Bangalore. The residence of the appellant was in Yelahanka. It has come in the evidence that the appellant's wife had to come to Bowring Hospital at least twice a day when the appellant was in-patient in that hospital from Yelahanka and she had to spend Rs. 100/- towards autorickshaw charges for every trip. That claim made by the appellant cannot be regarded as on higher scale having regard to more than 20 Kms distance from Yelahanka to Bowring Hospital in Bangalore City. It is trite, during hospitalisation as in-patient, the appellant required the services of an attendant. As pointed out supra, even after the treatment also, he did not regain freedom in movement, in the strict sense, to maintain physical mobility without support of another. In that view of the matter, we award a sum of Rs. 27,900/- 'towards 'attendant charges' and another sum of Rs. 27,900/- towards 'travelling expenses' at the rate of Rs. 100/- per day for a total period of 279 days. Thus, we award total sum of Rs. 55,800/-towards 'attendant charges and travelling expenses'. We further, award a sum of Rs. 20,000/- towards 'special food, nutrition and incidental expenses', keeping in mind the length of treatment and the complexity of the injuries sustained by the appellant. 46. It has come in the evidence that due to the injuries sustained by the appellant, he had to be on leave from the date of accident i.e., from 21-4-1996 to 22-7-1997, and, only on 23-7-

1997 he was taken back on duty by the administration of CRPF and allowed him to continue in service till he completed 10 years of qualifying service for the purpose of earning pension. Monthly salary of the appellant at the relevant point of time was Rs. 5,088/-. Appellant was laid-off for treatment as in-patient and outpatient, for a total period of 15 months. We, therefore, award a sum of Rs. 76,320/- (5088 x 15) towards 'loss of earning during the laid-off period' between 21-4-1996 and 22-7-1997. 47. It has come in the evidence that on the date of accident, the appellant was aged 31 years. However, notwithstanding the total functional disability, the appellant was allowed to report for duty on 23-7-1997 and he was discharged from service on 16-3-2000 after completion of 10 years of service on the recommendation of the Medical Invalidation Board. As on 16-3-2000 the appellant was 35 years of age. Therefore, we think it is just and appropriate to take the age of the appellant as 35 years and not 31 years for choosing appropriate multiple for the purpose of estimating 'future loss of income'. If that is so, the appropriate multiple to be applied is '15'. 48. The next question to be considered is whether, for the purpose of estimating loss of future income, the Court should take into account only the salary earned by the appellant on the date of accident or on the date of his discharge from service or the Court should also take into account the future prospects of the appellant earning more income by way of periodical increments, regular promotions, revisions of salary etc., Sri A.K. Bhat, drawing our attention to the evidence of P.W. 1, would contend that in normal course, the appellant, but for the injuries sustained by him in the accident, would have earned at least two promotions to the cadres of Head Constable and Sub-Inspector in the CRPF, and increments and revision of pay from time to time during the remaining 23 years of incompleted service and, therefore, Court should take his monthly income at the rate of Rs. 10,176/-, which is double of the actual monthly salary of the appellant on the date of the accident for the purpose of estimate of future loss of income. 49. Per contra, Sri Sowri Raju, learned Standing Counsel for the Insurance Company, would contend that while estimating the 'future loss of income', the Court should eschew the deductions made by the employer from the salary of the appellant and entire monthly salary of Rs. 5,088/- cannot be taken as the basis. 50. Let us first dispose of the contention of Sri Sowri Raju. It is not the case of the Insurance Company that from out of Rs. 5,088/- any deduction was made by the employer towards Income-tax or Professional tax. If that is so, deductions made by the employer towards loans obtained or advances made by the employer etc., need not be deducted from the gross salary of the appellant for the purpose of estimation of future loss of income. 51. The appellant sustained very grievous injuries relatively at the young age of 31 years. Even on the date of his discharge from service, 23-24 years of service was left out, because, the age of superannuation in the CRPF, it is stated, is 58 years. In the normal course, the appellant would have earned at least two regular promotions, as well as he would have the benefit of periodical revisions of wages, increments etc. Of course, future promotions, increments, revisions of pay are in the domain of many imponderables and the Court should bear them in mind while assessing future loss of income. Nevertheless, it is now well-settled by the judgments in

the cases of C.K. Subramonia Iyer and Ors. v. T. Kunhikuttan Nair and Ors.; Smt. Manjushri Raha and Ors. v. B.L. Gupta and Ors.; Bhanumati Vithaladas Gor v. Magabhai Dhulabhai; Nirmala Sharma v. Raja Ram, Uttar Pradesh State Road Transport Corporation, Allahabad v. K.M. Deepti , Jyoti Kaul v. State of Madhya Pradesh, that while estimating future loss of income, the Court can take into account the future prospects of the injured or the deceased of earning more income by way of promotions or otherwise. In that view of the matter, we are of the considered opinion that for the purpose of estimating 'future loss of income' in case of the appellant, the Court might be justified in taking his monthly income at least at the rate of Rs. 7,500/-, if not more. But, we are not doing so. Appellant in his evidence has stated that after his discharge from service, CRPF is paying him pension at the rate of Rs. 1,500/- per month. Although pension is a wage earned and not a solatium, taking into account all exigencies, uncertainties, pitfalls which accompany an ordinary human life, and also taking into account the fact that the appellant is being given 'lump sum' money at one go towards loss of future income, we are inclined to take the monthly income of the appellant at Rs. 6,000/- only for assessing loss of future income. If we take monthly income at the rate of Rs. 6,000/- and apply multiple of '15', the appellant is entitled to Rs. 10,80,000/- (6000 x 12 x 15) towards 'loss of future income'. 52. It has come in the evidence of P.W. 2-Doctor that the appellant is required to undergo one more surgery and requires to be in-patient for 15 days to be followed by treatment for a further period of one month. Of course, the Doctor has not stated the cost of surgery nor the money required for treatment as such, But, taking into account what P.W. 2 has stated in para 7 of his deposition recorded on 16-11-1999, we think, a sum of Rs. 20,000/- would be just compensation towards 'future medical expenses'. 53. Whatever the medical expenses already incurred by the appellant, it is admitted, has been reimbursed by the administration of CRPF and, therefore, awarding compensation towards medical expenses to the appellant would not arise, 54. The permanent disability sustained by the appellant, undeniably, would come in the way of the appellant enjoying his normal and full life. Appellant has become very much dependent upon others even for maintaining his physical mobility, The appellant's freedom of movement is drastically impaired and arrested. On account of the injuries sustained by him, he is denied enjoyment and pleasures of life including normal sex life. The appellant has to live rest of his life with frustration, disappointment, unhappiness, discomfort and inconvenience. On the head of damages for deprivation of amenities the measure of damages should primarily be the measure of deprivation of the natural gifts, faculties and capabilities of a man and to what extent the injured person has been deprived of the human experience, both physical and mental. Therefore, the Court while, assessing the damages for deprivation of amenities of life, should take into account the gravity and degree of the deprivation, duration of the deprivation and the degree of awareness of the deprivation. In that view of the matter, we think that the appellant is entitled to at least a sum of Rs. 1,00,000/- towards 'loss of amenities of life, frustration, disappointment, unhappiness, discomfort and inconvenience' etc. 55. The Tribunal has awarded interest at the rate of 9% per annum. We think that the

rate of interest awarded by the MACT is just and fair. 56. In the result and for the foregoing reasons, we allow the appeal in part, however, with no order as to costs, and, in substitution of the impugned award passed by the MACT, we award total compensation of Rs. 14,02,120/- (Rounded off to Rs. 14,00,000/- Rupees Fourteen Lakhs) under the following heads: Rs. (I) Loss of amenities of life, frustration, disappointment, unhappiness, inconvenience, etc. 1,00,000/- (II) Loss of future income 10,80,000/- (III) Pain and suffering 50,000/- (IV) Attendant charges and travelling expenses 55,800/- (V) Special food, nutrition and incidental expenses 20,000/- (VI) Loss of income during laid-off period 76,320/- (VII) Future medical expenses 20,000/- _____ Total: 14,02,120/- _____ Rounded off to Rs. 14,00,000/-

with interest at 9% per annum from the date of claim petition till payment.

57. The Insurance Company shall deposit the compensation money, minus (-) the money already paid or deposited towards compensation, within one month from the date of receipt of a copy of this judgment and, on such deposit being made, the MACT is directed to invest 50% of the compensation money and proportionate interest in a term deposit initially for a period of 5 years in ING Vysya Bank Limited, High Court Extension Counter, High Court Annexe, Bangalore-560 001, and the remaining compensation amount shall be paid to the appellant.