

M. R. Krishna Murthi vs The New India Assurance Co. Ltd. on 5 March, 2019

Equivalent citations: AIR 2019 SUPREME COURT 5625, AIRONLINE 2019 SC 493, (2019) 134 ALL LR 212, (2019) 196 ALLINDCAS 107, (2019) 1 ACC 730, (2019) 1 CURCC 352, (2019) 2 ACJ 1291, (2019) 2 KER LJ 253, (2019) 2 RECCIVR 455, (2019) 2 TAC 1, (2019) 3 CIVLJ 543, (2019) 4 MAD LJ 302, (2019) 4 SCALE 362, (2019) 74 OCR 436, (2020) 1 ANDHLD 283

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Bench: S. Abdul Nazeer, A.K. Sikri

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2476-2477 OF 2019
(ARISING OUT OF SLP (C) NOS. 31521-31522 OF 2017)

M.R. KRISHNA MURTHI

.....APPELLANT

VERSUS

THE NEW INDIA ASSURANCE CO. LTD.
& OTHERS

.....RESPONDENT(S)

JUDGMENT

A.K. SIKRI, J.

Leave granted.

2) The appellant herein, who is a practicing advocate, had suffered in nasty accident at the young age of 18 years. He was a student at that time studying in Modern School, Delhi. It was 26th May, 1988. He was travelling along with his mother from Delhi to Mussoorie to celebrate his 18th birthday falling on 27th May, 1988. On Delhi-Dehradun highway the accident took place in which his entire left leg was crushed. He was rushed to the hospital and his hospitalization continued for over two months. He had to undergo surgery for which he was operated on 31st May, 1988. Though,

the appellant was discharged from the hospital after two months, his treatment continued for over 6 years, during which period he had to undergo further operations. In all, three surgeries were performed. First, for putting plates and screws, another for removal of plates and screws wherein doctor discovered that he could not remove the plates and screws of femur bone. The result is that even today the said screws and plates in the femur bone remain planted. This exposes him to the risk of another fracture anytime. The third operation was for removal of a lump in the right leg which had developed after the accident and had grown over the years.

3) As per the appellant, the net result of the aforesaid accident of such severity is that he is suffering permanent disability (pain and difficulty in locomotion) even today. This disability is certified by the District Government Hospital, Muzaffarnagar at 40%, as per the disability certificate dated 10 th December, 2005 (Exh. PW-4/103).

4) The appellant filed an application claiming compensation before Motor Accidents Claims Tribunal (MACT), Muzaffarnagar, U.P. as the accident took place in the area within the jurisdiction of the said MACT. However, on his application for transfer of the said claim petition, this Court passed orders dated 12th January, 1998 transferring the case to MACT, Patiala House, New Delhi. The MACT, after conclusion of the trial, rendered its award dated 23 rd May, 2007 attributing negligence to the driver of the ambassador car which had hit the vehicle in which the appellant was travelling. As the accident occurred due to the negligence of the said driver (Respondent no. 4 in MACT case), and the offending vehicle was insured with Respondent no. 1, namely, New India Assurance Company Limited, the liability was fastened on the Insurance Company, the driver of the vehicle as well as the owner of the vehicle who also arrayed as respondents. The MACT, thereafter, dealt with the issue of quantum of compensation and awarded a sum of Rs. 8,48,000/-, the breakup of which is as under:

"Pain and sufferings	Rs.50,000/-
Medicines	Rs.2,10,000/-
Special Diet	Rs.15,000/-
Conveyance	Rs.15,000/-
Compensation on account of loss of income adopting multiplier of 18 permanent disability attendant	Rs.4,08,000/-
loss of enjoyment	Rs.75,000/-
	Rs.25,000/-
Total	Rs.8,48,000/-"

5) The MACT also awarded interest @7% for a period of 10 years, inter alia, taking note of the fact that the claim petition has been dismissed in default twice.

6) The appellant filed the appeal thereagainst before the High Court. However, when it was taken up for hearing, nobody appeared on behalf of the appellant. Going by the fact that on several consecutive dates the appellant was not represented and remained absent, instead of dismissing the appeal in default, the High Court decided the matter on merits after hearing the counsel for the Insurance Company and on perusing the record.

7) Main contention of the appellant in appeal was that MACT had failed to take into account the disability certificate which showed that the appellant had suffered permanent disability to the extent of 40%. This submission is rejected by the High Court with the observations that the MACT had, in fact, calculated the loss of future income on the basis of inference that the claimant has suffered functional disability to the extent of 40% corresponding to affecting his earning capacity. The High Court also took note of the income tax returns which were filed by the appellant for the periods 2003-04, 2004-05, 2005-06. However, as per the High Court, these income tax returns were irrelevant and could not be taken into consideration as accident occurred way back in the year 1988 and, therefore, compensation had to be fixed with reference to the date of the accident when the claimant was a boy of 18 years only. Instead, only addition is made by the High Court, that too on some other count. It has noted that the appellant would require services of a driver till he attains age of 70 years, which is a normal expected lifespan. Though, no evidence was led in support of this claim, the High Court has awarded an additional lumpsum damages in the sum of Rs. 50,000/- on this account, given the nature of disability and physical disfigurement suffered by the appellant.

8) The appellant, thereafter, preferred a review petition under Order LXVII Rule 1 of the Code of Civil Procedure seeking review of the judgment dated 17 th May, 2016 rendered by the High Court. It was pointed out that there was an error committed by the MACT as it had applied the multiplier of 17, whereas multiplier of 18 should have been adopted while calculating the compensation towards loss of income, going by the fact that the appellant was only 18 years of age when he suffered the injuries. This plea has been accepted by the High Court thereby applying the multiplier of 18, instead of 17 which has resulted in enhancement of compensation by Rs.24000/- together with corresponding interest. Main judgment dated 17th May, 2016 as well as order dated 19th May, 2017 passed in review petition are the subject matters of the present appeals.

9) Mr. Arun Mohan, learned senior counsel appearing for the appellant has made two-fold submissions which are paraphrased in the following manner:

(i) In the first instance, it is submitted that the MACT as well as the High Court have erred in computing the future earning by fixing the income at the rate of Rs.5000/- only while assessing the loss of future earnings. No doubt, submitted the learned senior counsel, the appellant was only a student and, therefore, there was no real earning at that stage. Only future prospects can be taken into consideration, as per the law laid down by this Court in a series of judgments. However, submission of learned senior counsel was that while assessing the loss of future earning, the Court should have regard to the family background of the victim, the institution in which he is getting education, his potential to adopt the career he desired to choose, career prospects in view of attendant circumstances etc. In this hue, Mr. Arun Mohan submitted that the appellant belongs to a family of lawyers as both his parents were senior lawyers practicing in Supreme Court. Because of this family background, the appellant also wanted to join legal profession. Though, at the time of accident, he was studying in school, after school he intended to pursue his studies in law. He, in fact, did law and has joined the legal profession, which fact was placed on record, as by the time the appellant became a lawyer the case before MACT was still pending. Further,

having regard to affluent family background, the appellant at the time of accident was studying in prestigious Modern School, Barakhamba Road, New Delhi. All these circumstances clearly indicated that the appellant had a bright future and, therefore, his future earnings could not be considered without keeping in view the aforesaid factors. In such circumstances, loss of future earning prospects by treating the future earnings at the rate of Rs.5000/- only was abysmally low. He also submitted that though in the review petition filed before the High Court, specific ground to this effect was taken, it has not even been considered by the High Court.

(ii) Second submission of Mr. Arun Mohan was a passionate plea aimed at reforming the system at following levels:

(a) On-road safety and grant of adequate compensation to the victims without any delay. For ensuring expeditious settlement of claims, resort to alternate means which may include innovative measures.

(b) Taking adequate steps including adopting innovative measures, to ensure fast track disposal of cases by MACTs.

(c) Ensuring receipt of compensation in the safe hands of victims and/or kiths and kins of victims, that too over a sustained period.

10) Detailed submissions on these aspects and suggestions of Mr. Arun Mohan are as under:

"Road Safety and Compensation IT is perceived that of road accidents (1,40,000 dead per year and 5,00,000 injured per year), less than 10% reach the MACT with claims. Almost 90% do not have Access to Justice.

And of the 10% or so who do reach MACT, the questions arise:

1. What is the 'Cost' to the State judiciary and insurance sector for adjudication of these claims?
2. What are the time delays?
3. On what income source do the dependents/injured survive during pendency till the payout?
4. Of the ultimate payout, how much actually reaches the recipients and how much is lost?
5. After, say, five years of receiving the compensation, what actually remains with the majority of the recipients?

These were some disturbing questions on a ground level survey. Put differently, firstly, as most are poor, there is hardly any access to justice; the court resources are wasted; there are delays and difficulties and slicing away (cut) from the payout; and little safety for the money that is received.

As a Solution to these problems, there are two proposals:

1. establishing a Motor Accidents Mediation Authority (MAMA) in every district;
2. making it compulsory for the accident investigator to:
 - (a) send a copy of his Report to MAMA;
 - (b) send e-mail to National Road Safety Council's cell

identifying the accident spot and how similar accidents could be prevented in future.

MAMA will follow the following procedure:

1. MAMA will then issue notices to the claimants and others.
2. interim compensation (with recourse) of few thousand rupees a month pending adjudication as direct credit to Aadhaar linked bank account;
3. completion of paperwork at MAMA;
4. mediation proceedings at MAMA;
5. complete safety in the hands of the recipient.

The amount settled is not given as rupees (or even FDRs), but as Annuity Certificates, which have more return for the same value-meaning lesser payout by the insurance sector with full receipt by the claimant.”

11) He further submitted that this Court may consider a direction to the Government to frame these procedures and schemes. LIC/RBI can provide for availability of Annuity Certificates in consultation with the Pension Fund Regulatory and Development Authority and the commercial Banks/insurance companies.

12) To facilitate appreciation and implementation, he gave two flowcharts as below:

13) In the Flowchart-1 (under the existing law), a direction from this Court is sought to all MACTs to compulsorily refer motor accident cases to the District Mediation Authority which will serve the purpose till the Government amends the Statute. Flowchart - 2 shows where the amended statute and the rules can provide for establishing a Motor Accident Mediation Authority (MAMA) in every district in the country. He also suggested that rules can provide for every accident investigator to

send information to : (1) MAMA; and (2) National Road Safety Council's Cell.

14) Speaking with an optimist tone, Mr. Mohan submitted that there is a hope that with a provision for MAMA:

(1) access to justice will substantially increase; (2) the court costs will reduce;

(3) insurance sector costs (as payout) will reduce; (4) Annuity Certificates of the payout will nearly eliminate the 'slicing away'; and (5) the actual benefit to the recipients will be far more (with Annuity Certificates) than it is at present.

15) Mr. Salil Paul, learned counsel appearing for the Insurance Company advanced his argument on the quantum of compensation based on future prospective. His submission was that the yardstick adopted by the courts below in fixing the income based on future prospective on the basis of which compensation is given to the appellant is in tune with various judgments rendered by this Court as well as the High Court. Therefore, no interference was called for, insofar as grant of compensation is concerned. He referred to certain judgments in support.

16) With reference to the second submission of Mr. Arun Mohan, Mr. Salil Paul gave a positive response with the plea that since suggestions given by Mr. Arun Mohan were in larger public interest for reformation of the system, he had no objection if the Court issues appropriate directions in this behalf. At the same time, he also pointed out that insofar as speedy disposal of cases and payment of compensation to the victims, particularly, young victims are concerned, the High Court of Delhi had given directions on the basis of which Claims Tribunal Agreed Procedure was approved by High Court of Delhi.

Modified version thereof has now been approved as recent as on 7 th December, 2018 which takes care of the speedy disposal as well as periodical payments to be made to the young victims over a period of time. Mr. Salil Paul placed on record the relevant judgments as well as Modified Claims Tribunal Agreed Procedure approved by the Delhi High Court vide orders dated 7th December, 2018.

17) We now proceed to discuss the merits of the aforesaid two proposition advanced before us.

(I) Assessment of Compensation:

Admittedly, the appellant was a student studying in a school. He was not doing any job or was in any vocation and, thus, was not earning anything. The loss of future earning is to be assessed on the aforesaid basis. Before adverting to the arguments that are raised by Mr. Arun Mohan and taken note of above, it would be appropriate to scan through certain judgments cited before us by both the parties in order to decipher the principles for determining loss of future earning in such circumstances. First case which we would like to refer is the judgment in the case of Arvind Kumar

Mishra v. New India Assurance Co. Ltd., (2010) 10 SCC 254. In that case also, the appellant who was a victim of accident, was a student. He was in the final year of engineering which he was doing from a reputed college. He had a brilliant academic record, having passed all semester examinations with distinction. In the accident that took place, the appellant suffered multiple injuries which led to 70% permanent disability. This disability rendered him incapacitated which had the consequence of dashing forever his dream of becoming Mechanical Engineer, studies for which career he had undertaken. On the aforesaid facts, his future earning were assessed at Rs.60,000/- per annum by taking salary and allowances payable to Assistant Engineer in public employment. This future earning was discounted at 30% on the basis of which multiplicand was taken at Rs.42,000/- per annum. Going by his age which was 25 years at the time of accident, multiplier of 18 was applied and on that basis, compensation towards loss of future earning was assessed at Rs.7,56,000/-.

Second case to which reference is made is Oriental Insurance Company Limited v. Deo Patodi & Ors., (2009) 13 SCC 123. Here, the victim was a brilliant student and while a student, he was also earning Rs.80,000/- per month in a job on part-time basis in the United Kingdom. He had not accepted a job offered by a US based company at a salary of Rs.18 lakhs per annum. However, at the time of accident, he was not working. Accident took place on June 12, 2003 when he was 22 years of age. He suffered head injuries which proved fatal and he died within six days i.e. on June 18, 2003. While computing the compensation under the head 'loss of dependency' (he was the only son of the claimant), the Tribunal as well as the High Court held that the deceased would have earned only Rs.18,000/- per month. This Court, in appeal, however, considered the aforesaid estimation of income to be on lower side and the Court decided to fix the earning at Rs.25,000/- per month, which was 1/3rd of the amount that he was receiving in the United Kingdom. The relevant discussion in this behalf runs as under:

"8. The question in regard to the calculation of loss of dependency, it is trite, would vary from case to case. The fact that the deceased was a brilliant student is not in dispute. He had graduated in Business Administration in the UK. Even as a student, in a job on a part-time basis he was being paid a salary of Rs 80,000 per month (UK £1008.31). He paid his income tax even in the UK. After his graduation, he came back to India. He was offered a job as EU Controller by GOA LLC, a company based in Chicago, USA at an annual salary of Rs 18 lakhs (i.e. \$41,600). However, when the accident took place he was not working; having not accepted the said offer. He was still a student. It would have been hazardous for the Tribunal to calculate the amount of compensation towards the loss of dependency on that basis.

9. The Tribunal and the High Court, however, in our opinion, keeping in view the aforementioned backdrop might not be correct in holding that he would have earned only Rs 18,000 per month. It is true that the cost of living in the western countries would be higher. The standard of living in the western countries cannot be followed; in the absence of any material placed before this Court it should not be followed in India. Even in a case where the victim of an accident was earning salary in US dollars, this Court opined that a lower multiplier should be applied.

10. In *United India Insurance Co. Ltd. v. Patricia Jean Mahajan* [(2002) 6 SCC 281] this Court held: (SCC pp. 294-95, paras 19-20) “19. In the present case we find that the parents of the deceased were 69/73 years. Two daughters were aged 17 and 19 years. The main question, which strikes us in this case is that in the given circumstances the amount of multiplicand also assumes relevance. The total amount of dependency as found by the learned Single Judge and also rightly upheld by the Division Bench comes to 2,26,297 dollars. Applying multiplier of 10, the amount with interest and the conversion rate of Rs 47, comes to Rs 10.38 crores and with multiplier of 13 at the conversion rate of Rs 30 the amount comes to Rs 16.12 crores with interest. These amounts are huge indeed. Looking to the Indian economy, fiscal and financial situation, the amount is certainly a fabulous amount though in the background of American conditions it may not be so. Therefore, where there is so much of disparity in the economic conditions and affluence of the two places viz. the place to which the victim belongs and the place where the compensation is to be paid, a golden balance must be struck somewhere, to arrive at a reasonable and fair mesne. Looking by the Indian standards they may not be much too overcompensated and similarly not very much under compensated as well, in the background of the country where most of the dependent beneficiaries reside. Two of the dependants, namely, parents aged 69/73 years live in India, but four of them are in the United States. Shri Soli J. Sorabjee submitted that the amount of multiplicand shall surely be relevant and in case it is a high amount, a lower multiplier can appropriately be applied. We find force in this submission. ...

20. The court cannot be totally oblivious to the realities. The Second Schedule while prescribing the multiplier, had maximum income of Rs 40,000 p.a. in mind, but it is considered to be a safe guide for applying the prescribed multiplier in cases of higher income also but in cases where the gap in income is so wide as in the present case income is 2,26,297 dollars, in such a situation, it cannot be said that some deviation in the multiplier would be impermissible. Therefore, a deviation from applying the multiplier as provided in the Second Schedule may have to be made in this case. Apart from factors indicated earlier the amount of multiplicand also becomes a factor to be taken into account which in this case comes to 2,26,297 dollars, that is to say an amount of around Rs 68 lakhs per annum by converting it at the rate of Rs 30. By Indian standards it is certainly a high amount. Therefore, for the purposes of fair compensation, a lesser multiplier can be applied to a heavy amount of multiplicand.” The said decision, however, to some extent was clarified by this Court in *Punjab National Bank v. Indian Bank* [(2003) 6 SCC 79] .

11. It is in the aforementioned situation, we are of the opinion that the fair amount of compensation should have been calculated at Rs 25,000 per month being about one-third of the amount which he was receiving in the UK.”

18) We may also take note of one judgment of High Court of Delhi in MAC. APP. No. 135 of 2008 titled ‘*New India Assurance Co. Ltd. v. Ganga Devi & Ors.*’ decided on

November 23, 2009. In that case also, accident resulted in death of the victim, named, Dr. Brij Mohan. He was 24 years of age at the time of accident and had completed his MBBS. He was doing one year internship and was getting stipend of Rs.5,000/-

per month. The deceased had cleared the UPSC examination for the post of Medical Officer and was scheduled to be appointed as Medical Officer after completing the internship. Evidence of PW-2, Senior Assistant of the Hospital, where the deceased was interning, was produced who deposed that after completing his internship, there was a possibility of getting absorbed as Junior Resident Doctor in the same hospital at salary of Rs.18,000/- to Rs.20,000/- per month.

19) The Tribunal took the view that the aforesaid evidence was insufficient to prove the income. Accordingly, it took the minimum wages of a graduate worker as Rs.3,543/- per month and added 50% towards inflation and rise in price index. From this, 1/3rd was deducted towards personal expenses and multiplier of 11 was applied to compute the loss of dependency at Rs.9,35,352/-. The High Court set aside the order of the Tribunal holding that evidence of PW-2 was believable. On that basis, income was taken at Rs.18,000/- per month to which 50% was added towards future prospects, following the judgment of this Court in *Sarla Verma v. Delhi Transport Corporation*, (2009) 6 SCALE 129. Deduction towards personal expenses was made on which multiplier of 13 was applied.

20) The aforesaid cases are of all those victims who were students at the time of accident and were not in actual employment. In addition, Mr. Arun Mohan had also referred to the judgment in *N. Manjegowda v. Manager, United India Insurance Company Limited*, (2014) 3 SCC 584, where victim of an accident was a young advocate aged about 36 years. In the accident, he sustained whole body disability of 50%. This judgment is cited for the purpose of showing principle laid down by the Court in determining the loss of earning capacity of an advocate who suffers disability in an accident. The Tribunal had assessed the loss of future income due to disability at Rs.6,17,500/- per annum. The High Court reduced the same to Rs.1,50,000/-. This Court noted that due to the said accident, the appellant had suffered partial sensory loss all over his limbs and there was lack of proper coordination in all four limbs. He needed an assistance for daily routine work. This kind of disability, in the opinion of the Court, hindered his ability to practice as an advocate and compete with others in the field of legal profession. He was bound to suffer huge professional loss in the said condition. This Court, in the aforesaid circumstances, took the view that loss of future income fixed at Rs.6,17,500/- did not require any deduction. On the contrary, the loss of earning should be treated as 70% and the appropriate multiplier should be 16 in place of 13. On that basis, the loss of income due to disability needed enhancement from Rs.6,17,500/- by at least Rs.4,00,000/- and the compensation under the head loss of income due to disability was worked out accordingly.

21) It would be also appropriate to take note of certain judgments dealing with the assessment of loss of future earnings on account of disability suffered as a result of accident, even when these cases pertain to those victims who were having their earnings, as these cases would throw light on the general principles which were laid down for assessing such a loss.

22) In the case of *Raj Kumar v. Ajay Kumar & Anr.*, (2011) 1 SCC 343, where the victim suffered 45% disability to left lower limb and permanent functional disability of 25%, the Court held that it is a functional disability which would be the operative criteria for assessing the loss of future earnings and not physical disability. There is a detailed and lucid discussion of assessment of future loss of earning due to permanent disability, covering all possible facets and discussing every nuance of the subject matter. After explaining the meaning of permanent disability and contrasting it with temporary disability and also the manner in which permanent disability of different limbs expressed by Doctors in the Disability Certificates is to be interpreted, the Court clarified that 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 manner in which the assessment is to be carried out is contained in the following passages in the said judgment:

"12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

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19. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

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

23) From the conjoint reading of the aforesaid judgments, inter alia, following principles can be culled out which would be relevant for deciding the instant appeal:

(i) In those cases where the victim of the accident is not an earning person but a student, while assessing the compensation for loss of future earning, the focus of the examination would be the career prospect and the likely earning of such a person in future. For example, where the claimant is pursuing a particular professional course, the poseer would be: what would have been his income had he joined a service commensurating with the said course.

That can be the future earning.

(ii) There may be cases where the victim is not, at that stage, doing any such course to get a particular job. He or she may be studying in a school. In such a case, future career would depend upon multiple factors like the family background, choice/interest of the complainant to pursue a particular career, facilities available to him/her for adopting such a career, the favourable surrounding circumstances to see which would have enabled the claimant to successfully pick up the said career etc. If the chosen field is employment, then the future earning can be taken on the basis of salary and allowances which are payable for such calling. In case, career is a particular profession, the future earning would depend on host of other factors on the basis of which chances to achieve success in such a profession can be ascertained.

(iii) There may be cases like Deo Patodi where even a student, the claimant would have made earnings on part-time basis or would have received offer for a particular job. In such cases, these factors would also assume relevance.

(iv) After ascertaining the likely earning of the victim in the aforesaid manner, the nature of injuries and disability suffered as a result thereof would be kept in mind while determining as to how much earning has been affected thereby. Here, impact of injuries on functional disability is to be seen. In case of death of victim, it would result in total loss of earning. In the case of injuries, the nature of disability becomes important. Such an exercise was undertaken in N. Manjegowda case.

24) The relevant factors which are brought on record by the learned senior counsel for the appellant are these: the appellant belongs to a family of lawyers as both his parents were senior lawyers practicing in the Supreme Court. Because of his family background, the appellant also wanted to join legal profession, even though at the time of accident, he was studying in school. Having regard to affluent family background, the appellant at the time of accident was studying in prestigious Modern School, Barakhamba Road, New Delhi. All these circumstances clearly indicated that the appellant had a bright future and, therefore, his future earnings could not be considered without keeping in view the aforesaid factors. The appellant also produced evidence in respect of his disability. This disability does not indicate much loss of prospects in earning as it is similar to N. Manjegowda case. Of course, his movements are restricted and he needs a Driver as he is not in a position to drive the car himself. This would hinder the earning capacity to some extent, though not significant extent.

25) From the judgment of the MACT, we find that, on this aspect, it has followed judgment of Arun Sondhi v. Delhi Transport Corporation, (2001) ACJ 1779 and has awarded the compensation at Rs.4,08,000/-. It has also added Rs.75,000/- on account of 40% permanent disability on the ground that apart from resulting in loss of income, it has severe impact on the life of the appellant as a whole. The figure of Rs.4,08,000/- is calculated in the following manner:

"42. Learned counsel for petitioner has argued at length that a substantial amount of compensation is required to be awarded to the petitioner on account of loss of earning capacity in future. It has been stated that on account of injuries suffered in the accident the income of the petitioner has reduced to 60% of what he could have earned otherwise. I consider that this argument raised by learned counsel for the petitioner cannot be accepted. The petitioner was student at the time of accident. He started his career after around 5 years of accident. I do not say that the injuries did not have an adverse impact on the petitioner, but to quantify the same in the manner claimed by the petitioner may not be just. In this regard, I consider that the guidance can be taken from the case of Arun Sondhi v. Delhi Transport Corporation, 2001 ACJ 1779. In this case, the injured was a student of 21 years and he had suffered disability of 100%. In L.P.A. the loss of future earning was assessed at Rs.5000/- p.m. and after adopting multiplier of 16 compensation of Rs.10,80,000/- was allowed. If the same principle is adopted and future earning is taken at Rs.5000/- p.m. and the disability of 40%, the monthly loss of income comes to Rs.2000/- p.m. or Rs.24,000/- p.a. It is

a settled proposition that in the case of permanent disability the multiplier is to be adopted according to the age at the time of trial. In this case adopting this principle if the multiplier of 17 is adopted the compensation on account of loss of future income comes to Rs.24,000/- x 17 = Rs.4,08,000/-.”

26) As can be seen from the above, loss of future earning is assessed at Rs.2,000/- per month or Rs.24,000/- per annum. In the process, the MACT has not considered future prospects having regard to the relevant facts pointed out above which should have been taken into consideration. At the same time, it is the functional disability which has to be kept in mind. Though, not very seriously, the functional capacity has been impaired because of the disability suffered by the appellant as the appellant cannot run around like other young advocates of his age.

Going by the overall circumstances, we are of the opinion that in case of the appellant, loss of future earning can be fixed at Rs.5,000/- per month i.e. Rs.60,000/- per annum on which multiplier of 18 is to be applied. Calculated in this manner, the loss future earning comes to Rs.10,80,000/-. The appellant, thus, would be paid another sum of Rs.6,54,000/- under this head along with interest as awarded by the Court below. We may place on record the statement of Mr. Arun Mohan that the appellant has volunteered to give this amount to any Government or public charitable organisation working towards road safety. We appreciate this gesture of the appellant. We leave it to the appellant to donate the amount to any particular organisation of his choice. Alternatively, it can also be given for MAMC project by the appellant. Choice would entirely be that the appellant.

(II) With this, we advert to the second proposition advanced by Mr. Arun Mohan. At the outset, we would like to point out that this aspect pertains to the reforms that can be brought insofar as payment of compensation to the victims of road accidents is concerned. We would also like to commend the suggestions given by Mr. Arun Mohan to bring about such reforms which are visionary in nature. The two aspects which he has highlighted are taken up for discussion in seriatim.

(A) ROAD SAFETY AND COMPENSATION:

27) Focus here is to ensure access to justice for road accident victims and also to

about a mechanism which prevents delays and other obstacles in awarding compensation to road accident victims. The suggestion of Mr. Arun Mohan for establishing a MAMA in every District is worthy of acceptance. Whatever steps are taken by the authorities for reducing road accidents, harsh reality is that accidents would keep on happening. There may be a possibility of reducing the number of road accidents, but occurrence thereof cannot be totally eliminated. Such accidents, particularly fatal accidents, would always lead to filing of claims by the victims and/or kith and kin of victims, for compensation. Fatal accidents also trigger prosecution of the driver who was negligent and rash in driving which caused the accident. Insofar as disputes regarding claims are concerned, there is a need to resolve the same at the earliest inasmuch as compensation money may be badly needed by the claimants for so many reasons and delay may bring insurmountable

sufferings of various kind. Having regard to the fact that large number of accidents are giving rise to phenomenal quantum jump in such cases, methods need to be adopted for quick resolution. Here, mediation as a concept of dispute resolution, even before dispute becomes part of adversarial adjudicatory process, would be of great significance. Advantages of mediation are manifold. This stands recognised by the Legislature as well as policy makers and need no elaboration. Mediation is here to stay. It is here to evolve. It is because of the advantages of mediation as a method here to find new grounds. It is here to prosper, as its time has come. It is now finding statutory recognition and has been introduced in few Statutes as well. Examples are the Companies Act, Insolvency and Bankruptcy Code, Commercial Courts Act etc. In these enactments provisions are made even for pre-litigation mediation by making this process mandatory. There is, in any case, umbrella provisions in the form of Section 89 of the Code of Civil Procedure which, inter alia, provides for court annexed mediation as well. Time is ripe now to have similar mechanism for settling accident claims as well. Therefore, the suggestion of establishing MAMA is laudable. We recommend to the Government to examine the feasibility of setting up MAMA by making necessary amendments in the Motor Vehicles Act itself. In fact, the way mediation movement is catching up in this country, there is a dire need to enact Indian Mediation Act as well.

28) Till the time such an amendment is made by the Parliament, National Legal Services Authority (NALSA) should take up this work as a project. A complete report/module be made about the functioning of Motor Accident Mediation Cell (MAMC). This exercise be completed within a period of two months. Thereafter, this project can be shared with all State Legal Services Authorities (SLSA) so that State Legal Services Authorities implement the same through their respective District Legal Services Authorities (DLSAs).

29) There is Mediation and Conciliation Project Committee (MCPC) in the Supreme Court which takes various policy decisions for better working of mediation, including court annexed mediation. Broadening the structure of MCPC, so as to have proper coordination with High Court Mediation Centers as well as Mediation Centers at District Court Level is achieved. Thus, NALSA can even consider entrusting the project of MAMC to MCPC as well.

30) In a book titled 'Road Accidents: Prevention, Attention and Compensation', authored by Mr. Arun Mohan, Senior Advocate various aspects pertaining to access to justice to road victims are deliberated upon. There is a specific chapter on the establishment of MAMA which can be of immense help to the NALSA for preparing and finalizing the project. NALSA would be well-advised to take into consideration the suggestions and proposals given in that book. It may, inter alia, make a provision for the accident investigator to compulsorily send a copy of report to MAMC or email to National Road Safety Council. Forwarding the copy to MAMC shall facilitate mediation, on the other hand giving information to National Road Safety Council would help the council to take measures for preventing such accidents in future.

(B) FAST TRACKING DISPOSAL OF CASES BY MACTs :

31) Establishment of MAMA/MAMC is for the purpose of resolving the claims before t

case is filed in the MACT. It is a matter of common knowledge that for amicable settlement of the cases pending before MACT, ADR in the form of Lok Adalat is resorted to, which has achieved tremendous success over a period of time. These Lok Adalats are also organised by the Legal Services Authorities. Settlement of cases by Lok Adalats have their own pros and cons. Be as it may, resort to Lok Adalat should continue because of its own advantages.

32) Notwithstanding, the aforesaid ADR methods, adjudicatory process before the MACTs is indispensable. There cannot be a guarantee that 100% cases would be settled through mediation or Lok Adalat. Therefore, there is a dire need for deciding these cases without delays and within reasonable period. The Delhi High Court has given few judgments providing for mechanism to speed up the disposal of such cases and to ensure that schemes are settled within a period of 90/120 days from the date of accident. In nutshell, these directions include that on the occurrence of accident, the police which comes into the picture in the first instance, should complete the investigation and along with filing of FIR before the concerned Court of Metropolitan Magistrate, copies are sent to MACT as well as Insurance Company also. Insurance Company is supposed to look into the same to find out as to whether the claim is payable and within 30 days it should respond to MACT and once all these documents are before the MACT in the form of evidence etc. as well it would enable the MACT to decide the case within 30 days. The case where entire procedure is articulated is judgment dated 16th December, 2009 in FAO No. 843 of 2003. This Court has also given its imprimatur in Jaiprakash v. National Insurance Company (SLP(Civil) No. 11801-11804 of 2005) in its order dated 13th May, 2016 in the following manner:

"Insofar as the said suggestion is concerned, learned Solicitor General drew our attention to the response filed before us on behalf of the General Insurance Council, in particular paragraph 4, which states that presently the procedure suggested in Paragraph 23 is being followed by the Insurance Companies in Delhi by way of a Scheme called "Claims Tribunal Agreed Procedure" which was formulated by the Delhi High Court in the judgment dated 16.12.2009 passed in FAO No.843 of 2003 in Rajesh Tyagi & Ors. v. Jaibir Singh 3 & Ors. It is also mentioned therein that Tribunal as well as the Legal Service Authority are taking effective steps to implement the said procedure, which is being carried out in the National Capital Territory of Delhi. In paragraph 5, it is further submitted that since this procedure has been successful in Delhi it can be extended on pan India basis. The agreed procedure has also been filed as Annexure R5 with the response filed on behalf of the General Insurance Council.

"We have also perused the procedure, which has been placed before us as Annexure R5 with the response which, in our view, appears to be a comprehensive one and that we can issue further directions to the Registrar General of the Delhi High Court to ensure that procedure is strictly followed insofar as Delhi is concerned and also circulate the said procedure to all the other High Courts and the Registrar General of all the other High Courts are directed to ensure that the said procedure is implemented through the Motor Accidents Claims Tribunals in coordination with the Legal Service Authorities as well as the Director General of Police of the States concerned.

The Registry of the Supreme Court is directed to forward a copy of this order along with Annexure R5 (pages 32 to 46 in the response filed on behalf of the General Insurance Council) to all the High Courts including the Delhi High Court to ensure compliance of the present order.”

33) Vide order dated 6th November, 2017 in Jaiprakash case, this Court modified its order dated 13th May, 2016 and directed all States to implement the Modified Claims Tribunal Agreed Procedure formulated by Delhi High Court on 12th December, 2014. The copy of the Modified Claims Tribunal Agreed Procedure was directed to be circulated to the Registrar General of each High Court for necessary compliance. The relevant part of the said order is reproduced hereunder:

"It is also pointed out by learned amicus curiae that the order passed by Justice Midha referred to in our order of 13th May, 2016 was actually modified by Justice Midha on 12th December, 2014. The order dated 13th May, 2016 will, therefore, stand modified to the extent that Justice Midha has himself modified his earlier order on 12th December, 2014. The Registry will send a copy of this order as well as the order passed by Justice Midha on 12th December, 2014 to the Registrar General of each High Court for necessary information and compliance.”

34) This needs to be followed at All India Level. NALSA should take up and monitor the same as well in coordination and cooperation with various high courts to facilitate the same.

(C) Ensuring receipt of compensation in the safe hands of victims and/or kiths and kins of victims:

35) Mr. Arun Mohan has suggested that Government may frame procedures and schemes in this behalf. In particular LIC/RBI can provide for availability of annuity services in consultation with Pension Fund Regulatory and Development Authority and the commercial banks/insurance companies. To facilitate the same, the learned senior counsel has given two flowcharts, one under the existing law and the other on establishment of MAMA. The details for framing such procedure and schemes are given in the book of Mr. Arun Mohan referred to above. We impress upon the Government to look into the feasibility of framing such schemes and for the availability of annuity certificates. This exercise may be done within the period of six months and decision be taken thereupon.

36) In addition, we would also like to mention that the Delhi High Court (speaking through J.R. Midha, J.) in *Rajesh Tyagi v. Jaiveer Singh and Others* (FAO No. 842 of 2003) undertook the exercise of framing Motor Accident Claims Annuity Deposit Scheme (MACAD Scheme) in cooperation with Indian Banks Association. Purpose of involving the banks was to ensure that the Scheme is implemented through the banks. In its order dated 7 th December, 2018 passed in the aforesaid case, the

learned Judge recorded that 21 banks had taken decision to implement MACAD Scheme which was approved by the Court on 1st May, 2018. Operative documents of these 21 banks were taken on record. The court directed that sets of these operative documents be furnished to the Registrar General of the High Court so that these are circulated to all the MACTs. Further, directions for implementation of the said Scheme are given.

Therefore, we would like to reproduce order dated 7th December, 2018 in its entirety.

"1. Mr. Lalit Bhasin, learned counsel for Indian Bank Association has handed over copies of the operative documents of 21 Banks which have implemented Motor Accident Claims Annuity Deposit Scheme (MACAD Scheme) approved by this Court on 01st May, 2018. The compilations of the operative documents of 21 banks are taken on record. Learned counsel for the Indian Bank Association shall furnish the sets of the operative documents to the Registrar General for being circulated to all the Claims Tribunals. 2. The Registrar General is directed to circulate the aforesaid compilation to all the Claims Tribunals for being implemented forthwith. The Claims Tribunals shall disburse the awarded amount to the claimants in a phased manner in terms of the order dated 01st May, 2018 and the award amount be disbursed through MACAD Scheme. 3. All the Banks are directed to appoint a Nodal Officer within four weeks. Learned counsel for the IBA shall compile the list of all the Nodal Officers of the Banks with their respective addresses, phone numbers as well as e-mail addresses and submit the same to the Registrar General who shall circulate the list of Nodal Officers to all the Claims Tribunals. The Nodal Officer of each Bank shall ensure the implementation of the MACAD Scheme by their branches. The Claims Tribunal shall send the copy of the disbursement order by e-mail to the Nodal Officer of that Bank who shall ensure the disbursement by the Bank within three weeks of the receipt of the e-mail. 4. The Indian Bank Association and Delhi State Legal Services Authority shall give adequate publicity to MACAD Scheme in the print as well as digital media. 5. Claims Tribunal Agreed Procedure in terms of the order dated 15th December, 2017 is further modified to incorporate the directions contained in orders dated 18th January, 2018, 09th March, 2018, 01st May, 2018, 20th July, 2018 and 07th September, 2018. The Modified Claims Tribunal Agreed Procedure is annexed to this order. 6. The Registrar General shall circulate the Modified Claims Tribunal Agreed Procedure to all the Claims Tribunals. The Claims Tribunals, Delhi Police and Insurance Companies are directed to implement the Modified Claims Tribunal Agreed Procedure with effect from 01st January, 2019.

7. Learned amicus curiae submits that the Committee is deliberating upon the issues referred to it by this Court. Let the final report of the Committee be submitted before this Court on the next date of hearing. 8. List for reporting compliance on 08th February, 2019 at 02:30 P.M. 9.

This Court appreciates the assistance rendered by Mr. Lalit Bhasin, learned counsel for Indian Bank Association for implementation of MACAD Scheme. 10. Copy of this order along with Modified Claims Tribunal Agreed Procedure be sent to the Registrar General of this Court, National Legal Services Authority (NALSA), Delhi State Legal Services Authority (DSLISA), Delhi Police as well as General Insurance Council (5th Floor, Building No.14, National Insurance Building, Jamshedji Tata Road, Churchgate, Mumbai-400020). General Insurance Council shall circulate this order to all the Insurance Companies. 11. Copy of this order be given dasti to learned counsel for the parties as well as learned counsel for IBA and Delhi Police under signature of Court Master.”

37) Thus, direction for implementation of the ‘Claims Tribunal Agreed Procedure’ which is substituted by modified procedure, as noted above, are already there. However, we find that there is no proper implementation thereof by the Claims Tribunals. We, thus, direct that there should be programmes from time to time, in all State Judicial Academies to sensitizing the presiding officers of the Claims Tribunals, Senior Police Officers of the State Police as well as Insurance Company for the implementation of the said Procedure.

38) The Modified Claims Tribunal Agreed Procedure as approved by High Court of Delhi in its aforesaid order dated 7th December, 2018 has the propensity to ensure speedy disposal of MACT cases. Likewise, Operative Documents of 21 documents which have implemented Annuity Deposit Scheme can ensure that compensation is delivered to the persons for whom it is meant.

It has the element of annuity payments as well. There is, therefore, a need to implement the MACAD Scheme by the Claims Tribunals in the entire country. We direct accordingly. We also direct 21 banks to implement its operative documents on All India basis.

39) We sum up the various directions/recommendations hereinbelow:

(a) We impress upon the Government to also consider the feasibility of enacting Indian Mediation Act to take care of various aspects of mediation in general.

(b) The Government may examine the feasibility of setting up MAMA by making necessary amendments in the Motor Vehicles Act. For this purpose, it can consider the two flow charts given by the appellant.

(c) In the interregnum, NALSA is directed to set up Motor Accident Mediation Cell which can function independently under the aegis of NALSA or can be handed over to MCPC. Such a project should be prepared within a period of two months and it should start functioning immediately thereafter at various levels as suggested in this judgment.

We reiterate the directions contained in order dated November 6, 2017 in Jai Prakash case for implementation of the latest Modified Claims Tribunal Agreed Procedure. For ensuring such implementation, NALSA is directed to take up the same in coordination and cooperation with various High Courts. MACAD Scheme shall be implemented by all Claim Tribunals on All India basis. 21 Banks, Members of Indian Banks Association, who had taken decision to implement MACAD Scheme would do the same on All India basis.

(d) We impress upon the Government to look into the feasibility of framing necessary schemes and for the availability of annuity certificates. This exercise may be done within the period of six months and decision be taken thereupon.

(e) Likewise, we direct that there should be programmes from time to time, in all State Judicial Academies, to sensitizing the Presiding Officers of the Claims Tribunals, Senior Police Officers of the State Police as well as Insurance Company for the implementation of the said Procedure.

40) The appeals are disposed of in the aforesaid manner.

.....J. (A.K. SIKRI)J. (S. ABDUL NAZEER)
NEW DELHI;

MARCH 05, 2019