Sidram vs The Divisional Manager United India ... on 16 November, 2022

Author: Surya Kant

Bench: Surya Kant

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 8510 OF 2022
(arising out of S.L.P. (Civil) No. 19277 of 2018)

SIDRAM .…APPELLANT

Versus

THE DIVISIONAL MANAGER, ….RESPONDENTS
UNITED INDIA INSURANCE CO. LTD.
AND ANR.

JUDGMENT

J.B. PARDIWALA, J.

1. Leave granted.

2. This appeal has been filed against the impugned final judgment and order dated 25th of April, 2018 passed by the High Court of Karnataka (Dharwad Bench) in "Shri Sidram S/o Raju Bhosale v. Shri Siddu Mahadev Bhosale & Anr." urging various legal grounds and contentions for further enhancement of compensation in the case of a motor accident involving the appellant-claimant herein whereby the High Court enhanced the compensation awarded by the Motor Accidents Claims Tribunal, Belgaum (for short, 'Tribunal') by Rs. 3,13,800/- to a total of Rs. 9,26,800/-. The Tribunal had awarded compensation of Rs. 17:03:56 IST Reason:

> 6,13,000/- under the various heads along with interest at the rate of 6% per annum from the date of filing of the petition till the date of realisation of payment.

3. The briefs facts of the case are given hereinunder. The appellant- claimant suffered grievous injuries in a road accident that occurred on 18.07.2012, while he was walking on the left side of the Kulgod-Gokak road. While the claimant was near the Laxmeshwar crossing, a goods vehicle bearing

registration No. KA-23/9426, being driven in a rash and negligent manner banged into the appellant- claimant. The appellant- claimant was shifted to a hospital and was treated as an indoor patient from 18.07.2012 till 06.08.2012. On account of the accident, the appellant-claimant suffered permanent disability to the extent of 45%. The appellant-claimant suffered from paraplegia due to the accident. The appellant- claimant was in the business of selling utensils in different villages of the district.

4. The appellant-claimant filed a claim petition before the First Additional Senior Civil Division Judge & MACT, Belgaum at Belgaum which was registered as the M.V.C. No. 1786 of 2012. Before the Tribunal, the appellant- claimant examined himself (PW-1) and also examined Dr. Anil B. Patil as PW2 in respect of his claim and various other documents were taken on record as evidence.

5. The Tribunal held that the accident took place due to the rash and negligent driving of the offending vehicle as a result of which, the appellant sustained injuries and was awarded pecuniary as well as non- pecuniary damages. The Tribunal held that the appellant was entitled to the compensation as under:

Towards pain and suffering	:	Rs. 40,000/-
Loss of earning during laid of period	:	Rs. 4,000/-
Loss of earning due to disability	:	Rs.3,24,000/
Towards Medical expenses	:	Rs. 1,50,000/
Conveyance, special diet etc	:	Rs. 20,000/
Loss of amenities in life	:	Rs. 30,000/
Towards marriage prospects	:	Rs. 20,000/
Towards future medical expenses	:	Rs. 25,000/-
Total	:	Rs.6,13,000/-

6. Aggrieved by the order of the Tribunal, the appellant filed an appeal in the High Court praying for enhancement of the compensation on the ground that the Tribunal ought to have awarded enhanced compensation on the basis of the evidence adduced. The contentions of the appellant will be taken up in detail at a later stage.

7. The High Court enhanced the compensation to Rs. 9,26,800/-. The High Court in its impugned order held:

> "9. The Tribunal has taken the income of the claimant at Rs. 5,000/- which is on the lower sipe. The accident is of the year 2012 and the notional income of the claimant could be taken at Rs.7,000/- per month considering the nature of business carried on by him.
>
> 10. Thus, the claimant would be entitled to compensation under the head of loss of future earning as follows: Rs.7,000/- x 12 x 18 x 40% = Rs.6,04,800/.

> 11. The compensation awarded under the head of pain and suffering, medical expenses, conveyance, special diet, etc., loss of amenities in life and marriage prospects is just and proper and same is not disturbed. The claimant who suffered grievous injury would have suffered loss of earning during the laid up. The compensation awarded under the head of pain and suffering, medical expenses, conveyance, special diet, etc., loss of amenities in life and marriage prospects is just and proper and same is not disturbed. The claimant who suffered grievous injury would have suffered loss of earning during the laid up period for a minimum period of six months. Therefore, he is entitled for a sum of Rs.42,000/- (Rs. 7,000 x 6). The claimant would be further entitled to litigation expenses of Rs.20,000/-.
>
> 12. With regard to future medical expenses, the claimant has not stated as to the nature of future treatment required. Hence, he would not be entitled for any compensation on the head of future medical expenses. However, it is made clear that if at all the claimant incurs any expenses towards any surgery or treatment on account of the injury suffering in the present motor accident and if he proves the same before the insurer, the insurer shall indemnify the same.
>
> 13. Accordingly, the claimant is entitled for a total compensation of Rs.9,26,800/- as against Rs.6,13,000/-

awarded by the Tribunal.

14. Thus, the claimant shall be entitled to a total compensation under the following heads:

SI. No.	Particulars	Amount
1.	Pain and suffering	Rs. 40,000/-
2.	Loss of earning during laid-up Period for six months	Rs.42,000/-
3.	Loss of earning due to disability	Rs.6,04,800/-
4.	Towards medical expenses	Rs.1,50,000/-
5.	Conveyance, special diet etc.	Rs. 20,000/-
6.	Loss of amenities in life	Rs. 30,000/-
7.	Marriage prospects	Rs. 20,000/-
8.	Litigation expenses	Rs. 20,000/-
	Total	Rs. 9,26,800/-

Accordingly, there would be an enhanced compensation of Rs. 3,13,800/-, which shall carry interest at the rate of 6% per annum from the date of petition till date of realization."

8. Not satisfied with the compensation awarded by the High Court, the appellant has appealed to this Court urging various contentions in support of further enhancement of the compensation.

SUBMISSION ON BEHALF OF THE APPELLANT

9. Mr. Anand Sanjay M. Nuli, the learned counsel appearing for the appellant, filed his submissions in writing. The submissions are as under:

10. The accident had occurred on 18.07.2012 when the appellant- claimant was walking on the left side of the Kulgod-Gokak Road, Karnataka when a goods vehicle bearing No. KA-23/9426 dashed against the appellant-claimant, whilst being driven in a rash and negligent manner. In lieu of the same, the appellant-claimant sustained grievous injuries. The appellant-claimant was admitted to Lake View Hospital from 18.07.2012 to 06.08.2012 and was an indoor patient for 19 days. An amount of Rs.2,00,000/- had been spent towards his medical expenses. It was observed that there was a permanent physical disability of 45% of the whole body as certified by the doctor and further was a functional disability of 100% as the appellant-claimant is unable to continue with his vocation and unable to find any work in lieu of the accident.

11. It is submitted that the appellant-claimant was hale, healthy and aged only 19 years at the time of the accident. The appellant-claimant being aggrieved, had sought compensation to the tune of Rs. 25,00,000/- by filing MYC No.1786/20 12 before the Tribunal. The Tribunal had awarded a meagre sum of Rs.6,13,000/- along with interest at 6%. Being aggrieved, the appellant-claimant had proceeded to file M.F.A. No.100867/2014 (MV) before the High Court of Karnataka (Dharwad Bench). The High Court vide its impugned order has only marginally increased the compensation payable to the appellant- claimant from Rs.6,13,000/- to Rs.9,26,800/-. The High Court had considered the income of the appellant-claimant to be only Rs. 7,000/- as against Rs. 9,000/- which the appellant-claimant was earning through his utensil business. The physical disability had only been taken as 40% as against 45% as opined by the Doctor. The table showing the heads awarded as compensation by the High Court and the Tribunal to the appellant-claimant is as follows:

SL. NO	PARTICULARS	HIGH COURT (IN RS.)	MACT (IN RS.)	AMOUNT CLAIMED
1.	Pain and suffering	40,000/-	40,000/-	1,00,000/-
2.	Loss of Earning for 6 months	42,000/-	4,000/-	9000 x 6 = 54,000
3.	Loss of earning due to disability	6,04,800/-	3,24,000/-	9000 x 12 x 18 x 40% = 7,77,600/-
4.	Towards medical expenses	1,50,000/-	1,50,000/-	2,00,000/-
5.	Conveyance	20,000/-	20,000/-	50,000/-
6.	Loss of amenities in life	30,000/-	30,000/-	50,000/-
7.	Marriage prospects	20,000/-	20,000/-	1,00,000/-
8.	Litigation charges	20,000/-	Not awarded	50,000/-
9.	Future medical expenses	Not awarded	25,000/-	2,50,000/-
10.	Attendant charges	Not awarded	Not awarded	4500 x 12 x 18 = 9,72,000/-
	TOTAL	9,26,800/-	6,13,000/-	26,03,600/-

12. It is submitted that both the Tribunal as well as the High Court have failed to correctly provide/grant compensation under the head "future prospects" as mandated by this Court by only taking the salary of the appellant-claimant to be Rs. 7,000/- and not Rs. 9,000/-. It is submitted that it had been specifically stated by Dr. Anil B. Patil (PW-2) that the appellant would require future medical expenses to the tune of Rs. 2,50,000/-. However, the Tribunal awarded only a sum of Rs. 25,000/- towards future medical expenses as against Rs. 2,50,000/- as stated by PW-2. The High Court has not considered the same at all.

13. It is submitted that with regard to conveyance, it ought to be appreciated that the accident occurred on the Kulgod-Gokak Highway and the appellant was subsequently transferred to Belgaum for treatment. Therefore, compensation under the head of conveyance ought to be granted on the higher side as the appellant was completely disabled and must have received help from family members or friends to get admitted at the hospital and back and forth which has also been observed in Master Ayush v. Branch Manager, Reliance General Insurance Company Limited and Another, (2022) 7 SCC 738. Therefore, it would be reasonable to award conveyance charges of Rs.50,000/-.

14. It is submitted that this Court in Sanjay Kumar v. Ashok Kumar and Another, (2014) 5 SCC 330, was pleased to award compensation to the tune of Rs.75,000/- for loss of marriage prospects wherein the claimant was earning only a sum of Rs.3,500/- per month. Therefore, it would be reasonable to award compensation to the tune of Rs. 1,00,000/- for loss of marriage prospects to the appellant-claimant in the present matter.

15. The appellant suffers from paraplegia because of the accident and requires an attendant throughout the day and hence, Attendant charges of Rs.4,500/- per month ought to be awarded to the appellant, which has not been considered by the Tribunal as well as the High Court. The appellant is unable to stand, walk or sit and is unable to bend his body or lift any weights. It is pertinent to point out herein that the appellant as a consequence of his grievous injuries will not be able to work in the same manner as he used to prior to the accident and therefore, functional disability of the appellant ought to be considered as 100%.

16. It is further submitted that the appellant had been operated upon twice and has undergone a great deal of pain and suffering in lieu of the accident and has had to give up his vocation as a consequence of the grievous nature of the injuries sustained. This Court in Ramesh v. Karan Singh & Anr. in Civil Appeal No. 6365 of 2022 dated September 16, 2022 was pleased to grant compensation to the tune of Rs. 4,00,000/- after taking notice of the grievous nature of the injuries sustained by the Claimant in the said matter and taking into consideration that he had been operated upon 5 times. In light of the same, it would be reasonable to award compensation of Rs. 1,00,000/- to the appellant under the head of pain and suffering.

17. It is submitted that this Court in R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. and Others, (1995) 1 SCC 551, (Para-9) had categorically stated that in injury cases, compensation ought to be assessed as Pecuniary Damages i.e the costs incurred by the claimant for the injury and Special

Damages which includes damages for mental and physical shock, loss of amenities, loss of expectation of life and inconvenience. It may be observed that cumulatively, only a meagre sum of Rs. 90,000/- has been awarded to the appellant for the same. It ought to be appreciated that the appellant would not be able to marry as a consequence of the accident and is forced to live with the pain and suffering throughout his life as he would require an attendant to care for him as well. It may be observed that it has been specifically stated that the appellant is unable to squat or sit cross legged and unable to stand and walk as well as per the disability certificate. Keeping in mind the same, it would be reasonable to award compensation of Rs.50,000/- each to the appellant-claimant under the non-pecuniary heads of loss of amenities. It is submitted that with regards to litigation expenses, the appellant has contested the matter right from the point of the Tribunal upto this Court, in light of the same, it would be reasonable to award litigation expenses of Rs.50,000/- to the appellant.

18. It is submitted that this Court in Govind Yadav v. New India Insurance Company Limited, (2011) 10 SCC 683, Arvind Kumar Mishra v. New India Assurance Company Limited and Another, (2010) 10 SCC 254, and Raj Kumar v. Ajay Kumar and Another, (2011) 1 SCC 343, has categorically held that adequate compensation ought to be awarded not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.

19. It is pertinent to point out herein that the appellant would be entitled to fair and just compensation in order to place the appellant in such a position as close to how the appellant was living prior to the accident as held by this Court in National Insurance Company Limited v. Pranay Sethi and Others, (2017) 16 SCC 680, (Para-55) and in Raj Kumar v. Ajay Kumar (supra)(Para-5). This Court has also held in Helen C. Rebello (Mrs.) and Others v. Maharashtra State Road Transport Corporation and Another, (1999) 1 SCC 90 (Para-36), that the Motor Vehicles Act, 1988 (for short, 'the Act') is a beneficial piece of legislation and hence the object of the Courts ought to be to assist the injured/deceased person.

20. It is pertinent to point out herein that the claim of the appellant

-claimant before the Tribunal was only Rs. 25,00,000/-. However, it is submitted that this Court in Nagappa v. Gurudayal Singh and Others, (2003) 2 SCC 274, and in Laxman alias Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited and Another, (2011) 10 SCC 756, had categorically stated that there is no restriction that the Tribunal/Court cannot award compensation amount exceeding the claim amount.

21. Thus, in view of the aforesaid, the learned counsel prayed that there being merit in his appeal, the same may be allowed and the amount of compensation may be enhanced accordingly.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1- INSURANCE COMPANY

22. Mr. Maibam Nabaghanashyam Singh, the learned counsel appearing for the insurance company has also submitted his submissions in writing. The same are as under:

23. It is submitted that the present petition is filed by the petitioner challenging the impugned order whereby the High Court had allowed the appeal filed by the petitioner and enhanced the compensation from Rs. 6,13,000/- to Rs. 9,26,800/-. The petitioner by filing the present petition is seeking further enhancement of the award. It is submitted that the High Court after considering the evidence on record and also after considering the MACT award had rightly enhanced the award as claimed by the petitioner as such there is no scope for any further enhancement of the amount in the present petition.

24. It is submitted that the High Court has rightly appreciated the evidence and has taken 40% disability for whole body after considering the nature of injury suffered and the evidence of treating doctor, which is 10% more than what has been considered by the Tribunal. The High Court has rightly assessed the future earning as per the law laid down by this Court in Anant son of Sidheshwar Dukre v. Pratap son of Zhamnnappa Lamzane and Another in Civil Appeal No. 8420 of 2018 dated August 21, 2022. The calculation of loss of future earning where the claimant suffers permanent disability as a result of injuries has been dealt in the aforementioned judgment in para no. 7.2. Therefore, under this head there is no scope of enhancement as claimed in the present petition.

25. It is submitted that the appellant has wrongly claimed enhancement of the compensation towards the loss of future earnings during the laid-up period. In fact, the High Court has awarded for loss of earning during the laid-up period for six months. Whereas as per the law laid down by this Court in Anant v. Pratap (supra), this Court has held that the claimant cannot succeed in the claim of actual loss of income. It was observed by this Court in para No. 7.3 that "The grant of loss of future income compensates for any further period of time where income was lost. Actual loss of income can be awarded for the month in which accident took place." In fact, the High Court had rather awarded on the higher side under this head i.e. for actual loss income, which ought to be have been awarded only for the month in which accident took place.

26. It is submitted that the appellant therein without any evidence on record is allegedly claiming that the claimant had 100% disability. It is pertinent to submit here that the appellant had miserably failed to produce any document before the Tribunal, the High Court or even in this Court to show that the claimant had 100% disability. The only document relied upon by appellant as regards to the disability of the claimant is the disability certificate which shows that total permanent physical disability of 45% to whole body. No document filed by the appellant is showing that the claimant has 100% disability. Therefore, the contention made by the appellant for enhancement of the compensation on the ground of disability of 100% is nothing but a desire of the claimant to gain sympathy of this Court to grant further amount as enhancement of the award. The approach of the appellant is unhealthy and will set a bad precedent if such pleas are accepted by this Court. In view of the same the present appeal is liable to be dismissed being devoid of merits.

27. Thus, in view of the aforesaid, the learned counsel appearing for the insurance company prays that there being no merit in the appeal filed by the original claimant, the same may be dismissed.

ANALYSIS

28. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the appellant-claimant has made out any case for further enhancement of the amount of compensation.

POSITION OF LAW

29. The process of determining the compensation by the court is essentially a very difficult task and can never be an exact science. Perfect compensation is hardly possible, more so in claims of injury and disability. As rightly pointed out in H. West & Son Ltd. v. Shephard, 1958-65 ACJ 504 (HL, England):

> "...money cannot renew a physical frame that has been battered."

30. The principle consistently followed by this court in assessing motor vehicle compensation claims, is to place the victim in as near a position as she or he was in before the accident, with other compensatory directions for loss of amenities and other payments. These general principles have been stated and reiterated in several decisions. [Govind Yadav v. New India Insurance Co. Ltd., (2011) 10 SCC 683.]

31. It is now a well settled position of law that even in cases of permanent disablement incurred as a result of a motor-accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects as well. We have come across many orders of different tribunals and unfortunately affirmed by different High Courts, taking the view that the claimant is not entitled to compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. That is not a correct position of law. There is no justification to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading is illogical because it denies altogether the possibility of the living victim progressing further in life in accident cases – and admits such possibility of future prospects, in case of the victim's death.

32. This Court has emphasised time and again that "just compensation" should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident, (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face their lives.

33. In Santosh Devi v. National Insurance Company Limited and Others, (2012) 6 SCC 421, this Court held that:

> "14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma case [Sarla Verma v. DTC, (2009) 6 SCC 121] that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual

> income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be nave to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.
>
> 15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor.

As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put in extra efforts to generate additional income necessary for sustaining their families.

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

17. Although the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the government employees and those employed in private sectors, but it cannot be denied that there has been incremental enhancement in the income of those who are self- employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc.

18. Therefore, we do not think that while making the observations in the last three lines of para 24 of Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121] judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes the victim of an accident then the same formula deserves to be applied for calculating the amount of compensation."

34. In Jagdish v. Mohan and Others, (2018) 4 SCC 571, the victim, a carpenter, suffered permanent disablement, and his claim for compensation including for loss of future prospects was considered by a three-Judge Bench which included, incidentally, the judges who had decided National

Insurance Company (supra). This Court held that:

> "13. In the judgment of the Constitution Bench in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680], this Court has held that the benefit of future prospects should not be confined only to those who have a permanent job and would extend to self-employed individuals. In the case of a self-employed person, an addition of 40% of the established income should be made where the age of the victim at the time of the accident was below 40 years. Hence, in the present case, the appellant would be entitled to an enhancement of Rs. 2400 towards loss of future prospects.
>
> 14. In making the computation in the present case, the court must be mindful of the fact that the appellant has suffered a serious disability in which he has suffered a loss of the use of both his hands. For a person engaged in manual activities, it requires no stretch of imagination to understand that a loss of hands is a complete deprivation of the ability to earn. Nothing —at least in the facts of this case—can restore lost hands. But the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity.
>
> 15. The Tribunal has noted that the appellant is unable to even eat or to attend to a visit to the toilet without the assistance of an attendant. In this background, it would be a denial of justice to compute the disability at 90%. The disability is indeed total.

Having regard to the age of the appellant, the Tribunal applied a multiplier of 18. In the circumstances, the compensation payable to the appellant on account of the loss of income, including future prospects, would be Rs 18,14,400. In addition to this amount, the appellant should be granted an amount of Rs 2 lakhs on account of pain, suffering and loss of amenities. The amount awarded by the Tribunal towards medical expenses (Rs 98,908); for extra nourishment (Rs 25,000) and for attendant's expenses (Rs 1 lakh) is maintained. The Tribunal has declined to award any amount towards future treatment. The appellant should be allowed an amount of Rs 3 lakhs towards future medical expenses. The appellant is thus awarded a total sum of Rs 25,38,308 by way of compensation. The appellant would be entitled to interest at the rate of 9% p.a. on the compensation from the date of the filing of the claim petition. The liability to pay compensation has been fastened by the Tribunal and by the High Court on the insurer, owner and driver jointly and severally which is affirmed. The amount shall be deposited before the Tribunal within a period of 6 weeks from today and shall be paid over to the appellant upon proper identification."

35. The case of Parminder Singh v. New India Assurance Company Limited and Others, (2019) 7 SCC 217, involved an accident victim, who underwent surgery for hemiplegia (weakness of one half of the body on the left side; in this case, caused by an accident). According to the treating medic, the victim could not work as a labourer or perform any agricultural work, or work as a driver (as he was wont to); the assessment of his disability was at 75%, and of a permanent nature. The Court held that:

> "5.1. The appellant has however, produced an affidavit by his employer in this Court. As per the said affidavit, the appellant was earning Rs 10,000 p.m. at the time of the accident. 5.2. On the basis of the affidavit filed by the employer of the appellant, we accept that the income of the appellant was Rs 10,000 p.m. at the time of the accident, for the purpose of computing the compensation payable to him.
>
> 5.3. Taking the income of the appellant as Rs 10,000 p.m., with future prospects @ 50% as awarded by the High Court, the total income of the appellant would come to Rs 15,000 p.m. 5.4. The appellant was 23 years old at the time when the accident occurred. Applying the multiplier of 18, the loss of future earnings suffered by the appellant would work out to Rs 15,000 × 12 × 18 = Rs 32,40,000.
>
> ********* ********* ********* 5.7. In K. Suresh v. New India Assurance Co. Ltd. (2012) 12 SCC 274, this Court held that: (SCC p. 279, para 10) "10. It is noteworthy to state that an adjudicating authority, while determining the quantum of compensation, has to keep in view the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. Hence, while computing compensation the approach of the Tribunal or a court has to be broad-based. Needless to say, it would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the fundamental criterion of "just compensation" should be inhered." ******** ********* ******** 5.9. In the present case, it is an admitted position that it is not possible for the appellant to get employed as a driver, or do any kind of manual labour, or engage in any agricultural operations whatsoever, for his sustenance. In such circumstances, the High Court has rightly assessed the appellant's functional disability at 100% insofar as his loss of earning capacity is concerned. The appellant is, therefore, awarded Rs 32,40,000 towards loss of earning capacity."

36. Yet later and in near past, in an accident case, which tragically left in its wake a young girl in a life-long state of paraplegia, this Court, in Kajal v. Jagdish Chand and Others, (2020) 4 SCC 413, reiterated that in addition to loss of earnings, compensation for future prospects too could be factored in, and observed that:

> "14. In Concord of India Insurance Co. Ltd. v. Nirmala Devi [(1979) 4 SCC 365 : 1979 SCC (Cri) 996 : 1980 ACJ 55], this Court held : (SCC p. 366, para 2) "2. ... the

determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales."

15. In R.D. Hattangadi v. Pest Control (India) (P) Ltd. [(1995) 1 SCC 551 : 1995 SCC (Cri) 250], dealing with the different heads of compensation in injury cases this Court held thus:

(SCC p. 556, para 9) "9. Broadly speaking while fixing the amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include: (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in the future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for loss of expectation of life i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

16. In Raj Kumar v. Ajay Kumar [(2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161], this Court laid down the heads under which compensation is to be awarded for personal injuries: (SCC p. 348, para 6) "6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

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

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

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

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

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

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

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

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)

(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

17. In K. Suresh v. New India Assurance Co. Ltd., (2012) 12 SCC 274 : (2013) 2 SCC (Civ) 279 : (2013) 4 SCC (Cri) 638, this Court held as follows: (SCC p. 276, para 2) "2. ... There cannot be actual compensation for anguish of the heart or for mental tribulations. The quintessentiality lies in the pragmatic computation of the loss sustained which has to be in the realm of realistic approximation. Therefore, Section 168 of the Motor Vehicles Act, 1988 (for brevity "the Act") stipulates that there should be grant of "just compensation". Thus, it becomes a challenge for a court of law to determine "just compensation" which is neither a bonanza nor a windfall, and simultaneously, should not be a pittance.

******** ******** ********

Loss of earnings

20. Both the courts below have held that since the girl was a young child of 12 years only notional income of Rs 15,000 p.a. can be taken into consideration. We do not think this is a proper way of assessing the future loss of income. This young girl after studying could have worked and would have earned much more than Rs 15,000 p.a. Each case has to be decided on its own evidence but taking notional income to be Rs 15,000 p.a. is not at all justified. The appellant has placed before us material to show that the minimum wages payable to a skilled workman is Rs 4846 per month. In our opinion, this would be the minimum amount which she would have earned on becoming a major. Adding 40% for the future prospects, it works to be Rs 6784.40 per month i.e. 81,412.80 p.a. Applying the multiplier of 18, it works out to Rs 14,65,430.40, which is rounded off to Rs 14,66,000."

37. In Neerupam Mohan Mathur v. New India Assurance Company, (2013) 14 SCC 15, this Court considered the case of a victim, whose injury was assessed to 70% as loss of earning capacity for amputation of the arm; he was a postgraduate diploma holder in mechanical engineering, 32 years of age and earning about Rs. 3000/- per month. This Court held, approving the High Court's order (which had adopted the formula from the Workmen's Compensation Act, 1923 to determine 70% for the purpose of deciding loss of earning capacity) as follows:

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

38. However, making a monetary assessment of the injury suffered is the only process devised to compensate the victim. The process of making such an assessment, whether in case of death or injury, is provided in Section 168 of the Act which requires that the tribunals constituted under the Act determine compensation, which appears to be 'just'. Thus, the Act vests a wide discretion upon the tribunals. The decision of this Court in Divisional Controller, KSRTC v. Mahadeva Shetty and Another, (2003) 7 SCC 197, needs mention here (para 15):

> "15. .....It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just", a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach

and not the outcome of whims, wild guesses and arbitrariness.. ...”

39. This Court in R.D. Hattangadi (supra), posited certain principles to be followed:

> “9.....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 damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial;
>
> (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in 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.”

40. In the case of Raj Kumar (supra) this Court has explained in the following terms the general principles relating to compensation in injury cases and assessment of future loss of earnings due to permanent disability:

> “General principles relating to compensation in injury cases
>
> 5. The provision of the Motor Vehicles Act, 1988 (“the Act”, for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. [See C.K. Subramania Iyer v. T. Kunhikuttan Nair [(1969) 3 SCC 64 : AIR 1970 SC 376] , R.D. Hattangadi v. Pest Control (India) (P) Ltd. [(1995) 1 SCC 551 : 1995 SCC (Cri) 250] and Baker v. Willoughby [1970 AC 467 : (1970) 2 WLR 50 :
>
> (1969) 3 All ER 1528 (HL)] .]

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

Pecuniary damages (Special damages)

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

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

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

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

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

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

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

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b),

(iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

7. Assessment of pecuniary damages under Item (i) and under Item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses—Item (iii)—depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages—Items (iv),

(v) and (vi)—involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decisions of this Court and the High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability—Item (ii)(a). We are concerned with

that assessment in this case.

Assessment of future loss of earnings due to permanent disability

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

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

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the

extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. [(2010) 10 SCC 254 :

> (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] and Yadava Kumar v. National Insurance Co. Ltd. [(2010) 10 SCC 341 :
>
> (2010) 3 SCC (Cri) 1285 : (2010) 8 Scale 567])

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.

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of "loss of future earnings", if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.

15. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.

16. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular, the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to "hold an enquiry into the claim" for determining the "just compensation". The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the "just compensation". While dealing with personal injury cases, the Tribunal should preferably equip itself with a medical dictionary and a handbook for evaluation of permanent physical impairment (for example, Manual for Evaluation of Permanent Physical Impairment for Orthopaedic Surgeons, prepared by American Academy of Orthopaedic Surgeons or its Indian equivalent or other authorised texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the First Schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen.

17. If a doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and, if so, the percentage.

18. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give "ready to use" disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily give liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or discharge certificate will not be proof of the extent of disability stated therein unless the doctor who treated the claimant or who medically examined and assessed the extent of disability of the claimant, is tendered for cross- examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local hospitals/medical colleges) and refer the claimant to such Medical Board for assessment of the disability.

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."

41. Later, in another judgment, i.e., Jakir Hussein v. Sabir and Others, (2015) 7 SCC 252, this Court had to consider the correctness of a compensation assessment based on the High Court's analysis of the injury to the victim (a driver who suffered permanent injury to his arm, impairing movement as well as the wrist, which rendered him incapable of driving any vehicle). The High Court had assessed permanent disablement at 30%, even though the doctor had certified it to be 55%.

This Court, reversing the High Court order, observed inter alia that:

"15. .....Due to this injury, the doctor has stated that the appellant had great difficulty to move his shoulder, wrist and elbow and pus was coming out of the injury even two years after the accident and the treatment was taken by him. The doctor further stated in his evidence that the appellant got delayed joined fracture in the humerus bone of his right hand with wiring and nailing and that he had suffered 55% disability and cannot drive any motor vehicle in future due to the same. He was once again operated upon during the pendency of the appeal before the High Court and he was hospitalised for 10 days. The appellant was present in person in the High Court and it was observed and noticed by the High Court that the right hand of the appellant was completely crushed and deformed. In view of the doctor's evidence in this case, the Tribunal and the High Court have erroneously taken the extent of permanent disability at 30% and 55%, respectively for the calculation of amount towards the loss of future earning capacity. No doubt, the doctor has assessed the permanent disability of the appellant at 55%. However, it is important to consider the relevant fact, namely, that the appellant is a driver and driving the motor vehicle is the only means of livelihood for himself as well as the members of his family. Further, it is very crucial to note that the High Court has clearly observed that his right hand was completely crushed and deformed.

16. In Raj Kumar v. Ajay Kumar [(2011) 1 SCC 343], this Court specifically gave the illustration of a driver who has permanent disablement of hand and stated that the loss of future earnings capacity would be virtually 100%. Therefore, clearly when it comes to loss of earning due to permanent disability, the same may be treated as 100% loss caused to the appellant since he will never be able to work as a driver again. The contention of the respondent Insurance Company that the appellant could take up any other alternative employment is no justification to avoid their vicarious liability. Hence, the loss of earning is determined by us at Rs 54,000 per annum. Thus, by applying the appropriate multiplier as per the principles laid down by this Court in Sarla Verma v. DTC [(2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002], the total loss of future earnings of the appellant will be at Rs 54,000 × 16 = Rs 8,64,000."

42. In Anthony alias Anthony Swamy v. Managing Director, Karnataka State Road Transport Corporation, (2020) 7 SCC 161, where the victim was a painter by profession, a three-Judge Bench had followed Raj Kumar (supra) and Nagarajappa v.

Divisional Manager, Oriental Insurance Company Limited, (2011) 13 SCC 323.

The High Court had assessed the injury to be 25% permanent disability, although the treating doctor had said that the injury incurred by the bus passenger (who was earning Rs. 9000/- per month) was 75% of the left leg and 37.5% for the whole body. In Raj Kumar (supra), the physical disability of the upper limb was determined as 68% in proportion to 22- 23% of the whole-body. The High Court had assessed the injury as 25% and granted compensation. However, this Court assessed the injury on the basis that the disability was 75%, stating as follows:

> "8. PW 3 had assessed the physical functional disability of the left leg of the appellant at 75% and total body disability at 37.5%. The High Court has considered it proper to assess the physical disability at 25% of the whole body only. There is no discussion for this reduction in percentage, much less any consideration of the nature of permanent functional disability suffered by the appellant. The extent of physical functional disability, in the facts of the case has to be considered in a manner so as to grant just and proper compensation to the appellant towards loss of future earning. The earning capacity of the appellant as on the date of the accident stands completely negated and not reduced. He has been rendered permanently incapable of working as a painter or do any manual work. Compensation for loss of future earning, therefore has to be proper and just to enable him to live a life of dignity and not compensation which is elusive. If the 75% physical disability has rendered the appellant permanently disabled from pursuing his normal vocation or any similar work, it is difficult to comprehend the grant of compensation to him in ratio to the disability to the whole body. The appellant is therefore held entitled to compensation for loss of future earning based on his 75% permanent physical functional disability recalculated with the salary of Rs 5,500 with multiplier of 14 at Rs 6,93,000."

> 43. The question of amount of compensation payable to one suffering injury as a result of motor vehicle accident was considered in Syed Sadiq and Others v. Divisional Manager, United India Insurance Company Limited, (2014) 2 SCC 735, when this Court had to apply the correct standard for awarding compensation for loss of future prospects for a vegetable vendor, whose right leg had to be amputated, as a result of a motor accident. The High Court had considered the disability to be 65%. This Court held as follows:

> "7. Further, the appellant claims that he was working as a vegetable vendor. It is true that a vegetable vendor might not require mobility to the extent that he sells vegetables at one place. However, the occupation of vegetable vending is not confined to selling vegetables from a particular location. It rather involves procuring vegetables from the wholesale market or the farmers and then selling it off in the retail market. This often involves selling vegetables in the cart which requires 100% mobility. But even by conservative approach, if we presume that the vegetable vending by the appellant claimant involved selling vegetables from one place, the claimant would require assistance with his mobility in bringing vegetables to the

market place which otherwise would be extremely difficult for him with an amputated leg. We are required to be sensitive while dealing with manual labour cases where loss of limb is often equivalent to loss of livelihood. Yet, considering that the appellant claimant is still capable to fend for his livelihood once he is brought in the market place, we determine the disability at 85% to determine the loss of income.

8. The appellant claimant in his appeal further claimed that he had been earning Rs 10,000 p.m. by doing vegetable vending work. The High Court however, considered the loss of income at Rs 3500 p.m. considering that the claimant did not produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganised sector doing his own business is expected to produce documents to prove his monthly income....."

44. In Arvind Kumar Mishra (supra), the appellant at the time of accident was a final year engineering (Mechanical) degree student in a reputed college. He was a brilliant student and had passed all his semester examinations with distinction. He suffered grievous injuries and remained in a coma for about two months; his studies were disrupted as he was moved to different hospitals for surgeries. For many months, his condition remained serious; his right hand was amputated and vision seriously affected. This Court accepted his claim and held that he was permanently disabled to the extent of 70%. In Mohan Soni v. Ram Avtar Tomar and Others, (2012) 2 SCC 267 (page 272), in a case of injury entailing loss of a leg, this Court held that medical evidence of the extent of disability should not be mechanically scaled down:

"8. On hearing the counsel for the parties and on going through the materials on record, we are of the view that both the Tribunal and the High Court were in error in pegging down the disability of the appellant to 50% with reference to Schedule I of the Workmen's Compensation Act, 1923. In the context of loss of future earning, any physical disability resulting from an accident has to be judged with reference to the nature of work being performed by the person suffering the disability. This is the basic premise and once that is grasped, it clearly follows that the same injury or loss may affect two different persons in different ways. Take the case of a marginal farmer who does his cultivation work himself and ploughs his land with his own two hands; or the puller of a cycle-rickshaw, one of the main means of transport in hundreds of small towns all over the country. The loss of one of the legs either to the marginal farmer or the cycle-rickshaw- puller would be the end of the road insofar as their earning capacity is concerned. But in case of a person engaged in some kind of desk work in an office, the loss of a leg may not have the same effect. The loss of a leg (or for that matter the loss of any limb) to anyone is bound to have very traumatic effects on one's personal, family or social life but the loss of one of the legs to a person working in the office would not interfere with his work/earning capacity in the same degree as in the case of a marginal farmer or a cycle-rickshaw-puller.

******** ********* **********

> 10. This Court in K. Janardhan case [(2008) 8 SCC 518 : (2008) 2 SCC (L&S) 733], set aside the High Court judgment and held that the tanker driver had suffered 100% disability and incapacity in earning his keep as a tanker driver as his right leg was amputated from the knee and, accordingly, restored the order passed by the Commissioner of Workmen's Compensation. In K. Janardhan [(2008) 8 SCC 518 : (2008) 2 SCC (L&S) 733] this Court also referred to and relied upon an earlier decision of the Court in Pratap Narain Singh Deo v. Srinivas Sabata [(1976) 1 SCC 289 : 1976 SCC (L&S) 52] in which a carpenter who suffered an amputation of his left arm from the elbow was held to have suffered complete loss of his earning capacity.
>
> ******** ********* **********
>
> 13. Any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim could make up for the loss of income by changing his vocation or by adopting another means of livelihood. The party advocating for a lower amount of compensation for that reason must plead and show before the Tribunal that the victim enjoyed some legal protection (as in the case of persons covered by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) or in case of the vast multitude who earn their livelihood in the unorganised sector by leading cogent evidence that the victim had in fact changed his vocation or the means of his livelihood and by virtue of such change he was deriving a certain income.
>
> 14. The loss of earning capacity of the appellant, according to us, may be as high as 100% but in no case it would be less than 90%. We, accordingly, find and hold that the compensation for the loss of the appellant's future earnings must be computed on that basis. On calculation on that basis, the amount of compensation would come to Rs 3,56,400 and after addition of a sum of Rs 30,000 and Rs 15,000 the total amount would be Rs 4,01,400. The additional compensation amount would carry interest at the rate of 9% per annum from the date of filing of the claim petition till the date of payment.

The additional amount of compensation along with interest should be paid to the appellant without delay and not later than three months from today."

45. One more decision, Sandeep Khanuja v. Atul Dande and Another, (2017) 3 SCC 351, too had dealt with the precise aspect of assessing the quantum of permanent disablement. The victim was aged about 30 years, working as a chartered accountant for various institutions for which he was paid professional fees. The injuries suffered by him resulted in severe impairment of movement; as he had problems in climbing stairs, back trouble while sleeping, etc. A rod was implanted in his leg. He suffered 70% permanent disability, and mental and physical agony. This Court enhanced the compensation, observing the proper manner to calculate the extent of disability. This Court held as under:

"13. In the last few years, law in this aspect has been straightened by this Court by removing certain cobwebs that had been created because of some divergent views on certain aspects. It is not even necessary to refer to all these cases. We find that the principle of determination of compensation in the case of permanent/partial disablement has been exhaustively dealt with after referring to the relevant case law on the subject in Raj Kumar v. Ajay Kumar [(2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161] in the following words: (SCC pp. 348-50, paras 8-11) "Assessment of future loss of earnings due to permanent disability

8. xx xx xx

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

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency).

We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation."

14. The crucial factor which has to be taken into consideration, thus, is to assess as to whether the permanent disability has any adverse effect on the earning capacity of the injured. In this sense, MACT approached the issue in the right direction by taking into consideration the aforesaid test. However, we feel that the conclusion of MACT, on the application of the aforesaid test, is erroneous. A very myopic view is taken by MACT in taking the view that 70% permanent disability suffered by the appellant would not impact the earning capacity of the appellant. MACT thought that since the appellant is a Chartered Accountant, he is supposed to do sitting work and, therefore, his working capacity is not impaired. Such a conclusion was justified if the appellant was in the employment where job requirement could be to do sitting/table work and receive monthly salary for the said work. An important feature and aspect which is ignored by MACT is that the appellant is a professional Chartered Accountant. To do this work efficiently and in order to augment his income, a Chartered Accountant is supposed to move around as well. If a Chartered Accountant is doing taxation work, he has to appear before the assessing authorities and appellate authorities under the Income Tax Act, as a Chartered Accountant is allowed to practice up to Income Tax Appellate Tribunal. Many times Chartered Accountants are supposed to visit their clients as well. In case a Chartered Accountant is primarily doing audit work, he is not only required to visit his clients but various authorities as well. There are many statutory functions under various statutes which the Chartered Accountants perform. Free movement is involved for performance of such functions. A person who is engaged and cannot freely move to attend to his duties may not be able to match the earning in comparison with the one who is healthy and bodily abled. Movements of the appellant have been restricted to a large extent and that too at a young age. Though the High Court recognised this, it did not go forward to apply the principle of multiplier. We are of the opinion that in a case like this and having regard to the injuries suffered by the appellant, there is a definite loss of earning capacity and it calls for grant of compensation with the adoption of multiplier method.....

15. In Arvind Kumar Mishra case [Arvind Kumar Mishra v. New India Assurance Co. Ltd., (2010) 10 SCC 254 : (2010) 4 SCC (Civ) 153 : (2010) 3 SCC (Cri) 1258], after following the judgment in Kerala SRTC v. Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335], the Court chose to apply multiplier of 18 keeping in view the age of the victim, who was 25 years at the time of the accident.

16. In the instant case, MACT had quantified the income of the appellant at Rs 10,000 i.e. Rs 1,20,000 per annum. Going by the age of the appellant at the time of the accident, multiplier of 17 would be admissible. Keeping in view that the permanent disability is 70%, the compensation under this head would be worked out at Rs 14,28,000. MACT had awarded compensation of Rs 70,000 for permanent disability, which stands enhanced to Rs 14,28,000. For mental and physical agony and frustration and disappointment towards life, MACT has awarded a sum of Rs 30,000, which we enhance to Rs 1,30,000....."

46. In the case of Arvind Kumar Mishra (supra), this Court observed as under:

> "9. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered.
>
> 10. In some cases for personal injury, the claim could be in respect of lifetime's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases— and that is now recognised mode as to the proper measure of compensation—is taking an appropriate multiplier of an appropriate multiplicand."

47. In Pappu Deo Yadav v. Naresh Kumar and Others, AIR 2020 SCC 4424, it was held that courts should not adopt a stereotypical or myopic approach, but instead, view the matter taking into account the realities of life, both in the assessment of the extent of disabilities, and compensation under various heads. In this case, the loss of an arm, in the opinion of the court, resulted in severe income earning impairment upon the appellant. As a typist/data entry operator, full functioning of his hands was essential to his livelihood. The extent of his permanent disablement was assessed at 89%; however, the High Court halved it to 45% on an entirely wrong application of some 'proportionate' principle, which was illogical and is unsupportable in law. What is to be seen, as emphasized by decision after decision, is the impact of the injury upon the income generating capacity of the victim. The loss of a limb (a leg or arm) and its severity on that account is to be judged in relation to the profession, vocation or business of the victim; there cannot be a blind arithmetic formula for ready application.

48. With the aforesaid broad principles in mind, we proceed to examine the appellant's claim for enhancement of the compensation awarded to him by the High Court.

MEDICAL EVIDENCE ON RECORD

49. Dr. Anil B. Patil (PW-2) who treated the appellant has issued a Disability Certificate (Ex. P-8) wherein the following has been stated:

> "This to certify that I have examined, Shri Sidram Raju Bhosle. Age-19 yrs/M of Kulgod. OPD No-19441 Dated-18/07/2012 at Lakeview Hospital. He has come to me for assessment of permanent physical disability certificate as per the record shown by the patient, the injuries were noted. The patient had met with a road Traffic accident on 18/7/2012 time around 1:30 pm at near Laxmeshwar cross Gokak Dist-Belgaum. He was admitted in my Lakeview Hospital, Belgaum, for the treatment on 4/5/09 MLC NO - outward no-BHSLVH/MRD MLC No. 229 Dated 18/07/12 Date of

admission -18/7/2012 Date of discharged - 6/8/2012 Diagnosis Burst Fracture D 12 vertebra with paraplegia. Fracture 1 to 6 Ribs with Hydropneumothorax, surgical emphysema.

X-Ray Report:

-Burst fracture D 12 vertebra. X-ray no.-9832 Dated on 23/07 /

-Fracture 1 to 6 ribs with Hydropneumothorax, surgical emphysema. X-ray no.- 753 dated 18/07/2012.

CT CHEST(PLAIN): on 18/07/2012

-Fracture of right 1st to 6th ribs along posterior/lateral aspect.

-Gross hydropneumothorax/hemothorax on the right side with pneumomediastinum causing gross shift of mediastinum towards left side and partial collapse of right lung.

-Cystic lesions(two) in right upper lobe? post traumatic with fluid levels A/W patchy opacities in right lung S/o contusions.

-burst anterior wedge compression fracture of D12 vertebral body involving both pedicles with retropulsion.

Case Examination

1.History 2-On Clinical Examination 1-History At Present Patient Con1plaints

-Pain and weakness in both legs and back.

-lnability in squatting & sitting crossed leg.

-Inability to stand and \Valle 2-0n. Clinical Examination . .

Inspection:-Linear Scar extending fron1 DS to L5 present over spine.

-scar over anterior lateral aspect of right side of chest

-Unable to squat and sit cross leg.

```
-Movements of Left knee                    Right knee grade 3-4
        Flexion grade 2
           Extension grade 3
Muscle wasting
Calf and thigh muscles ++
```

X-ray Shows- x-ray no. 2852 dated 29.07.2013 Old fracture D12 with implants in situ.

Observed function disability

-Pain in the left knee & left leg and weakness in both the legs and inability to stand and walk.

-Unable to squat and sit cross leg.

Conclusion I am of the opinion that considering the clinical signs & radiological findings the patient has got the total permanent physical disability of 45% to whole body in respect to D12 fracture and neurological weakness with inability to stand, sit & walk.

Place-Belgaum"

50. Dr. Patil (PW-2) in his oral evidence has deposed as under:-

> "I state that at present petitioner complains of pain and weakness in both legs and back. Inability in squatting and sitting cross leg. Inability to stand and walk. And on clinical examination of the petitioner it reveals that inspection linear scar extending from D5 to L5 present over spine, there is scar over anterior lateral aspect of right side of chest, unable to squat and sit cross leg.
>
> I state that movements of left knee flexion grade-2, extension grade-3, right knee grade 3-4 and movements of left foot, plantar-grade -1 dorsiflexion-grade-3 and left foot grade 3-4 and muscle wasting calf and thigh muscle++ Further I state that X-ray taken on 29-07-2013 reveals old fracture D12 with implants in situ, functional disability observed to the petitioner are:- pain in the left knee and left leg and weakness in both legs and inability to stand and walk, unable to squat and sit cross leg.
>
> Further I state that petitioner needs future medical expenses would be Rs. 2,50,000/-.
>
> After considering the clinical signs and radiological finding, the petitioner has got the total permanent physical disability of 45% to whole body in respect of D-12 fracture and neurological weakness with inability to stand, sit and walk. I have issued the disability certificate to the petitioner and it bears my signature and said disability certificate is already marked as Ex.P-8 and now my signature is marked as EX.P-8
>
> (a), (b), (c) respectively."

51. In his cross-examination at the instance of the owner of the vehicle, he has deposed: -

> "It is true that the age of the petitioner is 19 years at the time of assessment. It is not true to suggest that heel process of the injuries is better than old age person. It is not true to suggest that rib fractures 1 to 6 are not simple in nature. It is false to say that the petitioner is of young age and the heeling process is better improvement. It is false to say that disability given by me is on the higher side. It is false to say that after removing implant the petitioner will be able to walk and stand properly. It is false to say that future medical treatment expenses will Rs. 2,50,000/-. It is false to say that the petitioner is able to walk, stand as earlier. It is false to say that to help the petitioner I am deposing falsely."

52. In the cross-examination at the instance of the insurance company, he has deposed:

> "It is true that I am orthopedic surgeon and I am not neuro surgeon. It is false to suggest that I am authorized to give disability certificate of paraplegia. It is true that I have not received any court summons for this case. I don't know the avocation of the petitioner. It is true that the petitioner had met with a road traffic accident. It is false that by birth this petitioner is having this type of injury. It is true that the petitioner has taken proper treatment from our hospital. It is true that after well cured he was discharged from our hospital. It is true that I have advised him to take follow-up treatment. It is true that the petitioner has taken follow-up treatment. It is false to say that for not taking follow-up treatment by the petitioner this injury has worsened. It is false to say that from falling from the tree this type of injury may happen. It is false that due to rib fracture paraplegia cannot be caused. Burst fracture D-12 vertebra has caused paraplegia. It is false to say that this injury is not accidental injury. It is not true that to help the petitioner to get the compensation, I am deposing falsely. It is false that I have seen X-ray before discharge and after discharge. It is true that after seeing discharge X-ray there was improvement of the petitioner. It is false to say that the petitioner has acted as stated in your chief examination. It is true that basis of assessment I have referred ALIMCO.
>
> It is false to say that petitioner is unable to walk, stand properly. It is false to say that I have given higher side medical bills to help the petitioner. It is false that injuries are simple in nature. It is true that I have given disability to the whole body and this is higher side. It is false that whole body disability comes between 10% to 15% to help the petitioner. I am deposing false to get the compensation." THE PECUNIARY EXPENSES (1) Loss of earning due to disability

53. The courts must apply the multiplier method, while ascertaining the compensation to be awarded to the victim. This was so held by this Court in Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another, (2009) 6 SCC 121. In Sarla Verma (supra), this Court quoted the following observations from Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176:

> "The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the

multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.

It is necessary to reiterate that the multiplier method is logically sound and legally well established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years virtually adopting a multiplier of 45 and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and

34. This is wholly impermissible."

54. The Tribunal held that although the appellant herein had claimed that he was earning Rs. 9,000/- per month from his business of selling of utensils, yet the appellant was not in a position to adduce any documentary evidence in that regard. Although Dr. Anil B. Patil (PW-2) in his oral evidence has deposed that the appellant suffered a permanent disability to the tune of 45%, yet the Tribunal held that the appellant had suffered a permanent disability of only 30%. The Tribunal applied the multiplier as explained in the case of Sarla Verma (supra). Accordingly, the compensation awarded for the loss of earning capacity was determined as follows:

5000 x 12 x 18 x 30% = INR 3,24,000/-

55. The High Court enhanced the income to Rs. 7,000/- stating that the same was determined by the Tribunal on a lower side. Further, the High Court held that having regard to the evidence of the treating doctor, the permanent disability of the appellant should be determined at 40%. In such circumstances, the High Court while applying the multiplier, enhanced the compensation to be awarded under the head of loss of earning capacity to Rs. 7,000/-, as under:

7,000 x 12 x 18 x 40% = INR 6,04,800/-

56. The evidence on record indicates that the appellant suffered paraplegia due to the accident. Paraplegia is a form of paralysis of lower body. It restricts everyday routine more particularly the physical activity and leads to (i) deprivation of simple pleasures and amenities of life, (ii) 100% loss of earning capacity, (iii) long term secondary complications requiring continuous care, medical treatment and hospitalization, (iv) feeling of helplessness, depression, anger, stress, anxiety, etc. In

short, paraplegia impairs physical, mental and psychological health and has devastating impact on the social and financial well being of the victim.

57. In the case on hand, the appellant was in the business of selling utensils and used to travel to various villages to sell the same. With this disability in the form of paraplegia being suffered by the appellant, it is not possible for him now to walk a long distance or stand for a long period. His business could be said to have been gravely impacted. Further, the appellant at the time of accident was just 19 years old. The High Court enhanced his notional income from Rs. 5,000/- to Rs. 7,000/- per month. The appellant claimed that his notional income be determined at Rs. 9,000/-.

58. This Court in the case of Kirti and Another v. Oriental Insurance Company Limited, (2021) 2 SCC 166, while discussing the issue of proving the income of the victim, held as under:

> "39. Taking the above rationale into account, the situation is quite clear with respect to notional income determined by a court in the first category of cases outlined earlier, those where the victim is proved to be employed but claimants are unable to prove the income before the court. Once the victim has been proved to be employed at some venture, the necessary corollary is that they would be earning an income....."

59. Thus, we are of the view, more particularly keeping in mind the dictum of this Court in the case of Kirti (supra) that it is not necessary to adduce any documentary evidence to prove the notional income of the victim and the Court can award the same even in the absence of any documentary evidence. In the case of Kirti (supra) it was stated that the Court should ensure while choosing the method and fixing the notional income that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.

60. In the overall view of the matter, we are convinced that we should determine the notional income of the appellant herein at Rs. 8,000/- per month. The same would result in the compensation being enhanced as under:

8000 x 12 x 18 x 45% = INR 7,77,600/-

(2) Loss of earning for 6 months

61. Compensation under the aforesaid head was awarded by the Tribunal and the High Court. The Tribunal awarded only Rs. 40,000/- under this head. The High Court enhanced it to Rs. 42,000/-.

62. We uphold the payment towards loss of earning for six months as awarded by the High Court and applying the revised income, enhance the same as under:

8000 x 6 = INR 48,000/-

(3) Medical Expenses

63. The appellant claims Rs. 2,00,000/- towards medical expenses. In this regard, the appellant adduced documentary evidence in the form of medical bills/receipts to the tune of Rs.1,54,931/-, as stated in the order of the Tribunal.

64. The Tribunal in its order dated 21.01.2014 held:

> "Medical Expenses: The claimant submitted that he has taken treatment a Lake view hospital, Belgaum and was indoor patient. He has produced the hospital bill and medical bills to1 the tune of Rs.1,54,931/-. The same has been rounded to Rs.1,50,000/- and the petitioner is entitled to Rs.1,50,000/-
>
> under this head." [Emphasis supplied]
>
> 65. The High Court in Para 11 of its impugned judgment, held:
>
> "The compensation awarded under the head of pain and suffering, medical expenses, conveyance, special diet, etc., loss of amenities in life and marriage prospects is just and proper and same is not disturbed."
>
> 66. In view of the aforesaid, we grant compensation of Rs. 1,55,000/-

towards medical expenses.

(4) Future Medical Expenses

67. At the outset, we may state that the "Future Medical Expenses" and "Attendant Charges" would fall within the ambit of Pecuniary Expenses. In Abhimanyu Partap Singh v. Namita Sekhon and Another, (2022) 8 SCC 489, this Court held:

> "19. In view of the said legal position, the compensation can be assessed in pecuniary heads i.e. the loss of future earning, medical expenses including future medical expenses, attendant charges and also in the head of transportation including future transportation. In the non-pecuniary heads, the compensation can be computed for the mental and physical pain and sufferings in the present and in future, loss of amenities of life including loss of marital bliss, loss of expectancy in life, inconvenience, hardship, discomfort, disappointment, frustration, mental agony in life, etc."

68. The Tribunal has observed that the doctor has deposed that the appellant is likely to incur expenses of Rs. 2,50,000/- towards future medical expenses. However, according to the Tribunal, there was no sufficient and cogent evidence in that regard under this head. Accordingly, the Tribunal awarded Rs. 25,000/-. The High Court thought fit not to award any amount for future medical expenses as there was no evidence adduced by the appellant in regard to future treatment that may be required. The High Court however, thought fit to clarify that in the event if the appellant

incurs any expenses towards any surgery or treatment in future on account of the injury suffered and if he proves the same, then the insurer shall indemnify the same.

69. Dr. Anil B. Patil (PW-2) has deposed categorically that the appellant would require future medical expenses to the tune of Rs. 2,50,000/-. We are of the view that having regard to the evidence on record that the appellant would be incurring costs towards medical expenses in future along with physiotherapy and nursing and considering that the appellant at the time of accident was 19 years old, today his age would be around 29 years, even if a bare minimum of Rs. 1000/- is spent per month, then it comes to:

1000 x 12 x 18 = Rs. 2,16,000/-

70. In Vijaykumar Babulal Modi v. State of Gujarat (Deleted) & Gujarat State Road Transport Corporation, 2011 SCC OnLine Guj 7349, the High Court of Gujarat had the occasion to consider this aspect. The High Court held:

> "So far as future medical expenses are concerned, the amount claimed in the petition was to the tune of Rs. 2 lac, whereas the Tribunal has thought fit to award Rs. 25,000=00. We have noticed that the injured as on today is 100% disabled due to paraplegia. He has no control over his bowels or bladder. In such type of cases, treatment like physiotherapy, etc. needs to be given for a very very long period of time. The importance of physiotherapy for persons injured in road accidents has been elaborately stressed upon by the Supreme Court in the case of R.D. Hattangadi (supra). It is hence important to account for all expenses incurred and likely to be incurred and award reasonable sum for each head. It is also important to remember the decreasing money value. The life expectancy of the injured is also to be kept in mind. We feel that life expectancy of the victim in such a case can reasonably be assumed to be atleast 55 years, given the advancement in medical science, etc. The claimant's age on the date of the accident was 17 years, which means that the remaining period of life expectancy from that date of accident would be 38 years i.e. 1991 to 2029. We, therefore, propose to assess future medical expenses at about Rs. 1,000=00 per month. In that case, the adequate amount which can be awarded for future medical expenses would be Rs. 1 lac. We, therefore, enhance the amount of Rs. 25,000=00 awarded towards future medical expenses to Rs. 1 lac."

71. In Sanjay Verma v. Haryana Roadways, (2014) 3 SCC 210, the claimant was 25-years-old and suffered from total disability. This Court accordingly held:

> "20. Insofar as "future treatment" is concerned we have no doubt that the claimant will be required to take treatment from time to time even to maintain the present condition of his health. In fact, the claimant in his deposition has stated that he is undergoing treatment at Apollo Hospital at Delhi. Though it is not beyond our powers to award compensation beyond what has been claimed (Nagappa v. Gurudayal Singh [(2003) 2 SCC 274 : 2003 SCC (Cri) 523]), in the facts of the present

> case we are of the view that the grant of full compensation, as claimed in the claim petition i.e. Rs 3,00,000 under the head "future treatment", would meet the ends of justice. We, therefore, order accordingly."

72. In view of the aforesaid, we award Rs. 2,16,000/- towards future medical expenses.

(5) Attendant Charges

73. So far as this head is concerned, neither the Tribunal nor the High Court thought fit to award anything. The evidence on record indicates that the appellant is unable to stand, walk, sit or bend his body or lift anything heavy. It is not in dispute that the appellant will not be able to work in the same manner as he used to prior to the accident. Indisputably, the appellant has suffered from paraplegia on account of the accident and requires an attendant throughout the day. According to the claimant, the cost of keeping the attendant would be Rs. 4,500/- per month. We fix it at Rs. 2,000/- per month. As a result, we award the attendant charges as under:

> 2,000 x 12 x 18 = Rs. 4,32,000/-

74. In Abhimanyu Partap Singh (supra), the Claimant was suffering from 100% disability and this Court held:

> "16. The High Court in the impugned order [Abhimanyu Partap Singh v. Namita Sekhon, 2019 SCC OnLine P&H 6271] observed that the claimant has now started practice as an advocate, therefore, future loss of earning has been calculated only for 10 years, applying the multiplier of 16, without looking to the facts that the claimant cannot perform the work of advocacy similar to the other advocates by attending the cases in different courts. The attendant charges have been allowed only for 20 years with one attendant. In fact, not only for determination of future loss of earning but for attendant charges also the multiplier method should be followed.
>
> 17. The multiplier method has been recognised as most realistic and reasonable because it has been decided looking to the age, inflation rate, uncertainty of life and other realistic needs. Thus, for determination of just compensation to ensure justice with the family of the deceased or the injured as the case may be the compensation can be determined applying the said method. Therefore, in our view the Tribunal while granting the compensation of future loss as well as earning only for 10 years and attendant charges only for 20 years was not justified. In fact, the said amount should be determined applying the multiplier method.
>
> ********* ********* *********
>
> 23. In the head of medical expenses, the MACT or the High Court has not awarded any compensation presumably because the mother of the claimant, who was minor at the time of accident, may have claimed the amount of medical expenses being an IAS

officer. But now the claimant has become major, and looking to the nature of injuries, future medical expenses that includes the attendant charges, use of diapers due to loss of urination senses is required to be calculated including future medical expenses. The Tribunal awarded Rs 1,92,000 in the head of attendant charges @ Rs 1000 p.m. While the High Court proceeded on the premises that the rate of the attendant charges is variable after every five years, however, the Court calculated the amount @ Rs 2000 thereafter @ Rs 4000 p.m. for a period of 20 years and accordingly determined Rs 9,00,000 making enhancement of Rs 7,08,000 in the said head. As discussed, if we apply the multiplier method and in view of the judgment of Kajal [Kajal v. Jagdish Chand, (2020) 4 SCC 413 : (2020) 3 SCC (Civ) 27 : (2020) 2 SCC (Cri) 577] , we accept the rate of attendant charges at Rs 5000 p.m. for 12 hours, looking to the nature of injuries and disability the claimant is required two attendants at least within 24 hours then the expenses in the head of attendant charges comes to Rs 10,000 p.m. If we apply the multiplier of 18, the amount comes to Rs 21,60,000."

75. In Vijaykumar Babulal Modi (supra), the Gujarat High Court had held:

"It is clear that the appellant will require an attendant to assist him in his daily activities. However, we cannot accept the submission of the learned counsel for the appellant who stated that this will require an expenditure of Rs. 3,000=00 per month. The Tribunal has awarded a sum of Rs. 15,000=00, whereas the claim of the claimant is Rs. 4 lac. As held in the case of R.D. Hattangadi (supra), the Court need not be mathematical in calculating expenses on home attendant but ought to look upon the circumstances prevailing in the society to decide the amount. The Supreme Court in R.D. Hattangadi's case (supra) held as under:-

"9. xxx xxx
10. xxx xxx

11. In the case Ward v. James, 1965 (1) All ER 563, it was said:

"Although you cannot give a man so gravely injured much for his "lost years", you can, however, compensate him for his loss during his shortened span, that is, during his expected "years of survival". You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good for him. Yet Judges and Juries have to do the best they can and give him what they think is fair. No wonder they find it well nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The Judges have worked out a pattern, and they keep it in line with the changes in the value of money." In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked

with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards."

12. The Supreme Court in the case of C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 SC 376, in connection with the Fatal Accidents Act has observed:

"In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable."

13. In Halsbury's Laws of England, 4 th Edition, Vol. 12 regarding non-pecuniary loss at page 446 it has been said:-

"Non-pecuniary loss: the pattern: Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the courts in the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstances of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award.

The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases." We feel that the average cost of keeping a home attendant would be around Rs. 1,000=00 per month for the period of life expectancy. Accordingly, the annual expenses on an attendant works out to Rs. 12,000=00. We, therefore, propose to enhance the sum awarded for attendant to Rs. 1 lac."

76. Thus, we award an amount of Rs. 4,32,000/- towards the attendant charges.

(6) Litigation Expenses

77. The Tribunal thought fit not to award anything towards the litigation expenses. The High Court took the view that the appellant is entitled to the amount of Rs. 20,000/- towards the litigation expenses. The appellant claims Rs. 50,000/- towards the litigation expenses.

78. We take notice of the fact that the accident took place on 18.07.2012. The appellant is pursuing this litigation for the past almost 10 years. The SLP before this Court was filed in 2018. It has been four years since then.

79. In Govind Yadav (supra), this Court held:

> "12. .....Sometimes the delay and litigation expenses make the award passed by the Tribunal and even by the High Court (in appeal) meaningless....."

80. In New India Assurance Company Limited v. Gopali and Others, (2012) 12 SCC 198, this Court held:

> "1. ...India is acclaimed for achieving a flourishing constitutional order, an inventive and activist judiciary, aided by a proficient Bar and supported by the State. However, the courts and tribunals, which the citizens are expected to approach for redressal of their grievance and protection of their fundamental, constitutional and legal rights, are beset with the problems of delays and costs. In a country where 36% of the population lives below the poverty line, these deficiencies in the justice-delivery system prevent a large segment of the population from availing legal remedies. The disadvantaged and the poor are deprived of access to justice because of the costs of litigation, both in terms of actual expenses and lost opportunities, and the laudable goal of securing justice—social, economic and political enshrined in the Preamble to the Constitution of India remains an illusion for them.
>
> 2. The infrastructure of courts and the processes which govern them are simply inaccessible to the poor. The State, which has been mandated by Article 39-A of the Constitution to ensure that the operation of the legal system promotes justice by providing free legal aid and that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, has not been able to create an effective mechanism for making justice accessible to the poor, downtrodden and disadvantaged. In the last two-and-a-

half decades the institution of the Legal Services Authorities has rendered yeoman's service in the field of providing legal aid to the poor but a lot is required to be done for ensuring justice to economically deprived section of the society and those who suffer from other disabilities like illiteracy and ignorance.

3. We have prefaced the disposal of this petition, filed against the order dated 22-3-2007 [New India Assurance Co.

Ltd. v. Sheo Chand, Special Appeal Civil (SAC) No. 49 of 2005, dated 22-3-2007 (Raj)] passed by the Division Bench of the Rajasthan High Court whereby the special appeal filed by the appellant against the judgment of the learned Single Judge was dismissed as not maintainable, by making the aforementioned observations because in last almost 20 years the claimants—the aged parents, wife and five children of Nanag Ram, who became a victim of road accident in 1992, must have exhausted all their resources in prosecuting and contesting the litigation till the stage of the High Court and they must not have been left with money sufficient for engaging an advocate in this Court and also because in last almost five years, during which the special leave petition remained pending in this Court, they must have lost all hopes to get justice.

4. The learned Single Judge of the High Court had allowed the appeal filed by the dependants of Nanag Ram under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act") and enhanced the compensation awarded by the Motor Accidents Claims Tribunal, Jaipur (for short "the Tribunal") by an amount of Rs 4,85,000 and directed the appellant to pay the enhanced compensation with interest at the rate of 12% per annum from the date of filing the claim petition till 31-12- 2000 and at the rate of 9% from 1-1-2001 till the payment thereof, but on account of ex parte interim order passed by this Court on 23-7-2007 [New India Assurance Co. Ltd. v. Sheo Chand, SLP (C) No. 11345 of 2007, order dated 23-7-2007 (SC)], the claimants could get only a paltry sum of Rs 2 lakhs and they perhaps thought that it will not be worthwhile to spend money for contesting the special leave petition filed by the appellant. This is perhaps the thinking of many thousands of poor litigants, who succeed in the courts below and the High Courts, but cannot afford the cost and expenses of contesting litigation in the highest court of the country and suffer silently in the name of the Almighty God by treating it as their destiny."

81. In Syed Sadiq v. Divisional Manager, United India Insurance Company Limited, (2014) 2 SCC 735, this Court held:

> "14. Further, along with compensation under conventional heads, the appellant claimant is also entitled to the cost of litigation as per the legal principle laid down by this Court in Balram Prasad v. Kunal Saha [(2014) 1 SCC 384 : (2014) 1 SCC (Civ) 327]. Therefore, under this head, we find it just and proper to allow Rs 25,000."

82. In view of the aforesaid, we award an amount of Rs. 50,000/- towards litigation expenses.

(7) Loss of Conveyance

83. Under this head, the Tribunal vide order dated 21.01.2014, held:

> "15. Conveyance, special diet etc: The claimant was admitted to the hospital and thereafter attended the hospital for further treatment. The claimant is also entitled for special diet and nutrition. Therefore, I award an amount of Rs.20,000/- under this head."

84. The Tribunal awarded Rs. 20,000/- under this head. The High Court in Para 11 of its impugned judgment dated 25.04.2018, held:

> "The compensation awarded under the head of pain and suffering, medical expenses, conveyance, special diet, etc., loss of amenities in life and marriage prospects is just and proper and same is not disturbed"

85. The High Court thought fit to confirm Rs. 20,000/- as awarded by the Tribunal.

86. However, the appellant has claimed Rs. 50,000/- towards loss of conveyance.

87. This Court in Master Ayush (supra) held:

> "14. The determination of damages in personal injury cases is not easy. The mental and physical loss cannot be computed in terms of money but there is no other way to compensate the victim except by payment of just compensation. Therefore, we find that in view of the physical condition, the appellant is entitled to one attendant for the rest of his life though he may be able to walk with the help of assistant device. The device also requires to be replaced every 5 years. Therefore, it is reasonable to award cost of 2 devices i.e. Rs 10 lakhs. The appellant has not only lost his childhood but also adult life. Therefore, loss of marriage prospects would also be required to be awarded. The learned Tribunal has rejected the claim of taxi expenses for the reason that the taxi driver has not been produced. It is impossible to produce the numerous taxi drivers. Still further, the Tribunal should have realised the condition of the child who had complete sensory loss in the legs. Therefore, if the parents of the child have taken him in a taxi, probably that was the only option available to them. Accordingly, we award a sum of Rs 2 lakhs as conveyance charges."

88. The High Court of Judicature at Allahabad in the New India Assurance Company Ltd. v. Amit Kumar Yadav and Another, F.A.O. Nos. 1285 & 1489 of 2008 decided on March 23, 2022, held as under:

> "22. The question of determination of compensation directly came up before Supreme Court in Raj Kumar Vs. Ajay Kumar and another, 2011 (1) SCC 343. Therein, claimant sustained fracture of both bone of left leg and fracture of left radius in a motor accident on 01.10.1991. Tribunal awarded compensation under the heads of loss of future earning, pain and sufferings, loss of earning during period of treatment, medical expenses, conveyance and special diet. He was awarded total compensation of Rs. 94,700/- and 9% interest. His appeal for enhancement was rejected by Tribunal and ultimately went in appeal to Supreme Court. It observed that scheme of Act, 1988 shows that award must be "just", which means that compensation should, to the extent possible, fully and adequately restore claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. A person is not only to be compensated for physical injury, but also for the loss which he suffered as a result of such injury. It means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned....."

89. Hence, we may grant the appellant loss of conveyance and special diet up to Rs 50,000/- considering that after the accident at Kulgod- Gokak Road, the appellant was shifted to Lakeview Hospital Belgaum wherein he was admitted as an indoor patient from 18.7.2012 to 6.8.2012 for 19 days, and took treatment for the injuries suffered by him, and continued to take the treatment after getting discharged from the hospital as well.

90. In view of the aforesaid, we may award Rs. 50,000/- towards loss of conveyance and special diet.

NON-PECUNIARY EXPENSES (8) Pain and Suffering

91. The High Court of Judicature at Allahabad in the case of Virendra Kumar v. Vijay Kumar and Others, (2021) ILR 3 All 272, while discussing the distinction between pecuniary and non-pecuniary damages held as under:

> "9. The law with respect to the grant of compensation in injury cases is well-settled. The injured is entitled to pecuniary as well as non-pecuniary damages. Pecuniary damages also known as special damages are generally designed to make good the pecuniary loss which is capable of being calculated in terms of money whereas non-pecuniary damages are incapable of being assessed by arithmetical calculations. The pecuniary or special damages, generally include the expenses incurred by the claimants on his treatment, special diet, conveyance, cost of nursing/attending, loss of income, loss of earning capacity and other material loss, which may require any special treatment or aid to the insured for the rest of his life. The general damages or the non-pecuniary loss include the compensation for mental or physical shock, pain, suffering, loss of amenities of life, disfiguration, loss of marriage prospects, loss of expected or earning of life, inconvenience, hardship, disappointment, frustration, mental stress, dejectment and unhappiness in future life, etc."

92. The Tribunal awarded a sum of Rs. 40,000/- for the pain and suffering. The High Court affirmed the amount of Rs. 40,000/-. However, the appellant is seeking enhancement of Rs. 40,000/- to make it Rs. 1,00,000/- towards compensation for the pain and sufferings.

93. Pain and suffering would be categorized as a non-pecuniary loss as it is incapable of being arithmetically calculated. Therefore, when compensation is to be awarded for pain and suffering, special circumstances of the claimant have to be taken into account including the victim's age, the unusual deprivation the victim has suffered, the effect thereof on his or her future life. This Court in the case of R.D. Hattangadi (supra), while discussing this aspect held that:

> "10. It cannot be disputed that because of the accident the appellant who was an active practising lawyer has become paraplegic on account of the injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a lifelong handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame.

********* ********* *********

> 17. .....When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-

pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration....."

94. This Court in the case of Mahadeva Shetty (supra), while discussing the factors to be taken into consideration while awarding compensation for pain and suffering held that:

> "18. A person not only suffers injuries on account of accident but also suffers in mind and body on account of the accident throughout his life and a feeling is developed that he is no more a normal man and cannot enjoy the amenities of life as another normal person can. While fixing compensation for pain and suffering as also for loss of amenities of life, features like his age, marital status and unusual deprivation he has undertaken in his life have to be reckoned."

95. In another case of this Court in Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka and Others, (2009) 6 SCC 1, this Court granted a very high amount of Rs. 10,00,000/- on account of the pain and suffering of the victim. That was a case of engineering student aged 20 years, who was a victim of medical negligence. The case before this Court was of a young student who being the victim of paraplegia was confined to wheelchair, and who pursued career in education and ultimately got employed as I.T. engineer at a handsome salary.

96. This Court has awarded compensation for pain and suffering by looking into the circumstances of the case. Therefore, considering that the appellant was only 19 years at the time of the accident and suffered a permanent disability of 45%, he ought to be awarded compensation under this head.

97. Furthermore, the decision of this Court in Nagappa (supra), holds that there is no embargo in awarding compensation more than that claimed by the Claimant.

98. In view of the aforesaid, we award an amount of Rs. 1,00,000/- towards pain and suffering.

(9) Marriage Prospects

99. The Tribunal held that the appellant was young, and due to the physical disability, his marriage prospects are now almost nil. The Tribunal awarded to Rs. 20,000/- under this head. The High Court upheld the amount of Rs. 20,000/-.

100. In Sanjay Kumar (supra), this Court observed as under:

> "14... On the point of loss of marriage prospects, we feel that it is a major loss, keeping in mind the young age of the appellant and the High Court has gravely erred in not awarding adequate compensation separately under this head and instead clubbed it under "loss of future enjoyment of life" and "pain and suffering". We thereby award Rs 75,000 towards loss of marriage prospects..."

101. In Ibrahim v. Raju and Others, (2011) 10 SCC 634, this Court held:

> "19. On account of the injuries suffered by him, the prospects of the appellant's marriage have considerably reduced. Rather, they are extremely bleak. In any case, on account of the fracture of pelvis, he will not be able to enjoy the matrimonial life. Therefore, the award of Rs 50,000 under this head must be treated as wholly inadequate. In the facts and circumstances of the case, we feel that a sum of Rs 2 lakhs should be awarded to the appellant for loss of marriage prospects and enjoyment of life."

102. In Master Ayush (supra), this Court observed that the victim (5- year-old, paraplegic) was entitled to Rs.3,00,000/-.

"14.... The appellant has not only lost his childhood but also adult life. Therefore, loss of marriage prospects would also be required to be awarded..."

103. In view of the aforesaid, we award a sum of Rs. 3,00,000/- towards loss of marriage prospects.

(10) Loss of Amenities

104. The Tribunal held that an amount of Rs. 30,000/- should be awarded towards loss of amenities. The High Court upheld the amount of Rs. 30,000/- as awarded by the Tribunal. The claim of the appellant towards loss of amenities is Rs. 50,000/-.

105. This Court in the case of Pappu Deo Yadav (supra), observed:

> "6. The principle consistently followed by this court in assessing motor vehicle compensation claims, is to place the victim in as near a position as she or he was in before the accident, with other compensatory directions for loss of amenities and other payments. These general principles have been stated and reiterated in several decisions.
>
> [Govind Yadav v. New India Insurance Co.
>
> Ltd. [Govind Yadav v. New India Insurance Co. Ltd., (2011) 10 SCC 683 .....]"

106. In R.D. Hattangadi (supra) it has been held:

> "12. In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.
>
> x x x x
>
> 17. .....When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life....."

107. This Court in the case of Raj Kumar (supra) held:

> "5. ....A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned....."

108. In the case of Sri Laxman alias Laxman Mourya (supra), this Court observed:

> "15. The ratio of the abovenoted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to the accident, loss of earning and the victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

109. This Court in Govind Yadav (supra) held:

> "18. In our view, the principles laid down in Arvind Kumar Mishra v. New India Assurance Co. Ltd. (2010) 10 SCC 254 and Raj Kumar v. Ajay Kumar (2011) 1 SCC 343 must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

110. Vijaykumar Babulal Modi (supra), the High Court of Gujarat observed as under:

> "It appears that the claim under this head is to the tune of Rs.3 lac. However, the Tribunal has not awarded any sum under the head 'loss of amenities'. We are of the opinion that this head must take into account all aspects of a normal life that have been lost due to the injury caused. As per R.D. Hattangadi's case (supra), this includes a variety of matters such as the inability to walk, run or sit, etc. We include here too the loss of childhood pleasure such as the ability to freely play, dance, run, etc., the loss of ability to freely move or travel without assistance. Then, there is the virtual impossibility of marriage as well as a complete loss of the ability to have sex and to have and nurture children."

111. In view of the aforesaid, we award an amount of Rs. 50,000/- for the loss of amenities taking into consideration the fact that the appellant was 19 years old at the time of the accident, and also considering the nature of injuries suffered by him and the extent of his disability.

112. The total compensation awarded by us under different heads is as under:

S.NO.	COMPENSATION	AMOUNT (IN RUPEES)
1	Loss of earning due to disability	7,77,600/-
2.	Loss of earning for 6 months	48,000/-
3.	Medical expenses	1,55,000/-
4.	Future medical expenses	2,16,000/-
5.	Attendant Charges	4,32,000/-
6.	Litigation charges	50,000/-
7.	Loss of conveyance	50,000/-
8.	Pain and suffering	1,00,000/-
9.	Marriage prospects	3,00,000/-
10	Loss of amenities	50,000/-
	TOTAL	21,78,600/-

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

circumstances, there is resultant affront to the injured victim. [See: Pappu Deo Yadav (supra)]

114. We, therefore, direct the respondent No. 1 herein – insurance company to pay the appellant-claimant the difference in the compensation awarded herein as against the amount of Rs. 9,26,800/- as awarded by the High Court. The amount awarded by this Court shall be deposited by the respondent No. 1 – insurance company within a period of eight weeks from today after adjusting the amount already deposited. The rate of interest at the enhanced amount is to be the same i.e., 6% per annum.

115. In the result, the appeal is allowed to the aforesaid extent. There shall be no order as to costs.

116. Pending application, if any, stands disposed of accordingly.

.....J. (SURYA KANT) .....J. (J.B. PARDIWALA) NEW DELHI;

NOVEMBER 16, 2022