National Insurance Co. Ltd. Lucknow ... vs Gaurav Sharma And Anr. on 10 March, 2025

Author: Rajnish Kumar

Bench: Rajnish Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2025:AHC-LKO:14340

AFR

Court No. - 4

Case :- FIRST APPEAL FROM ORDER No. - 137 of 2017

Appellant :- National Insurance Co. Ltd. Lucknow Thru. Asstt. Manager

Respondent :- Gaurav Sharma And Anr.

Counsel for Appellant :- Mrs. Pooja Arora

Counsel for Respondent :- Ashish Chaturvedi

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Case :- FIRST APPEAL FROM ORDER No. - 217 of 2017

Appellant :- Gaurav Sharma

Respondent :- National Insurance Company Limited Lucknow And Another

Counsel for Appellant :- Ashish Chaturvedi

Counsel for Respondent :- Deepak Kumar Agarwal,Mrs. Pooja Arora

Hon'ble Rajnish Kumar,J.

1. Heard, Mrs. Pooja Arora, learned counsel for the appellant in F.A.F.O. No.137 of 2017 and for respondent no.1 in F.A.F.O. No.217 of 2017 (here-in-after referred as learned counsel for the Insurance Company) and Shri Ashish Chaturvedi, learned counsel for the claimant-respondent no.1 in F.A.F.O. No.137 of 2017 and for appellant in F.A.F.O. No.217 of 2017 (here-in-after referred as learned counsel for claimant). None appeared on behalf of the owner i.e. the respondent no.2 in both the appeals.

2. The F.A.F.O. No.137 of 2017 has been filed under Section 173 of Motor Vehicle Act, 1908 (here-in-after referred as MV Act) challenging the judgment and award dated 23.11.2016 passed in Claim Petition No.163 of 2011 (Gaurav Sharma Vs. Rajesh Kumar Tiwari and another). The F.A.F.O. No.217 of 2017 has been filed for enhancement of compensation. Hence both the appeals are clubbed and decided together with this common judgment and order.

3. Learned counsel for the Insurance Company submits that the claimant; Gaurav Sharma, who appeared as PW-1 admitted in his cross-examination that he had seen in his rear view mirror of scooty that the truck is coming on his back side but he had not tried to save him, therefore, his contributory negligence can not be denied but the learned tribunal has failed to consider it. The PW-2 has admitted in his evidence that he had seen the accident after hearing, therefore, he can not be said to be an eye witness to the accident. Thus, the rash and negligent driving of the offending truck also can not be said to have been proved, but the learned tribunal failed to consider it all. She further submits that the concerned doctor has not been produced to prove as to what would be the extent of future loss to the claimant on account of the disablement suffered by him in the accident, therefore, the assessment in this regard made by the learned tribunal is not tenable. Even otherwise, as per the old act the permanent disability could have been determined in terms of schedule-II of the said act in application under Section 163-A of MV Act. Lastly, she submits that the proforma for filing application under Section 163-A is given in SR-49 and the tribunal could not have traveled beyond the provisions of said section and allowed the compensation to the claimant treating the claim petition under section 166 of the MV Act. On the basis of above, learned counsel for the appellant submits that the judgment and award passed by the learned tribunal is not sustainable and liable to be set-aside.

4. Learned counsel for the Insurance Company opposing the appeal of the claimant for enhancement of compensation submits that the appeal has been filed on misconceived and baseless grounds. The doctor was not produced to prove the future loss on account of the disability suffered in the accident and no proof of any income from the sport or in regard to any other claim has been filed, therefore, the appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

5. She relies on Raj Kumar Vs. Ajay Kumar and Another; (2011) 1 SCC 343/ 2011 ACJ 1, Gopal, Krishnaji Ketkar Vs. Mahomed Haji Latif and Others; AIR 1968 SC 1413/ 1968 SCC Online SC 63,

Oriental Insurance Co. Ltd. at Nanded Vs. Prakash Shahuraj Mali and Others; 2020 (1) TAC 938, Rajesh Kumar @ Raju Vs. Yudhvir Singh and Another; AIR 2008 SC 2396, National Textile Corporation Ltd. Vs. Naresh Kumar Badri Kumar Jagad and Others; 2011 (12) SCC 695/ 2011 (29) LCD 1793, Anita Sharma and Others Vs. New India Assurance Co. Ltd. and Another; (2021) 1 SCC 171 and Sunita and Others Vs. Rajasthan State Road Transport Corporation and Others; (2020) 13 SCC 486.

6. Per contra, learned counsel for the claimant submits that the accident and rash and negligent driving of the driver of the offending truck has been proved by the claimants before the tribunal and merely because the claimant has stated in his cross-examination that he had seen the truck coming on his back side in the rear view mirror of his scooty, it can not be a ground for determination of any contributory negligence on his part because he has clearly stated that he was going on the left side of the road with a speed of 30-40 km/hour and if in such a situation the truck dashed from the back side, it can be only because of rash and negligent driving of driver of the offending truck. Thus, the appeal filed by the appellant challenging the award is misconceived and liable to be dismissed. He further submits that though the appeal was filed under Section 163-A of the MV Act but it was dealt with as an application under Section 166 of the MV Act and after framing the issues without any objection from the insurance company or any other party in regard to rash and negligent driving of truck driver, therefore, the learned tribunal has rightly decided the claim petition in accordance with law and once it has been decided the insurance company can not raise any objection in this regard.

7. Learned counsel for the claimant pressing his appeal for enhancement submits that the deceased was a student of class-12. Besides studying, he used to play Cricket and was a fast bowler. He had participated in many competitions and had also got certain trophies and on account of the disability suffered in the accident, he has been restrained from pursuing the Cricket and if he would have not suffered the disability, he could have pursued the Cricket and may have played in the National Cricket. He further submits that the learned tribunal has not allowed the compensation on all the heads claimed by the claimant, therefore, the judgment and award is liable to be modified and the compensation is liable to be enhanced accordingly.

8. He relies on Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and Another; (2011) 10 SCC 756, Nagappa Vs. Gurudayal Singh and Others; (2003) 2 SCC 274, Govind Yadav Vs. New India Insurance Company Limited; 2011 (10) SCC 683, R.D. Hattangadi Vs. Pest Control (India) Pvt. Ltd and Others; (1995) 1 SCC 551, Raj Kumar Vs. Ajay Kumar and Another; (2011) 1 SCC 343/ 2011 ACJ 1, G. Ravindranath @ R. Chowdary Vs. E Srinivas and Another; (2013) 12 SCC 455, Lakshmana Gowda B.N. Vs. Oriental Insurance Company Ltd. and Another; (2023) SCC OnLine SC 786, Jagdish Vs. Mohan and Others; (2018) 4 SCC 571, U.P.S.R.T.C., Ghaziabad Vs. Smt. Neerja Bhatiya and Others; First Appeal From Order No.1726 of 2001, Uttar Pradesh State Road Transport Corporation Vs. Bhawani Prasad Manjhi; 2024 SCC OnLine All 7385.

9. I have considered the submissions of learned counsel for the parties and perused the records.

10. The claim petition was filed by the claimant alleging therein that the claimant met with an accident on 05.08.2010 due to negligent driving of the driver of the offending Truck No.U.P.32-Z-0458 near Krishna Nagar Kotwali, on account of which he was hospitalized and his left leg was amputated in hospital. The claimant was riding on a scooter activa bearing No.U.P.32-BD-9557 and was going to Krishna Nagar from his residence slowly and cautiously on the left side of the road following all the traffic rules. When he reached near Krishna Nagar Kotwali, the Truck No.U.P.32-Z-0458 hit the scooter of the claimant on his back from behind, by driving rashly and negligently by its driver, on account of which the claimant fell down and got grievous injuries, on account of which his left leg was amputated. The truck driver was caught by the local inhabitants from the site of the accident and handed over to the Krishna Nagar Police Station and they also took the claimant to the Lal Hospital in the area, from where he was referred to the Trauma Center, Medical College, Lucknow on the same date. The Pelvic bone of the claimant was broken. After few days the claimant was shifted to Vivekanant Polyclinic, where his left leg was amputated on account of critical condition. After some time he was shifted to Sahara Hospital from where he ultimately was discharged on 25.09.2010. Thereafter also the treatment is going on.

11. It has further been alleged that the claimant was good in studying and studying in Class-12. He was a very good sport person also. He had twice participated in C.K. Naidu Cricket Tournament at district level as a fast bowler. He also participated in Gali-10 Cricket Competition and district level 20-20 Cricket competition. He also participated in fast bowler competition at district level. He had a bright future and had he not met with the said accident, there were chances of the claimant to become a national level Cricketer. The earning of claimant was claimed as Rs.3000/- per month. Thus, it was pleaded that on account of the accident, a good sport person and a good student is constrained to live a life of handicapped as he had become permanent disable. Accordingly, the compensation was claimed.

12. The claim petition was contested by the respondent no.1 in the claim petition i.e. the owner denying the averments made in the claim petition and disclosing therein that the Registration, Insurance Policy, License of driver, Permit, Fitness etc. of Truck No. U.P.32-Z-0548 were in order, therefore, in case any compensation is to be paid, the Insurance Company would be liable to pay the amount of compensation. The owner also filed the cover note of the Insurance Policy, which shows that the policy was effective on the date of accident. Thereafter the Insurance Company was impleaded as respondent no.2. The Insurance Company filed a written statement denying the averments made in the claim petition and taking general pleas as are being taken by the Insurance Company without verifying the facts of even Insurance Policy, which remains available with it and other documents. After exchange of pleadings, the tribunal framed six issues, which are extracted here-in-below:-

"1. 05.08.2010 9.30 . .
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13. The oral as well as the documentary evidence was adduced by the parties. The claimant got himself examined as PW-1 and one another eye witness Shri Satya Prakash Awasthi as PW-2. The claimant filed a copy of F.I.R., copy of license of the claimant, disability certificate issued by the Chief Medical Officer, Hathras, copy of charge sheet, site plan and other medical related documents. The owner filed photo copies of the Registration Certificate, Insurance Policy and Driving License of the truck driver. The Insurance Company filed the original form 54. The learned tribunal after hearing learned counsel for the parties and considering the records passed the impugned judgment and award and allowed the claim petition and awarded compensation to the tune of Rs.9,52,600/- alongwith interest @ 7% per annum from the date of filing of claim petition.

14. The application for compensation was filed with the caption 'Claim Petition under section 163-A of the Motor Vehicles Act, 1988'. Section 163-A provides special provisions as to payment of compensation on structured formula basis. However, the application has been dealt with and decided after framing the issue of rash and negligent driving of the truck driver. The U.P. Motor Vehicle Rules, 1998 (here-in-after referred as the Rules of 1988) have been made under various sections of MV Act 1988 including section 176 of the MV Act. Under Section 176, the State Government may make rules for the purpose of carrying into effect the provisions of Sections 165 to 174 and in particular such rules may provide the form of application for claims for compensation and the particulars it may contain, and fees, if any, to be paid in respect of such application including the other rules made in the section. Rule 204 of the Rules of 1988 provides the application for payment before the claims tribunal. It provides that the every application for payment of compensation under Section 166 shall as far as possible is made in form SR-48 and if the compensation is claimed under Section 163-A in Form SR-49. In both SR-48 and SR-49, the necessary particulars of the person dead/ injured/and/ or suffering damage to property and the vehicle involved in the accident etc. are to be given. There is only one difference that in SR-49 after paragraph 23 two declarations are to be made; one that the applicant have not filed any other application for compensation and thereafter that the compensation may be determined in accordance with the second schedule of MV Act, 1988 and direct for payment of the same, which shall be full and final compensation in respect of the aforesaid accident, but it is not in SR-48 on which the application under Section 166 of MV Act was filed. Therefore, it is very material to

consider as to whether the application is under Section 163-A or Section 166 of MV Act. The form given in SR-48 and aforesaid declaration of SR-49 are extracted here-in-below:-

> FORM SR-48 [See Rule 204 (1)] Application For Compensation (Otherwise than under Section 163-A) To, The Motor Accidents/Claims Tribunal .....
>
> I, ...son/daughter/widow of .....residing at having been injured and/or suffered damage to property in a motor vehicle accident hereby apply for the grant of compensation for the injury sustained and or damage suffered. Necessary particulars in respect of the injury/damage to property, vehicle etc., are given below:
>
> 1, ...son/daughter/wife/widow of ..... residing at .....hereby apply as a legal representative/agent, for the grant of compensation on account of death of/injury sustained and/or damage suffered by Sri/Kumari/Srimati..... .. ...son/daughter/wife/widow of ..Sri/Srimati .....who died/ was injured and/or damage suffered in a Motor Vehicle accident. Necessary particulars of the person dead/injured/and/or suffering damage to property and the vehicles involved in the accident etc. are hereunder____
>
> 1. Name with Farther/Husband's name of the person dead/injured and or suffering damage to property.
>
> 2. Full address of the person dead/injured and or suffering damage to property.
>
> 3. Age of the person injured/dead.
>
> 4. Occupation of the person injured/dead.
>
> 5. Name and address of the employer of the deceased, if any.
>
> 6. Monthly income of the person injured/dead.
>
> 7. Name and age of each of the dependents of the deceased/injured indicating relationship with him, and also monthly average income of the deceased/injured and the source of such income.
>
> 8. Details of the property damaged and the extent of damage caused.
>
> 9. Does the person in respect of whom compensation is claimed pay income tax (to be supported by documentary evidence).
>
> 10. Place, date and time of the accident.

11. Name and address of police station in whose jurisdiction the accident took place or FIR was registered.

12. Was the person in respect of whom compensation is claimed, travelling by the vehicle involved in the accident if so, give the names of places of starting of journey and destination.

13. Nature of injuries sustained.

14. Name and address of the Medical Officer/Practitioner, if any, who attended on the injured/dead.

15. Period of treatment and expenditure, if any, incurred thereon (to be supported by documentary evidence).

16. Registration number and the type of the vehicle involved in accident.

17. Name and address of the owner of the vehicle.

18. Name and address of the insurer of the vehicle.

19. Has any claim been lodged with the owner/insurer, if so with what result.

20. Relationship with the deceased.

21. Title to the property of the deceased.

22. Amount of compensation claimed.

23. Any other information that may be necessary or helpful in the disposal of the claim.

I .....solemnly declare that the particulars given above are true and correct to the best of my knowledge.

Signature or thumb-impression of the applicant

FORM SR-49 [See Rule 204(1)] Application for compensation under Section 163-A To, The Motor Accident Claims Tribunal .....

I ,
.....

.....are hereunder__ .....

1 .

23

....

I have not filed any other application for compensation.

I, ... therefore, request that the amount of compensation in respect of the aforesaid accident may be determined in accordance with the Second Schedule of the Motor Vehicles Act, 1988 and the owner/insurer may be directed to make payment of the compensation so determined, to me, which shall be full and final compensation in respect of the aforesaid accident. I shall not file any other claim in respect thereof under Section 140 and under Section 163-A of the Motor Vehicles Act, 1988.

I,..... .....solemnly declare that the particulars given above are true and correct to the best of my knowledge.

Signature or Thumb-Impression of the Applicant

15. The aforesaid declaration claiming compensation in accordance with the second schedule of the MV Act, 1898 is not in SR-48 on which, the application under Section 166 of the MV Act is filed for compensation. Perusal of the application filed by the claimant in the instant case, which is on record of the tribunal, indicates that there is no such declaration in the application and in fact the application is on proforma given in Form SR-48, therefore, mere mention of the application under section 163-A of the MV Act in the caption would not change the nature of the application and claim made therein, therefore, it has rightly and in accordance with law has been dealt with and decided by the tribunal treatig it under Section 166 of MV Act after framing relevant issues. It is only that because of this no such objection was also raised before the tribunal at the time of framing of the issues by the tribunal and even thereafter till disposal of the claim petition, therefore, once the application was filed claiming compensation on the proforma given in Form SR-48 and not in the Form SR-49 of the Rules of 1988 and the issue of rash and negligent driving of the truck driver was also framed, but no objection was raised either before the tribunal or before this Court, the contention of learned counsel for the Insurance Company in this regard is misconceived and not tenable and liable to be rejected and rejected accordingly.

16. This Court, in the case of Phul Chand Yadav and Others Vs. Kedar Yadav and Others; 2011 SCC OnLine ALL 1036, has held that quoting a wrong provision is never fatal.

17. The Hon'ble Supreme Court, in the case of Coal India Limited and Another Vs. Ujjal Transport Agency and Others; (2011) 1 SCC 117, has held that the application for filing of an application for condonation of delay under a wrong provision of law will not vitiate the application.

18. The Hon'ble Supreme Court, in the case of Pankajbhai Rameshbhai Zalavadiya Vs. Jethabhai Kalabhai Zalavadiya; (2017) 9 SCC 700, has held that it is by now well settled that a mere wrong mention of the provision in the application would not prohibit a party to the litigation from getting justice. Ultimately, the courts are meant to do justice and not to decide applications based on technicalities. The relevant portion of paragraph 16 is extracted here-in-below:-

> "16. .....It is by now well settled that a mere wrong mention of the provision in the application would not prohibit a party to the litigation from getting justice. Ultimately, the courts are meant to do justice and not to decide the applications based on technicalities. .....
>
> ....."

19. A co-ordinate Bench of this Court, by means of the judgment and order dated 04.08.2023 passed in U.P.S.R.T.C., Ghaziabad Vs. Smt. Neerja Bhatiya and Others; First Appeal From Order No.1726 of 2001, held that when the parties have accepted both before the Tribunal and also before this Court that the claim petition was to be decided as per provisions of Section 166 of Motor Vehicles Act, 1988, no such ground can now be raised before this Court that it was a petition under Section 163A of the Act.

20. The learned tribunal considered the issue no.1 and 5 together, which are in regard to the accident on account of rash and negligent driving of the driver of the truck No.U.P.32-Z-0548 and contributory negligence of claimant. The claim petition was filed alleging thereon that the accident had occurred on 05.08.2010 at about 09:30 in the morning, when the claimant was going on his Activa Scooter from his house to Krishna Nagar, when the truck No.U.P.32-Z-0548 being driven rashly and negligently by its driver, dashed the scooty of the claimant from the back side, on account of which he fell down and suffered serious injuries. The truck driver was caught on spot by the persons present there and handed over to Police Station- Krishna Nagar and the claimant was admitted in a nearby Lal Hospital, from where he was referred to the Trauma Center, King George Medical College, Lucknow on the same date, where he remained up to 09.08.2010. Thereafter he was shifted to Vivekanand Polyclinic Lucknow, where his left leg was amputated on 10.08.2010 to save his life. The first information report of the accident was lodged on 21.10.2020 by the father of the claimant vide Case Crime No.423 of 2010, under Section 279 and 338 I.P.C. at Police Station- Krishna Nagar, District- Lucknow, in which the charge sheet has been filed against the driver of the truck, a copy of the charge sheet and site plan were placed on record. The reason for delay in F.I.R. has been given in the F.I.R. itself that on account of the treatment of his son i.e. the claimant whose condition was serious and he was busy in the same. He was disturbed mentally and financially, therefore, the report could not be lodged immediately. The driving license of the claimant was also placed on record, which was valid and effective w.e.f. 14.12.2009 to 13.12.2029.

21. The claimant appeared as PW-1, who proved the accident. He stated in his cross-examination that he had seen in the rear view mirror that the truck is coming on his back. He further stated that at the time of accident the speed of his scooter was 30-40 KM/hour and he was going on the left side

of the road. The PW-2, who is also an eye witness, has also proved the accident. However he has stated that he had seen the accident after hearing the voice. It is apparent that the accident had occurred on account of rash and negligent driving of the Truck No.U.P.32-Z-0548 and it was proved by the PW.1 and PW.2, therefore, merely because the claimant stated that he has seen the truck in rear view mirror coming on the back side and PW-2 stated that he had seen accident after hearing the voice, can not be a ground to hold that the claimant was negligent and there was any contributory negligence because he was going at a moderate speed on the left side of the road and if even then the truck coming from the back side hit the scooty from the back side, it can be only because of the rash and negligent driving of the driver of the truck because the truck being a heavy vehicle, the driver thereof, should have been cautious enough to drive the vehicle. Even otherwise the accident and rashness and negligence of the truck driver have been proved by the claimant himself and the evidence of PW-2 supports it. The claimant himself is an injured, whose one leg has been amputated on account of said accident. The driver was also caught on the spot and handed over to the police. The charge sheet has also been filed against the driver. These all are sufficient to prove the accident on account of rash and negligent driving of the driver of the truck and involvement of truck in the accident in question. Nothing also could be extracted from PW-1 and PW-2, which may create any doubt about the veracity of evidence given by them. No contrary evidence or any other evidence has also been adduced by the Insurance Company or the Owner of the truck, which may even indicate that the accident had not occurred on account of rash and negligent driving of the truck driver or there was any negligence or contributory negligence on the part of the claimant. The claimant had also valid and effective driving license on the date of accident.

22. The Hon'ble Supreme Court in the case of Prabhavathi and Others Vs. The Managing Director, Bangalore Metropolitan, Transport Corporation; 2025 LiveLaw (SC) 266, has held that in absence of any direct or corroborative evidence on record, it can not be assumed that the accident occurred due to the rash and negligent driving of both the vehicles. The relevant paragraph 11 is extracted here-in-below:-

> "11. Thus, in our considered view, the contributory negligence taken by the High Court at 25% of the deceased is erroneous. We advert to the principles laid down in Jiju Kuruvila v. Kunjujamma Mohan', where it was held that in the absence of any direct or corroborative evidence on record, it cannot be assumed that the accident occurred due to the rash and negligent driving of both the vehicles. This exposition came to be followed in Kumari Kiran v. Sajjan Singh and Ors.2. In the present case, therefore, on an allegation simpliciter, it cannot be presumed that the accident occurred due to rash and negligent driving of both vehicles, for having driven at high speed."

23. In view of above, the findings recorded by the learned tribunal that the driver of truck caused the accident driving rashly and negligently, in which claimant suffered serious injuries and there was no contributory negligence on the part of the claimant does not suffer from any illegality are perversity, therefore, the contention in this regard of learned counsel for the Insurance Company is misconceived and not tenable and liable to be rejected and rejected accordingly.

24. The issue no.6 as to whether the claimant is entitled for any compensation, if so, how much and from whom, has been considered by the tribunal. The claim for medical expenses on the basis of photo copies of the prescription and bills filed as C28/2 to C28/179 has been rejected by the tribunal on the ground that the claimant himself has admitted in his cross-examination that he does not know that his father has received the payment in regard to the dues of the accident from his office, therefore, he has not denied that the payment of the said bills has been received by his father from his office. The original bills were also not placed on record because payment of the same were taken from the department, therefore, he is not entitled for payment of the same. There is no illegality or infirmity in it.

25. The learned Tribunal on the basis of pleading, material on record and evidence adduced before it found that the claimant was a student of intermediate and his age was 18 years. He suffered serious injuries in the accident on account of which his left leg was amputated. The disability certificate has been issued by the Chief Medical Officer, Mahamaya Nagar, Hathras, which has been placed on record as Paper No.C-38/3, in which his disability has been shown 70% and it is permanent. His photo is also pasted on the said certificate. In the disability certificate his left leg has been amputated below the knee. The claimant pleaded and deposed in evidence that he was a good player of Cricket. He has filed the certificate of intermediate college, in which he has participated in the competition of State Colleges of Division in C.K. Naidu Cricket Tournament of Secondary State Colleges and his performance was outstanding in the said state level tournament. He also filed a chart showing his performance as published in news papers in various matches. The Tribunal has recorded a finding on the basis of pleadings, evidence and material on record that it appears that the claimant had good reputation in Cricket as a bowler and definitely amputation of left leg of such a student makes his life dark in the said field.

26. The learned tribunal, after considering the judgment of Hon'ble Supreme Court, in the case of Syed Siddiqui Vs. Divisional Manager United India; 2014 (1) TAC 369 SC, in which on account of amputation of left leg of a vegetable seller, the Supreme Court determined the functional disability of 85% and his monthly income was Rs.6500 per month in the year 2011 and accordingly the compensation was determined, held that in comparison thereof, the claimant has claimed his monthly income as Rs.3000/- per month, which is equivalent to a labour and it is only an example of his bona fide. Accordingly, looking to his being good player of Cricket determined the functional disability of 80%. The learned tribunal has further awarded the future prospects to the tune of 50% and Rs,50,000/- for pain and suffering and Rs.1,00,000/- for loss of amenities and degradation in the marriage life and Rs.25,000/- towards the transport and fuel etc.

27. The Hon'ble Supreme Court, in the case of Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and Another (Supra), has held that personal sufferings of the survivors of the road accidents and those who are disabled in such accidents are manifold. Some time they can be measured in terms of money but most of the times it is not possible to do so. In cases involving total or partial disablement, the term `compensation' used in Section 166 of the Motor Vehicles Act, 1988 would include not only the expenses incurred for immediate treatment, but also the amount likely to be incurred for future medical treatment/care necessary for a particular injury or disability caused by an accident. It has further been held 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 accident, loss of earning and 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. The relevant paragraphs 8, 14 and 15 are extracted here-in-below:-

> "8. The personal sufferings of the survivors of road accidents and those who are disabled in such accidents are manifold. Sometimes they can be measured in terms of money but most of the times it is not possible to do so. If an individual is permanently disabled in an accident, the cost of his medical treatment and care is likely to be very high. In cases involving total or partial disablement, the term "compensation" used in Section 166 of the Motor Vehicles Act, 1988 (for short "the Act") would include not only the expenses incurred for immediate treatment, but also the amount likely to be incurred for future medical treatment/care necessary for a particular injury or disability caused by an accident.
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> 14. In Raj Kumar v. Ajay Kumar [(2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161] the Court considered some of the precedents and held: (SCC pp. 347-48, paras 5-6) "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.
>
> ...
>
> 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.

(second) 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.

(secondi) 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), (second)(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 (second)(b), (secondi), (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."

(emphasis supplied)

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."

28. The Hon'ble Supreme Court, in the case of Nagappa Vs. Gurudayal Singh and Others (Supra), has held that it would be difficult to hold that for future medical expenses which are required to be incurred by a victim, fresh award could be passed. However, for such medical treatment, Court has to arrive at a reasonable estimate on the basis of the evidence brought on record. In the said case nothing was awarded for change of artificial leg every two or three years which was required as pointed out for replacing the artificial leg. The court awarded Rs.1,00,000/- as an additional compensation as the appellant would be in a position to meet the said expenses from the interest of the said amount.

29. The Hon'ble Supreme Court, in the case of Govind Yadav Vs. New India Assurance Company (Supra) and G. Ravindranath @ R. Chowdary Vs. E Srinivas and Another (Supra), has taken the similar view as in the aforesaid two cases and awarded an amount of Rs.2,00,000/- to the appellant

for future treatment.

30. The Hon'ble Supreme Court, in the case of R.D. Hattangadi Vs. Pest Control (India) Pvt. Ltd and Others (Supra), has held that 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. It has further been observed that 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 and allowed Rs.1,50,000/- in respect of claim for pain and suffering and Rs 1,50,000 in respect of loss of amenities of life i.e. total Rs.3,00,000/- against the claim of Rs.6,00,000/- under the heads "Pain and Suffering" and "Loss of amenities of life".

31. The Hon'ble Supreme Court, in the case of Raj Kumar Vs. Ajay Kumar and Another (Supra), has held that 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. It has further been held in paragraphs 12 and 13 as to how the assessment of future loss of earnings due to permanent disability would be made and summarized the principles in paragraph 19, which are extracted here-in-below:-

> "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;

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

(secondi) 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 (second) 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 (secondi) 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.

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.

(second) 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).

(secondi) 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."

32. The Hon'ble Supreme Court, in the case of Lakshmana Gowda B.N. Vs. Oriental Insurance Company and Another (Supra), has observed that the claimant clearly deposed that on account of the injuries sustained and consequential disability suffered his marriage prospects have become bleak as none has come forward to marry him and allowed Rs.50,000/- towards the "loss of marriage prospects."

33. A three judges Bench of Hon'ble Supreme Court, in the case of Jagdish Vs. Mohan and Others (Supra), has held that 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. The relevant paragraph-14 is extracted here-in-below:-

> "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."f

34. This Court, in the case of Uttar Pradesh State Road Transport Corporation Vs. Bhawani Prasad Manjhi (Supra), has held that the claimant-respondent is entitled for the future prospects and interest thereon also.

35. The Hon'ble Supreme Court, in the case of National Textile Corporation Ltd. Vs. Naresh Kumar Badri Kumar Jagad and Others (Supra), has held that pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are more of help to the court in narrowing the controversy involved and to inform the parties concerned and it is not permissible for the court to travel beyond the pleadings as the pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ and where the evidence is not in line of the pleadings and is at variance with it, the said evidence cannot be looked into or relied upon.

36. The Hon'ble Supreme Court, in the case of Anita Sharma and Others Vs. New India Assurance Co. Ltd. and Another (Supra), has held that one needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non□ examination of some best eye□witnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. The relevant paragraphs 21 and 22 are extracted here-in-below:-

> "21. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyse the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true.

> 22. A somewhat similar situation arose in Dulcina Fernandes v. Joaquim Xavier Cruz [Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13] wherein this Court reiterated that : (SCC p. 650, para 7) "7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pick-up van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt. (Bimla Devi v. Himachal RTC [Bimla Devi v. Himachal RTC, (2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101] .)"

(emphasis supplied)

37. The Hon'ble Supreme Court, in the case of Sunita and Others Vs. Rajasthan State Road Transport Corporation and Others (Supra), has held that while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases and once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation and it shall not be strictly bound by the pleadings of the parties. The relevant paragraph- 22 is extracted here-in-below:-

> "22. It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases."

38. Adverting to the facts of the present case, the learned tribunal has rightly dealt with the case and decided the claim petition in accordance with law. The learned tribunal has allowed the claim petition and accepted the income of the claimant as Rs.3000/- and he was of 18 years of age at the time of accident, therefore, applied the multiplier of 18, which is in accordance with law and judgment of the Hon'ble Supreme Court, in the case of National Insurance Co. Ltd. Vs. Pranay Sethi; (2017) 16 SCC 680. In the said case the Hon'ble Supreme Court has upheld the multiplier determined in the case of Sarla Verma Vs. DTC, (2009) 6 SCC 121, in which an operative multiplier of 18 for the age group of 15 to 20 has been provided. The relevant paragraph 42 is extracted here-in-below:-

> "42. As far as the multiplier is concerned, the Claims Tribunal and the courts shall be guided by Step 2 that finds place in para 19 of Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] read with para

> 42 of the said judgment. For the sake of completeness, para 42 is extracted below : (Sarla Verma case [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] , SCC p. 140) "42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the Table above (prepared by applying Susamma Thomas [Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176 : 1994 SCC (Cri) 335] , Trilok Chandra [UP SRTC v. Trilok Chandra, (1996) 4 SCC 362] and Charlie [New India Assurance Co. Ltd. v. Charlie, (2005) 10 SCC 720 : 2005 SCC (Cri) 1657]), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is, M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

39. The contention of learned counsel for the Insurance Company that in view of principles laid down by the Hon'ble Supreme Court in the case of Raj Kumar Vs. Ajay Kumar and Another (Supra), since the doctor was not produced to prove the future disability of the claimant, therefore, the tribunal could not have considered and decided the same is misconceived and not tenable because the Hon'ble Supreme Court has held that 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 and 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 and the manner in which the effect of the permanent disability on the actual earning capacity can be ascertained in the manner provided in paragraph-13 of the judgment. The judgment, in the case of Rajesh Kumar @ Raju Vs. Yudhvir Singh and Another (Supra), has been passed in the facts and circumstances of that case, in which the certificate was obtained after two years, therefore, it is of no assistance to the Insurance company as there is no such pleadings and the certificate has not been disputed in which 70% disability has been determined on account of amputation of one leg. Similarly the case of Oriental Insurance Co. Ltd. at Nanded Vs. Prakash Shahuraj Mali and Others (Supra) and Gopal, Krishnaji Ketkar Vs. Mahomed Haji Latif and Others (Supra) also not of any assistance to Insurance Company.

40. In view of above, loss of one leg of a good student of intermediate and a good sport person, who has attained name and fame as a fast bowler is a very big loss because he after studying in any field could have been placed in a very good position but on account of loss of one leg, the doors of many jobs and activities closed for him, which can not be disputed. Though the handicapped persons have now been employed at various places but the effect of loss of one leg on efficiency in work even in those places can not be disputed and limitation of choices also. The claimant was also a good Cricketer and a fast bowler. He participated in many competitions and done very well at the level of secondary level but on account of loss of one leg he has become incapable of playing the Cricket for whole of his life, in which field also he could have done very well or even could have made a career. Even otherwise, the sports can enhance the mental and physical ability to perform the works in his

career and other fields also. The sport is a good mode of recreation also, which enhances the capacity and capability of a person to do his work more efficiently but the claimant has lost it for all the times to come.

41. The disability certificate has been issued by the competent authority i.e. the Chief Medical Officer with the signatures of orthopedic surgeon as one of the signatory. The certificate shows the permanent disability of 70%, which could not be disputed. The only dispute raised is that in absence of evidence of any doctor, who had treated the claimant, the future disability could not have been determined. Where a leg has been amputated below knee, it can not be denied that a person would face many difficulties not only in his day to day life but in his career also and he has also lost the chances of playing Cricket, therefore the disability of 80% has rightly been determined. It does not suffer from any illegality or error.

42. The learned tribunal has awarded a sum of Rs.50,000/- for pain and sufferings and Rs.1,00,000/- for loss of amenities and degradation in married life. This Court is of the view that in view of the pain and sufferings to the claimant, who was a student of intermediate and of 18 years of age and also a good player and on account of loss of one leg in the accident he has become incapable of playing it, therefore, it can not be equated in terms of money as he had whole life before him and he could have made his career in any field in future in the manner he would have liked but now he can not do the same, therefore, the same is liable to be enhanced to Rs.1,50,000/- and Rs.1,50,000/-. on both courts.

43. So far as the claim of future treatment is concerned, learned counsel for the Insurance Company had submitted that there is no pleadings in this regard whereas the claim petition indicates that the appellant has pleaded the same and also claimed Rs.6,00,000/- on this ground. It can not be disputed that the claimant, who has lost his one leg requires the artificial leg for whole life, therefore, even if it has not been pleaded specifically, whereas he has deposed that Rs.2,50,000/- has been spent on artificial leg and claimed compensation for future treatment, contention of learned counsel for the Insurance company is misconceived and not tenable. This Court is of the view that Rs.2,00,000/- will be sufficient in this head as by interest of the same, the claimant will be able to meet out the said expenses in future.

44. In view of above and considering over all facts and circumstances of the case, the appeal filed by the Insurance Company is misconceived and the grounds taken therein are not tenable in the eyes of law and liable to be dismissed and the appeal filed by the claimant is liable to be partly allowed and compensation is liable to be enhanced as indicated above and accordingly the claimant is entitled for a total sum of Rs.9,52,600+Rs.1,00,000+Rs.50,000+Rs.2,00,000 i.e. Rs.13,02,600/- as compensation alongwith interest awarded by the tribunal.

45. With the aforesaid, the F.A.F.O. No.137 of 2017 filed by the Insurance Company is hereby dismissed and the F.A.F.O. No.217 of 2017 filed by the claimant for enhancement is partly allowed. The judgment and award dated 23.11.2016 is, accordingly, modified. The enhanced amount alongwith remaining, if any, alongwith interest till the date of deposit shall be deposited by the Insurance Company within a period of four weeks from today before the concerned tribunal. No

order as to costs.

46. The amount of statutory deposit made before this Court for adjustment in compensation and the tribunal's records shall be remitted to the concerned tribunal forthwith and in any case within a period of three weeks from today.

....(Rajnish Kumar, J.) Order Date :- 10.3.2025 Haseen U.