

# Atul Tiwari vs Regional Manager, Oriental Insurance ... on 6 January, 2025

**Author: Sanjay Karol**

**Bench: Sanjay Karol**

2025 INSC 29

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 151 OF 2025  
(@ Special Leave Petition (Civil) No. 24205 of 2022)

ATUL TIWARI

Appellant(s).....

VERSUS

REGIONAL MANAGER, ORIENTAL  
INSURANCE COMPANY LIMITED

Respondent(s).....

JUDGMENT

PRASANNA B. VARALE, J:-

1. Leave granted.

2. The challenge in the present appeal is to the common order dated 23.09.22 in Misc. Appeal no. 1969/2014 and Misc. Appeal no.2181/2021 whereby the High Court of Madhya Pradesh dismissed the appeal preferred by the respondent herein (Misc.

Appeal no. 1969/2014) and had partially allowed the appeal preferred by the petitioner herein (Misc. Appeal no.2181/2021).

3. The factual background is that on 3.10.2009 the petitioner herein was travelling to Panchmarhi with his friend on a motorcycle. They met with an accident with a truck which was being driven on the wrong side and in a negligent manner. The petitioner suffered various serious injuries including injuries to head, jaws, legs, knees, chest and ribs for which the petitioner was operated on three

occasions. On account of his serious injuries, the petitioner was rendered 60% permanently disabled. Accordingly, the petitioner through his father and natural guardian filed an application for compensation u/s 166 of the Motor Vehicles Act, 1988 before the Motor Accidents Claims Tribunal (hereinafter "MACT"), Bhopal Madhya Pradesh. The MACT vide its order dated 30.6.14 allowed the application and granted a compensation of Rs. 19,43,800/- to the petitioner along with interest at rate of 7% p.a from the date of application till the date of payment. The MACT has awarded compensation as shown in the table below:

HEAD	Compensation Amount awarded by MACT
Loss of Income	Rs. 11,23,000/-
Speech Therapy Expenses	Rs. 53,000/- (Already Undergone) & Rs. 50,000/- (Future Therapy)
Physiotherapy Expenses	Rs. 1,28,000/- (Already Undergone) & Rs. 1,08,000/- (Future Therapy)
Attendant Expenses	Rs. 1,20,000/-
Travelling/ Transportation Expenses	Rs. 11,600/- (Already Spent) & Rs. 20,000/- (Future Expenses)
Nutritious Food Expenses	Rs. 50,000/-
Mental & Physical Pain	Rs. 1,00,000/-
Expenditure on Operation & Surgery	Rs. 80,000/- (Already Spent)
Non-Pecuniary Expenses	Rs. 1,00,000/-

4. Feeling aggrieved by the order of MACT a cross appeal was preferred by petitioner herein claiming enhancement of compensation amount and by the respondent herein claiming reduction of the compensation amount. The High Court vide the impugned common order dismissed the appeal of the respondent and had partially allowed the appeal of the petitioner thereby granted an enhancement in the compensation for Loss of Income from Rs. 11,23,200/- to Rs. 27,21,600/-.

5. Feeling aggrieved and dissatisfied with the impugned order passed by the High Court the petitioner has preferred the present appeal.

6. The Ld. counsel for the petitioner submitted that in light of Sidram v. Divisional Manager, United India Insurance Co. Ltd. & Anr,<sup>1</sup> the petitioner being a victim of serious injuries leading to permanent disability, he is entitled for compensation for future prospects at 50% against 40% as granted by the High Court. It is further submitted that the compensation due to the petitioner under

the head of loss of income, by taking multiplier of 18 should be enhanced to Rs. 64,80,000/- against Rs. 27,21,600/- as granted by the High Court.

7. It is submitted that the MACT has mechanically deducted the petitioner's loss of income at 60% basis the petitioner's disability. He further submits that the petitioner's case is of 100% functional disability and a total loss of income, thus, no deduction under this head is liable to be made.

8. It is submitted that the notional income adopted by the High Court was too less for a meritorious student such as petitioner and it deserves to be enhanced to Rs. 20,000/- per month against Rs. 15,000/- per month given the efflux of time and changed economic scenario.

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9. It is submitted that MACT failed to award future medical expenses to the petitioner on the ground that petitioner's father is a government servant who is reimbursed the medical expenses of those dependent on him. It further submitted that petitioner's father's retirement is due on 31.12.2023. Moreover, fairly large amounts of reimbursements to the tune of Rs. 4,85,418/- and one another of Rs. 74,306/- are still due to the petitioner's father and have not been paid till date.

10. It is submitted that MACT granted only Rs. 50,000/- for future speech therapy for next two years only, the same is contrary to its observation on doctor's medical opinion in its order that petitioner need at least another 5 years of speech therapy, in addition to the 2 years of therapy already received. It is further submitted that this is unjust in view of the fact that the petitioner has still not regained his power of speech entirely.

11. It is submitted that MACT granted compensation of Rs. 3,000/- per month for physiotherapy for 3 years which is contrary to the doctor's recommendation for continuous requirement of physiotherapy in the future at Rs. 6,000/- per month.

12. It is submitted that the petitioner is entitled to receive enhanced compensation for attendant charges at Rs. 4000/- for the remainder of his life. It is further submitted that by using multiplier of 18, the petitioner is eligible to be granted Rs. 8,64,000/- towards attendant charges against Rs. 1,20,000/- granted by MACT for only a period of 5 years.

13. It is submitted that considering the rising prices of fuel, the petitioner is entitled to an enhancement in future transportation charges to the tune of Rs. 1,00,000/- against Rs. 20,000/- granted by MACT.

14. It is submitted that on the basis of the judgement of this court in Sidram (supra) the amount for loss of marriage prospects should be enhanced to Rs. 3,00,000/- against Rs. 1,00,000/- granted by MACT. Further the petitioner is entitled to compensation for loss of amenities to the tune of Rs. 50,000/- as well as litigation expenses, thus, the total sum to be paid to the petitioner for non-pecuniary compensation should be enhanced to Rs. 5 lakhs.

15. Per contra, the Ld. Counsel appearing for the respondent submitted that the accident in the present case has occurred in the year 2009. Therefore, taking into consideration the relevant factor of the future and decisions of this court dealing with similar situation, the Hon'ble High Court has rightly fixed the notational income of the petitioner at Rs. 15,000/- per month (i.e. Rs. 1,80,000/- annually).

16. It is submitted that the High Court has rightly granted 40% towards future prospects in light of the judgment of the Constitution Bench of this Hon'ble Court in National Insurance Co. Ltd. v. Pranay Sethi (2017) 16 SCC 680.

17. It is submitted that Sh. K.P. Soni deposed that petitioner will get the re- imbursement of all the medical bills from its department. Hence, the liability towards the remaining medical expenditure bill may not be imposed upon the insurance company

18. It is submitted that the petitioner has submitted bills towards the expenses incurred on speech therapy for two years totalling to Rs. 53,000/-. Therefore, considering the statement of Dr. Vishal Mehra that 'it is remarkable that in two years the applicant has come from zero to speaking position, now only few words are left to be clear and to speak in continuity and answer.....this work can be completed in the next two years as well', the Ld. Tribunal has rightly awarded Rs. 50,000/- for future expenses likely to be incurred in next two years towards speech therapy. Hence, no further enhancement under this head is warranted.

19. It is submitted that the petitioner has vaguely stated that the "petitioner claimed compensation for physiotherapy for at least the next 20 years" without medical report or evidence. Whereas, the Neurologist Dr. Shahani stated that "need for physiotherapy for about 5-6 years" as recorded under para 28 of the award. Hence, MACT has rightly awarded the expenditure to be incurred on physiotherapy at the rate of Rs. 3000/- per month for the next three years.

20. It is further submitted that MACT has rightly observed under para 33 that "In this situation, following the legal decision Kavita vs. Deepak and others (supra), it seems appropriate to accept Rs. 2000/- per month as attendant expenses. In view of the progressive improvement in the condition of the applicant, for the next five years from January 2010, at the rate of Rs. 2000/- per month, Rs. 1,20,000/- is accepted as attendant expenses".

21. It is further submitted that the MACT has rightly passed the award under the head of non-pecuniary compensation and no further enhancement is required, as it is a settled law that the compensation under the non-pecuniary heads has to be awarded on nominal side.

22. Heard Ld. Counsels appearing on both sides and perused the relevant documents placed on record.

23. The short question which is posed for consideration before this Court is, whether the compensation should be enhanced or not.

24. The High Court while partly allowing the appeal has observed as under:

“7. Shri Anil Lala, on the other hand, submits that claimant was a student of B.Tech Third year on the date of accident which took place on 03.10.2009. Under similar facts and circumstances, co-ordinate Bench of this Court in Om Prakash Gupta and others Vs. Wajeer Ahmed Alinayak Wadi and 3 3 another, (2013) 2 MPLJ 306 , construed income of Third year Computer Science student at Rs.15,000/- per month and has made computation accordingly.

8. This argument has some force.

10. As far as appeal filed by the claimant is concerned, in place of notional income of Rs.80,000/- per annum, notional income of claimant will be considered at Rs.15,000/- per month or Rs.1,80,000/- per annum. Tribunal has accepted 60% disability as Dr. I.D. Chourasiya, Neurosurgeon, who was examined before the Court, admitted that claimant Atul Tiwari was in a vegetative stage.

12. Taking these facts into consideration, Loss of Income will come out to Rs.1,08,000/- per annum. There will be addition of 40% towards Future Prospects and multiplier of 18 will be applicable, taking total compensation under the head of Loss of Income to Rs.27,21,600/- against a sum of Rs.11,23,200/-

awarded by learned Claims Tribunal. Thus, there will be enhancement to the tune of Rs.15,98,400/-. This additional amount will also earn interest at the rate of 7%, as has been awarded by the learned Claims Tribunal, from the date of filing of the claim petition till the date of actual payment.”

25. It is submitted that the High Court has partly allowed the appeal and has not granted appropriate compensation under other heads to the petitioner. Therefore, at this stage it becomes pertinent to discuss the settled jurisprudence on the assessment of compensation to motor accidents' victims.

26. This court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum vs Susamma Thomas and Ors.2 had laid down the factors to be considered by a court in ascertaining the compensation for motor accidents. The court also laid emphasis on use of the multiplier method for ensuring a 'just' compensation. The relevant paragraphs are enumerated below for perusal:

“9. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased

might have got better employment or income or might have lost his employment or income altogether.

16. 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 (1994) 2 SCC 176 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. We are, aware that some decisions of the High Courts and of this Court as well have arrived at compensation on some such basis. These decisions cannot be said to have laid down a settled principle. They are merely instances of particular awards in individual cases. The proper method of computation is the multiplier- method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. Some judgments of the High Courts have justified a departure from the multiplier method on the ground that Section 110-B of the Motor Vehicles Act, 1939 insofar as it envisages the compensation to be 'just', the statutory determination of a 'just' compensation would unshackle the exercise from any rigid formula. It must be borne in mind that the multiplier method is the accepted method of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. We disapprove these decisions of the High Courts which have taken a contrary view. We indicate that the multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and very exceptional cases.”

27. Keeping in view the lack of uniformity and consistency in awarding compensation and variations in adoption of multiplier by courts, this court in the case of Sarla Verma & Ors. vs Delhi Transport Corporation & Anr.<sup>3</sup> has well settled the rule for adoption of multiplier very lucidly and has also formulated the principles for assessment of compensation. The relevant paragraphs are enumerated below for perusal:

(2009) 6 SCC 121 “18. Basically only three facts need to be established by claimants for assessing compensation in the case of death: (a) Age of the deceased; (b) income of the deceased; and (c) the number of dependents. The issues to be determined by the Tribunal to arrive at the loss of dependency are: (i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. If these determinants are standardized, there will be

uniformity and consistency in the decisions. There will be lesser need for detailed evidence. It will also be easier for the insurance companies to settle the accident claims without delay.

19. To have uniformity and consistency, Tribunals should determine compensation in case of death, by the following well settled steps: Step 1 (Ascertaining the multiplicand): The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependent family, constitutes the multiplicand. Step 2 (Ascertaining the multiplier): Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors a Table of multipliers with reference to the age has been identified by this court. The multiplier should be chosen from the said Table with reference to the age of the deceased. Step 3 (Actual Calculation): The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the “loss of dependency” to the family.

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, Trilok Chandra and Charlie), 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.”

28. This court in National Insurance Company Ltd. vs Pranay Sethi & Ors.<sup>4</sup> has highlighted the aspect of addition of salary towards future prospects considering the nature of job of the victim and his age. The relevant paragraphs are enumerated below for perusal:

“59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

29. This court in the case of R.D. Hattangadi vs Pest control (India) Pvt. Ltd. & Ors.<sup>5</sup> has highlighted the heads under which the victims of a motor accident are entitled for compensation which are broadly divided into two categories i.e., pecuniary damages and (2017) 16 SCC 680 (1995) 1 SCC 551 non-pecuniary or special damages. The relevant paragraphs are enumerated below for perusal:

“9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special 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.”

30. This court in the case of Raj Kumar vs Ajay Kumar & Anr.<sup>6</sup> has explained process of considering the factors while assessing the amount of compensation in case of permanent disability caused to the victim of motor accident. It has also discussed the process of ascertainment of the effect of the permanent disability on the actual earning capacity of the victim. The relevant paragraphs are enumerated below for perusal:

“10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the (2011) 1 SCC 343 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.* and *Yadava Kumar v. National Insurance Co. Ltd.*)

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: (1) 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 (1) 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.”

31. After perusing the judgement of High Court, it can be seen that the High Court has rightly adopted the settled position of law in assessing the notional income and subsequently enhancing the

Loss of Income of the petitioner after considering his 60% disability. However, the High Court has utterly failed in delving into the aspect of correctness of compensation granted under other heads by MACT.

32. The High Court has failed to consider the fact that MACT despite taking note of the doctor's medical opinion, has failed in granting the compensation for the recommended period of time which would have been sufficient for the petitioner. Likewise, the High Court has also failed to consider that MACT has neglected the fact of uncertainty as to the period of recovery and has wrongly granted the compensation with respect to the therapies and attendant charges for a specified duration only.

33. Furthermore, the High Court has failed to consider the fact that MACT's rationale in granting compensation for a short duration is based on the reports highlighting the improvement in the petitioner's health however, it has failed to consider the fact that the reports do not guarantee the recovery of the petitioner within a specified time. Hence, the MACT has acted against the recommendations by the doctors as to the period of recovery.

34. In our considered opinion, the compensation granted under the head – non-pecuniary compensation is not sufficient to meet the needs of the petitioner. Hence, in view of the erroneous consideration by the MACT in granting compensation warrants for its enhancement.

35. It is well accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation so far as money can compensate. This court in the case of Arvind Kumar Mishra v. New India Assurance Co. Ltd. & Anr.<sup>7</sup> has observed that basis for assessment of all damages for person injury is compensation. Perfect compensation is hardly possible but one has to keep in mind that victim has suffered at the hands of the wrongdoer and court must take care to give him full and fair compensation for that he had suffered. 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.

36. In view of the above discussion and the law laid down by this Court in the aforesaid decisions, this court is of the view that High Court only to the extent of enhancing the compensation of the petitioner under the head - Loss of Income has not made any error. However, the High Court has utterly failed in not delving into the correctness of the compensation granted by MACT under other heads. Therefore, this court is inclined to enhance the amount of compensation to be granted to the petitioner to Rs. 48,00,000/- in (2010) 10 SCC 254 toto, the same is hereby matched with the amount claimed by him in his application before the MACT.

37. In view of the above the present appeal is allowed and disposed of accordingly.

38. No order as to cost.

.....J. [SANJAY KAROL] .....J. [PRASANNA B.  
VARALE] NEW DELHI;

JANUARY 6, 2025.