
(2022) 12 DEL CK 0184
In the Delhi High Court
Case No : MAC.APP. No. 615 Of 2013

Kale Ram

APPELLANT

Vs

Ajay & Ors

RESPONDENT

Date of Decision : 23-12-2022

Acts Referred:

Motor Vehicle Act, 1988 — Section 173
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2(i)

Citation : (2022) 12 DEL CK 0184

Hon'ble Judges : Gaurang Kanth, J

Bench : Single Bench

Advocate : S.N. Parashar, J.P.N. Shahi, J. Kiran

Final Decision : Allowed

Judgement

Gaurang Kanth, J

1. The present appeal has been preferred by the appellant under Section 173 of the Motor Vehicle Act, 1988 against the award dated 31.01.2013 ("impugned award") passed by the Motor Accident Claims Tribunal, Patiala House Court, New Delhi.

2. By way of the impugned award, the learned Claims Tribunal awarded a compensation of Rs. Rs.2,66,128/- (Two lakhs Sixty Six Thousand One Hundred and Twenty Eight Rupees) with interest @ 9% per annum from the date of filing of petition till the date of realisation. All the respondents (respondent No.1(Driver), respondent No.2(Owner) and respondent No.3(Insurance Company) are held jointly and severally liable for compensating the appellant. Respondent no.3/Oriental Insurance Company Ltd., was directed to deposit the awarded amount along with the prescribed interest before the learned Claims Tribunal.

FACTUAL MATRIX

3. On the unfortunate day of 22.02.2011, the appellant was hit by the offending vehicle bearing no. HR-38 LT-9158 while he was commuting to office by his motorcycle at Krishna Menon Marg, Delhi. As a result of forceful impact of collision, the appellant sustained grievous injuries for which he underwent medical treatment for non-union of clavicle at Max Hospital, Delhi. Appellant was examined by the Medical Board of Pt. Madan Mohan Malaviya Hospital, New Delhi for ascertainment of disability. Permanent Disability Certificate dated 14.11.2011 stating 56% permanent disability in relation to his right upper limb was issued to him and his condition was classified as non-progressive.

4. Mr. Ajay/Respondent no.1 and Mr. Manjeet Singh, Respondent no.2 were identified to be the driver and owner of the offending vehicle respectively. Thus a claim was raised by appellant before the learned Claims Tribunal where the following issues were framed :-

"1. Whether the petitioner sustained injuries in the accident which occurred on 22.2.2011 at about 12.00 PM at Krishna Menon Marg, Near Kothi No. 6, New Delhi caused by rash and negligent driving of vehicle no.HR-38LT-9158 driven by respondent no. 1, owned by respondent no. 2 and insured with respondent no. 3? OPP

2. Whether the petitioner is entitled for compensation? If so, to what amount and from whom?

3. Relief."

5. Appellant in support of his claims examined (i) Shri Sudhir Gupta, Sr. Resident Orthopedics, Pt. Madan Mohan Malviya Hospital as PW1; (ii) Shri I.M. Khan, Senior Assistant, Civil Establishment Home, New Delhi Municipal Council (NDMC) as PW2; (iii) Shri Krishan Pal, Palika Kendra as PW3 and (iv) himself as PW4. On the other hand, Respondent no.3 produced (i) Shri Bishambar, Conductor in DTC but on deputation as Dealing Assistant in the office of RTO, Suraj Mal Vihar, Delhi as R3W1 and (ii) Shri V.D. Talwar Administrative officer, Insurance Company as R3W2.

6. Upon perusing the records and going through the testimonies of the witnesses, the learned Claims Tribunal decided all the issues in favour of the appellant and against all the Respondents. It awarded compensation in favour of the appellant under the following mentioned heads:

S.no

Head

Compensation

1.

Medicines and medical treatment

Rs.33,546/-

2.

Pain and suffering and loss of

Amenities of life

Rs.60,000/-

3.

Conveyance and Special Diet

Rs.20,000/-

4.

Loss of Income

Rs.42,582/-

5.

Attendant Charges

Rs.10,000/-

6.

Loss on account of disability

Rs.1,00,000/-

TOTAL

Rs.2,66,128/-

7. Discontent with the quantum of compensation, the appellant herein filed an appeal before this Court under Section 173 of the Motor Vehicle Act for Enhancement of the Compensation (hereinafter referred to as "the Act") praying for suitably modifying the impugned award passed by the learned Claims Tribunal in Suit No. 674/11.

SUBMISSIONS ON BEHALF OF APPELLANT

8. Mr. S.N. Parashar, learned counsel appearing for the appellant has stated that learned Claims Tribunal failed to grant compensation towards 'future loss of income' owing to the disability suffered by the appellant in the accident. It is submitted that disability certificate duly proved by PW-1/Dr. Sudhir Gupta, states that the appellant has suffered 56% disability in relation to his right upper limb. Due to the said disability, appellant is not able to do even day to day activities. It has significantly reduced his efficiency and competence to dispense his duty as a 'Beldar' as his work consists of heavy manual labour tasks.

9. Other than this, appellant has claimed reasonable and just compensation under the following heads :

(i) Future medical expenses and Future conveyance

(ii) Loss of enjoyment of life

(iii) Disfiguration

10. Furthermore, learned counsel has submitted that the learned Claims Tribunal erroneously awarded compensation for 75 days Earned leaves (E.L.) only, rather than granting for 190 days (75 days E.L. + 115 days Medical Leave). Learned counsel contended that the appellant took a total of 190 days leave for treatment. If there was no accident, he could have utilized his medical leave for future purposes. Considering this, the Appellant is entitled for total 190 days compensation including medical leaves instead of only 75 days Earned Leave compensation.

11. Apart from this, learned counsel has asserted that the appellant is entitled for enhanced compensation under the head of "Pain and suffering and Loss of amenities of life" since he suffered 56% permanent disability with respect to right upper limb. Due to which, appellant is no more able to enjoy his personal and social life.

12. For cementing the party's claims, learned counsel has relied upon judgment delivered by the Apex Court and co-ordinate Bench of this Hon'ble Court in Hari Om Const. v. National Insurance Company (Civil Appeal No. 7262-63 of 2022) decided on 13.10.2022 and Oriental Insurance Co. Ltd. v. Sangeeta Nanda reported as 2017 SCC OnLine Del 11986 respectively.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.3, INSURANCE COMPANY

13. Per contra, Mr. J.P.N. Shahi, learned counsel appearing for respondent no.3 argued that the compensation awarded by the learned Claims Tribunal is just and reasonable and there is no ground to enhance it. Learned counsel for respondent No.3 pointed out that the appellant has not suffered any actual loss of income after the accident since he continues to work in the same organisation with no adverse impact on his income and promotion prospects.

14. Learned counsel for Respondent No.3 further submitted that there exists no proof on record which demonstrates that the disability caused due to accident has impacted working efficiency of appellant as a Beldar. In the light of the above-mentioned facts, learned counsel has asserted that the appellant is not entitled for payment of compensation for future loss of income and further enhancement of compensation as awarded by the learned Claims tribunal.

LEGAL ANALYSIS

15. This Court has heard the arguments advanced by the learned counsels for both the parties and perused the documents on record and Judgments relied upon by the parties.

16. The appellant has claimed the enhancement of compensation under the

following heads:

- a. Compensation for future loss of income on account of his disability owing to the accident;
- b. Compensation for Future medical expenses, future conveyance, loss of enjoyment of life, disfiguration;
- c. Enhancement of compensation towards Pain & suffering and for Loss of amenities of life.
- d. Cumulative compensation for 190 days for loss of Earned leave and medical leave availed during treatment.

17. The Hon'ble Supreme Court has expounded the law relating to compensation to be awarded in cases involving personal injuries to the claimants culminating in disability in *Raj Kumar v. Ajay Kumar & Anr.* reported as (2011) 1 SCC 343 and made the following observations:

"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."

(emphasis supplied)

18. In Pappu Deo Yadav v. Naresh Kumar & Ors. reported as 2020 SCC OnLine SC 752, the Apex Court has made the following observations:

"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.

xxx

8. This court has emphasized 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."

(emphasis supplied)

19. Keeping in mind the above-said legal principles as reiterated by the Hon'ble Supreme Court, this Court shall now proceed to deal with the facts of the present case.

20. The appellant is aggrieved by the fact that the learned Claims Tribunal failed to award compensation for future loss of income and hence neglected the permanent disability suffered by the appellant and its consequent effect on appellant's efficiency. It is also the case of the appellant that the learned Claims Tribunal failed to award the loss of earning during the complete treatment period. As per the judgment of the Hon'ble Supreme Court in Raj Kumar (supra), loss of earnings has two components (a) Loss of earning during the period of treatment; (b) Loss of future earnings on account of permanent disability.

21. In order to determine the loss of income due to permanent disability, it is relevant to examine the nature of disability and its effect on the earning capacity or future prospects of the appellant. To deal with this issue, it is deemed profitable to refer the relevant paras of the judgment delivered by the Hon'ble Supreme Court in Raj Kumar (supra), which read as follows:

"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

xxx

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.

22. In the aforesaid judgment, the Apex court laid down the following steps for ascertainment of future loss of income:

(a) Firstly, to 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).

(b) Secondly, to ascertain his avocation, profession and nature of work before the accident, as also his age.

(c) Thirdly, 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.

23. In the present case, the certificate for permanent disability has been duly proved by PW1/Dr. Sudhir Gupta. Relevant excerpt of testimony of PW-1 has been reproduced below:

"PW1 Dr. Sudhir Gupta, Sr. Resident Orthopaedics, Pandit Madan Mohan Malviya Hospital, Malviya Nagar, New Delhi.

On SA

I have brought the summoned record of the patient Mr. Kale Ram S/o Sh. Diwan Chand. As per the record he suffered 56% permanent disability in relation to his right upper limb. The disability certificate is Ex. PW1/1. I can verify the signatures of Dr. Manish Sharma, Dr. Anita R. Sharma, Dr. Anshu Goel and Dr. S. K. Verma. He is not able to lift the objects over head or do heavy manual labour work. He is having difficulty in combing, writing and drinking glass of water..."

24. As per Exhibit PW1/1, the appellant suffered 56% permanent disability in relation to his right upper limb. PW-1 further deposed that the appellant is not able to lift the objects over head or do heavy manual labour work. He is having difficulty in combing, writing and drinking glass of water. It is no more res integra that future loss of income is to be calculated on basis of the impact of permanent disability on the earning capacity of the individual. Appellant was working as a 'Beldar' with NDMC. His job involves manual work. Further the appellant will have difficulty in his day-to-day life. However, the pertinent factor to be noted is that the appellant was a Class IV permanent employee of NDMC and he is still performing the work of a Class-IV employee. His employer retained him in service even after the accident and there is no actual loss of income to him. Hence it is evident that even though he suffered 56% of the permanent disability on his right upper limb, he is able to carry out other activities without hindrance.

25. Learned Single Judge of the Karnataka High Court recently had an occasion to examine a case where the doctors detected 20% of permanent disability on the right upper limb of an injured. While determining the permanent physical functional disability, the learned Single Judge attributed 1/3rd of the permanent disability to the whole body in a recent decision dated 10.08.2021 in Mallappa v. Somappa & Ors in Misc. First Appeal No. 21948/2010. Similarly, this Court also deems it appropriate to attribute 1/3rd of his permanent disability qua right upper limb towards the functional disability of the whole body. Hence, this Court held that the appellant suffers permanent disability of 18.7% for the whole body for the purpose of computing the compensation.

26. It is undisputed that at the time of accident, appellant was working as a 'Beldar' with NDMC. As per the salary slip Exhibit PW3/1, total taxable income of the appellant for the period from March 2011 to February 2012 was Rs. 2,58,754/-. Total tax deducted was Rs.7880/-. Hence the annual income of the

appellant for the relevant period was Rs. 2,50,874/- (2,58,754-7880). Monthly income was Rs.20,906.17/-.

27. Now, this Court will first proceed to examine the loss of income during the period of treatment. Leave record of the appellant for the period from 22.02.2011 to 30.08.2011 (190 days) was proved on record as Exhibit PW2/2. It includes 115 days Medical Leave and 75 days Earned Leave. The learned Claims Tribunal granted compensation for 75 days Earned Leave. The relevant portion of the impugned Award, reads, inter alia, as follows:

"The petitioner has examined Sh. I.M.Khan, Senior Assistant, Civil Establishment Home, NDMC, Palika Kendra, New Delhi as PW2 who produced the leave record of petitioner for the period 22.2.2011 to 30.8.2011 out of which there were medical leaves for 115 days and earned leaves for 75 days and same is Ex.PW2/1. It is to be noted that medical leave is for medical emergencies and is not encashable at any stage of service career of an employee. It is only earned leave which is encashable at the time of retirement and it can be accumulated by an employee upto 300 days. As the petitioner availed earned leaves for 75 days, he shall be entitled to compensation for loss of wages on account of availing earned leave due to this accident."

28. This Court in Ashwani Kumar v. Oriental Insurance Company Ltd, MAC Appeal No. 1103/2011 decided on 06.08.2012, examined identical issue. In the said matter, the Claimant therein availed 6 months medical leave, and the learned Claims Tribunal granted compensation for the said 6 months period. Insurance Company challenged the said finding of the learned Claims Tribunal before this Court alleging that the Claimant has not suffered any pecuniary loss as he obtained paid leave. Negating the argument of the Insurance Company, this Court held, inter alia, as follows:

"10. Admittedly, the Second Respondent took leave on account of his incapacity to attend to his duties because of the injuries suffered in the accident. He admitted that he was paid the salary for the leave taken by him. The Second Respondent lost leave for a period of six months, which he could have availed for other purposes. Although, the Second Respondent did not suffer any financial loss but loss of leave which he may be entitled to encash on year to year basis or at the time of his superannuation, has to be compensated in terms of money.

11. The Claims Tribunal, therefore, rightly awarded the compensation for loss of leave at the rate of his salary. The Claims Tribunal's finding in this regard cannot be faulted."

29. Similarly, this Court encountered with identical issue in Oriental Insurance Company Ltd v. Balram Yadav & Ors, MAC Appeal 62/2008 decided on 31.05.2016, and held, inter alia, as follows:

"7. The objection against the award of loss of income is raised on the ground that it was not proved whether the leave of 199 days for which the compensation was

granted by the tribunal was paid leave or unpaid leave. The absence of clarity in this regard in the evidence, in the opinion of this Court, is inconsequential. A government employee enjoys the privilege of leave to be availed as per his convenience and for his own needs or pleasure. Spending leave on medical treatment for injuries in a motor vehicular accident cannot conceivably be called a choice he exercised voluntarily. The loss of leave account, it being of value, thus had to be suitably compensated.

30. In view of the legal position as emerged from Ashwani Kumar (supra) & Balram Yadav (supra), this Court is of the view that the Appellant is entitled for the compensation for the complete period of treatment, i.e, 190 days (115 days Medical Leave + 75 days Earned Leave). Hence the compensation under this head would be Rs. 20,906.17/- /30 X 190= Rs.1,32,405.74/- (Rounded to Rs.1,32,406/-).

31. Now this Court proceeds to examine the loss of future earnings on account of permanent disability. Learned Claims Tribunal while determining compensation for the appellant, abstained itself from awarding any compensation under the head of 'Future loss of income'. Learned Claims Tribunal, rather, awarded compensation in tune of Rs.1,00,000/- under the head of 'loss on account of disability'. Observation made by the learned Claims Tribunal in this regard, is as follows:

"27. As per the above judgment, the petitioner has to be compensated for loss of functional disability i.e. loss of earning capacity on account of accident. However, the petitioner has not proved that he is likely to suffer loss of earning capacity. The petitioner has not adduced any evidence to the effect that on account of this disability his promotional prospects are likely to be jeopardized or the disability as acquired is likely to affect his earning/increment any manner. PW1 Dr. Sudhir Gupta, Sr. Resident Orthopaedica, Pandit Madan Mohan Malviya Hospital, Malviya Nagar, New Delhi stated that the petitioner is not able to lift the objects over' head or do heavy manual labour work and he will have difficulty in combing, writing and drinking glass of water. Although, the petitioner would not suffer loss of income on account of disability acquired due to this accident, however, the disability is likely to affect his skills and shall also reduce his efficiency in his day to day activities. In the circumstances, he is awarded a sum of Rs.1,00,000/- for loss on account of disability suffered by him due to the accident."

32. Now what needs to be ascertained is whether appellant is entitled to be compensated for future loss of income. Appellant has relied upon judgment delivered by the Hon'ble Apex court in Hari Om Const. (supra). In this case, the Hon'ble Supreme Court restored the learned Claims Tribunal's order while observing that it rightly awarded future loss of income to a constable who continued to be in service post-accident. Also, Co-Ordinate Bench of this Court in case of Sangeeta Nanda (supra) compensated victim for future loss of income even when the victim continued in the same service after the accident and there was no actual loss of income suffered by the victim.

33. It is relevant to note the observations made by the Hon'ble Supreme Court in *Santosh Devi v. National Insurance Company Limited and Others* reported as (2012) 6 SCC 421, which read as follows:

"5. 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."

34. Therefore, this Court, while going with the judicial precedents, is of the opinion that even though appellant has not faced any disruption in his livelihood, he shall be compensated for future loss of income. The purpose of compensation must be to restore back the victim to the same position as he or she was right before the accident and thus it should be just and reasonable. Appellant will not be able to live the same life with same vigor as he used to live before the accident, which will seriously impede him from delivering his best services. In such a scenario, this Court proceeds to calculate the future loss of income owing to appellant's disability.

35. At the time of accident, the Appellant was 45 years of age and in permanent employment with NDMC. Hence in view of Para 59.3 of the Hon'ble Supreme Court's Judgment in *National Insurance Co. Ltd v. Pranay Sethi & Ors* reported as (2017) 16 SCC 680, the Appellant is entitled for 30% hike towards the future prospects. The multiplier would be calculated as per the law laid down by the Hon'ble Supreme Court in *Sarla Verma and Ors. v. Delhi Transport Corporation and Ors.* reported as (2009) 6 SCC 121, and it would be 14.

36. At this stage, this Court finds it relevant to discuss one more legal proposition. In the present case, the Appellant continued to be in the same service with no loss of income. Hence, the loss of income, if any, would be after the retirement after attaining the age of superannuation. The Courts used to calculate the loss of income by using the multiplier 9 with respect to the loss of income post retirement at the age of 60. While applying the same principle, this Court in *MAC Appeal No.464/2011* titled as *National Insurance Company Ltd v. Hari Om Construction & Ors* decided on 03.11.2017 & *MAC Appeal No. 782/2011* titled as *Hari Om v. Lekh Raj & Ors* decided on 03.11.2017 granted the loss of income by applying the multiplier 9. The relevant portions of this Court's Judgement in *Hari Om Construction* (supra), reads inter alia, as follows:

"11. It was brought to the notice of the counsel that there is an apparent error in the impugned judgment since the multiplier of 16, chosen on the basis of age of the claimant on the date of accident, would not be appropriate to compute the loss of future income for the reason that there has been no loss of employment and that for such purposes calculations would need to be made afresh on the multiplier of 9 which would be the proper method with reference to the loss of

income post-retirement at the age of 60 years. The counsel for the claimant submitted that he concedes to such calculations being made on the multiplier of 9.

12. Since the claimants' functional disability deserves to be taken as 45% (per cent), and since he has been in regular and permanent employment of the government, the element of future prospects of increase to the extent of 50% (per cent) would deserve to be added. It is however, also to be borne in mind that post-retirement he would be earning pension which would be equivalent to 50% (per cent) of the emoluments last earned. The loss of future income, thus, would need to be computed on the remainder with the multiplier of 9.

xxxxxxx

14. Having regard to the above, the loss of future income due to disability is calculated as $(Rs.18941 \times 150 \div 100 \div 2 \times 45 \div 100 \times 12 \times 9)$ Rs.6,90,399/-....."

37. This Judgment has been challenged before the Hon'ble Supreme Court in Civil Appeal No. 7262-63/2022 (Supra). The Hon'ble Supreme Court vide its judgment dated 13.10.2022, set aside the High Court Judgment and held, inter alia, as follows:

"We have heard learned counsel for the parties and find that the High Court has erred in law in reducing the amount of compensation. The appellant though continuous to be in service but his efficiency as a constable has been seriously compromised. Therefore, the amount of compensation awarded by the Motor Accident Claims Tribunal as Rs.21,94,082/- was just and proper keeping in view the injuries and its long-term effect on the person of the appellant.

Considering the above, we set aside the order of the High Court and restore the order of the Motor Accident Claims Tribunal.

38. Hence in view of the law laid down by the Hon'ble Supreme Court in Civil Appeal No. 7262-63/2022 (Supra), this Court examined the functional disability of the Appellant. As per the evidence of the PW-1, the Appellant will have difficulty even in drinking water. Being a Beldar, the Appellant's work is more related to manual Work and because of the injury suffered by him, his efficiency will be reduced considerably. He won't be able to do any manual work. Hence applying the principle as enunciated by the Hon'ble Supreme Court, this Court is of the view that the multiplier as per chart in the case of Sarla Verma (Supra) is to be applied in the present case.

39. Hence, the compensation to be awarded under the head 'loss of future income' is calculated as follows:

i. Income of the Appellant after adding future prospects = $(20,906.17 + 30\% \text{ of } 20906.17) \times 12 = Rs.3,26,136.25 \text{ /- p.a.}$

ii. post-retirement he would be earning pension which would be equivalent to

50% (per cent) of the emoluments last earned =Rs.1,63,068.12/-

iii. Loss of future income at the level of his disability 18. 67% of Rs.1,63,068.12 /- = Rs. 30,444.82/- p.a.

iv. Multiplier applicable (45 years) = 14

v. Loss of future income = Rs. 30,444.82 X 14= Rs. 4,26,227.48/-

40. Hence, it is held that the Appellant would not be entitled for the compensation of Rs.1,00,000/- under the head 'Loss on account of disability', instead, he is entitled for Rs. 4,26,227.48/- under the head 'Loss on account of future income'.

41. The Appellant further prayed for enhancement of compensation under the head Future Medical Expenses, future conveyance, loss of enjoyment of life, disfiguration, Pain & suffering and Loss of amenities of life. This Court examined the impugned Award. The learned Claims Tribunal has granted Rs.60,000/- towards pain & sufferings and loss of amenities in life. This Court finds all the non-pecuniary damages are sufficiently covered under this head and no need to enhance the said compensation. Regarding the future medical expenses, the Appellant has not led any evidence to prove that he requires any future medical care. However, considering the nature of the injury, this Court grants Rs.10,000/- towards the future medical expenses.

42. In view of the above discussion, the appeal is allowed and the impugned Award is modified to the following extent:

S. No.

Head

Compensation awarded

PECUNIARY DAMAGES (SPECIAL DAMAGES)

1.

Expenses on medicines etc.

Rs. 33,546/-

2.

Future medical expenses

Rs. 10,000/-

3.

Loss of income for 6 months

Rs.1,32,406/

4.

Loss of future income

Rs. 4,26,227.48/-

5.

Special Diet Expenses

Rs. 10,000/-

6.

Conveyance Charges

Rs. 10,000/-

7.

Attendant Charges

Rs.10,000/-

NON-PECUNIARY DAMAGES (GENERAL DAMAGES)

8.

Pain, & suffering,

Rs. 50,000/-

9.

Loss of amenities, etc.

Rs. 10,000/-

Total compensation awarded

Rs.

(Rs. 6,92,179/- in

round figure)

43. Accordingly, the computation of compensation by the learned Claims Tribunal is enhanced from Rs.2,66,128/- to Rs.6,92,179/- to be paid to the appellant.

44. Respondent No.3 is directed to deposit the enhanced compensation amount with interest @ 9% from the date of filing of the present appeal with the Registrar General of this Court within 4 weeks. Upon such deposit, the enhanced compensation amount shall be released to the Appellant within 2 weeks. The statutory deposit may also be released to the Appellant.

45. The Appeal stands allowed in the above terms. No order as to costs.