

(2025) 05 SHI CK 1014
In the High Court Of Himachal Pradesh
Case No : FAO (MVA) No. 181 Of 2016

United India Insurance Co. Ltd	Vs	APPELLANT
Nitya Nand & Others		RESPONDENT

Date of Decision : 06-05-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 311, 313
Negotiable Instruments Act, 1881 — Section 138, 142

Citation : (2025) 05 SHI CK 1014

Hon'ble Judges : Virender Singh, J

Bench : Single Bench

Advocate : Anirudh Sharma, Sudhir Thakur, Somesh Sharma

Final Decision : Partly Allowed

Judgement

Vivek Singh Thakur, J

1. Appellant-Insurance Company has preferred this appeal against award dated 4.12.2015 passed in Claim Petition No. 19/14/2009, titled as Nitya Nand Vs. Hardev Singh Saini and others, by Motor Accident Claims Tribunal-III, Mandi, District Mandi, H.P. camp at Jogindernagar, whereby claim petition preferred by respondent No. 1-claimant Nitya Nand has been allowed by awarding compensation of ₹ 4,53,047/- alongwith 9% interest per annum from the date of filing the petition till payment with costs of ₹ 5,000/-.

2. Respondent No. 1-claimant Nitya Nand had preferred the claim petition for receiving injury in a motor accident involving Motor Cycle No. HP-33A-6577 and HP-33A-6201. At the time of accident Motor Cycle HP-33A-6577, owned by respondent No. 2 Hardev Singh, was being driven by respondent No. 3 Chhabil Kumar, whereas respondent No. 4 Tek Chand is owner cum driver of another Motor Cycle.

3. Occurrence of the accident, injuries received by respondent No. 1-claimant and details of his treatment are not in dispute. Present appeal has been

preferred by assailing the quantum of compensation determined by the Motor Accident Claims Tribunal under different heads and also on the ground that liability to pay compensation is also to be shared by the owner or insurer of another Motor Cycle involved in the accident who, according to appellant, was also equally responsible for the accident.

4. So far as involvement of another Motor Cycle HP-33A-6201 is concerned, in the FIR, there is reference of Motor Cycle HP-33A-6201, but it has been categorically mentioned in the FIR that accident was caused on account of rash and negligent driving of rider of another Pulsar Bike, who was trying to overtake Motor Cycle HP-33A-6201 and because of rash and negligent act of rider of another Motor Cycle i.e. HP-33A-6577 respondent-claimant Nitya Nand suffered injuries after collusion of both Motor Cycles. There is no other evidence placed on record by the Insurance Company or any body else including the driver and owner of Motor Cycle HP-33A-6577 with respect to rash and negligent driving of Motor Cycle No. HP-33A-6201. Therefore, for no evidence on record, it cannot be concluded only on the basis of ground taken in the appeal or for reference of another Motor Cycle in the FIR, that there was contributory negligence of both Motor Cycles involved in the accident. For want of material on record plea of appellant Insurance Company with respect to equal liability to pay compensation by owner/rider of another Motor Cycle or its' insurer, is not sustainable and is rejected.

5. With respect to quantum, learned counsel for the appellant-Insurance Company has pointed out that disability certificate, placed on record as Ex. RW-4/C, is not sufficient evidence to determine disability as well as loss of earning, for non examination of any Doctor who had issued this certificate. Further that the certificate even if considered in evidence, it depicts that disability was temporary which was to be reviewed after one year and the claimant Nitya Nand has not produced any evidence with respect to continuity of disability, discontinuity of his job and loss of earning.

6. Learned counsel for the appellant has also questioned the amount of medical treatment awarded on the basis of medical bills produced in evidence, production whereof in evidence was objected to by the Insurance Company regarding the mode of proof. Further that awarding sum of ₹ 40,000/- as attendant charges for engaging two attendants during the treatment and amount of ₹ 20,000/- towards special diet is also not permissible and sustainable.

7. It has been contended by learned counsel for appellant that considering 25% disability as permanent disability and thereby awarding ₹ 1,98,000/- for suffering 25% permanent disability causing the loss of income to the same proportion is also contrary to the settled law of the land because claimant has failed to establish 25% functional disability qua the entire body.

8. It has also been contended on behalf of the appellant that amount of ₹ 80,000/- awarded for damages for pain suffering and trauma is also highly

exorbitant.

9. It has been contended by learned counsel for the appellant that alongwith bills of medicines produced in evidence, there are Medical Charges Reimbursement Forms duly attested by the Doctors which indicates that medical charges were reimbursed to the claimant and, therefore, claimant is not entitled for any compensation on account of medical bills.

10. So far as awarding pecuniary damages (special damages) and non-pecuniary damages (general damages) are concerned, the Motor Accident Claims Tribunal has awarded compensation under various heads after relying upon judgments of the Supreme Court in case titled as R.D. Hattangadi vs. Pest Control (India) Pvt. Ltd. And others, (1995) 1 SCC 551 and Raj Kumar Vs. Ajay Kumar and Another (2011) 1 SCC 343.

11. The aforesaid judgments have been considered, relied upon and approved by the Supreme Court in its judgment in Sidram Vs. Divisional Manager, United India Insurance Company Limited and Another, (2023) 3 SCC 439 alongwith other judgment as under:-

"40. In Raj Kumar this Court has explained in the following terms the general principles relating to compensation in injury cases and assessment of future loss of earnings due to permanent disability: (SCC pp. 347-52, paras 5-19)

"General principles relating to compensation in injury cases

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

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

Pecuniary damages (Special damages)

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

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

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

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

(iii) Future medical expenses. Non-pecuniary damages (General damages)

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

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

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

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

7. Assessment of pecuniary damages under Item (i) and under Item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses—Item

(iii) —depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages—Items (iv), (v) and (vi)—involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/ deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decisions of this Court and the High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability—Item (ii)(a). We are concerned with that assessment in this case.

Assessment of future loss of earnings due to permanent disability 8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either

partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the Disabilities Act", for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

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

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

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

standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in *Arvind Kumar Mishra v. New India Assurance Co. Ltd.* [(2010) 10 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] and *Yadava Kumar v. National Insurance Co. Ltd.* [(2010) 10 SCC 341 : (2010) 3 SCC (Cri) 1285 : (2010) 8 Scale 567])

12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement; (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

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

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as

he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of "loss of future earnings", if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.

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

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

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

seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and, if so, the percentage.

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

19. We may now summarise the principles discussed above:

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

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

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

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

41. Later, in another judgment, i.e., *Jakir Hussein v. Sabir and Others*, (2015) 7 SCC 252, this Court had to consider the correctness of a compensation assessment based on the High Court's analysis of the injury to the victim (a driver who suffered permanent injury to his arm, impairing movement as well as

the wrist, which rendered him incapable of driving any vehicle). The High Court had assessed permanent disablement at 30%, even though the doctor had certified it to be 55%. This Court, reversing the High Court order, observed *inter alia* that:

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

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

42. In *Anthony alias Anthony Swamy v. Managing Director, Karnataka State Road Transport Corporation*, (2020) 7 SCC 161, where the victim was a painter by profession, a three-Judge Bench had followed *Raj Kumar* (supra) and *Nagarajappa v. Divisional Manager, Oriental Insurance Company Limited*, (2011) 13 SCC 323. The High Court had assessed the injury to be 25% permanent disability, although the treating doctor had said that the injury incurred by the bus passenger (who was earning Rs. 9000/- per month) was 75% of the left leg

and 37.5% for the whole body. In Raj Kumar (supra), the physical disability of the upper limb was determined as 68% in proportion to 22- 23% of the whole-body. The High Court had assessed the injury as 25% and granted compensation. However, this Court assessed the injury on the basis that the disability was 75%, stating as follows: "

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

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

"7. Further, the appellant claims that he was working as a vegetable vendor. It is true that a vegetable vendor might not require mobility to the extent that he sells vegetables at one place. However, the occupation of vegetable vending is not confined to selling vegetables from a particular location. It rather involves procuring vegetables from the wholesale market or the farmers and then selling it off in the retail market. This often involves selling vegetables in the cart which requires 100% mobility. But even by conservative approach, if we presume that the vegetable vending by the appellant claimant involved selling vegetables from one place, the claimant would require assistance with his mobility in bringing vegetables to the market place which otherwise would be extremely difficult for him with an amputated leg. We are required to be sensitive while dealing with manual labour cases where loss of limb is often equivalent to loss of livelihood. Yet, considering that the appellant claimant is still capable to fend for his

livelihood once he is brought in the market place, we determine the disability at 85% to determine the loss of income.

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

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

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

10. This Court in K. Janardhan case [(2008) 8 SCC 518 : (2008) 2 SCC (L&S)

733], set aside the High Court judgment and held that the tanker driver had suffered 100% disability and incapacity in earning his keep as a tanker driver as his right leg was amputated from the knee and, accordingly, restored the order passed by the Commissioner of Workmen's Compensation. In *K. Janardhan* [(2008) 8 SCC 518 : (2008) 2 SCC (L&S) 733] this Court also referred to and relied upon an earlier decision of the Court in *Pratap Narain Singh Deo v. Srinivas Sabata* [(1976) 1 SCC 289 : 1976 SCC (L&S) 52] in which a carpenter who suffered an amputation of his left arm from the elbow was held to have suffered complete loss of his earning capacity.

13. Any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim could make up for the loss of income by changing his vocation or by adopting another means of livelihood. The party advocating for a lower amount of compensation for that reason must plead and show before the Tribunal that the victim enjoyed some legal protection (as in the case of persons covered by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) or in case of the vast multitude who earn their livelihood in the unorganised sector by leading cogent evidence that the victim had in fact changed his vocation or the means of his livelihood and by virtue of such change he was deriving a certain income.

14. The loss of earning capacity of the appellant, according to us, may be as high as 100% but in no case it would be less than 90%. We, accordingly, find and hold that the compensation for the loss of the appellant's future earnings must be computed on that basis. On calculation on that basis, the amount of compensation would come to Rs 3,56,400 and after addition of a sum of Rs 30,000 and Rs 15,000 the total amount would be Rs 4,01,400. The additional compensation amount would carry interest at the rate of 9% per annum from the date of filing of the claim petition till the date of payment. The additional amount of compensation along with interest should be paid to the appellant without delay and not later than three months from today."

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

"13. In the last few years, law in this aspect has been straightened by this Court by removing certain cobwebs that had been created because of some divergent

views on certain aspects. It is not even necessary to refer to all these cases. We find that the principle of determination of compensation in the case of permanent/partial disablement has been exhaustively dealt with after referring to the relevant case law on the subject in *Raj Kumar v. Ajay Kumar* [(2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164 : (2011) 1 SCC (Cri) 1161] in the following words: (SCC pp. 348-50, paras 8-11)

“Assessment of future loss of earnings due to permanent disability

8. xx xx xx

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

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

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result

of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation.”

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

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

16. In the instant case, MACT had quantified the income of the appellant at Rs 10,000 i.e. Rs 1,20,000 per annum. Going by the age of the appellant at the time of the accident, multiplier of 17 would be admissible. Keeping in view that the permanent disability is 70%, the compensation under this head would be

worked out at Rs 14,28,000. MACT had awarded compensation of Rs 70,000 for permanent disability, which stands enhanced to Rs 14,28,000. For mental and physical agony and frustration and disappointment towards life, MACT has awarded a sum of Rs 30,000, which we enhance to Rs 1,30,000.....”

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

“9. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered.

10. In some cases for personal injury, the claim could be in respect of lifetime's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases—and that is now recognised mode as to the proper measure of compensation—is taking an appropriate multiplier of an appropriate multiplicand.”

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

12. Perusal of heads, under which compensation has been awarded, depicts that Motor Accident Claims Tribunal has awarded compensation under various heads in consonance with the broad principles laid down by the Supreme Court for awarding compensation.

13. Plea with respect to objection of the Insurance Company with respect to medical bills, is not sustainable for the reasons that at the time of production of medical bills Ex. PW-4/B1 to Ex. PW-4/B109, there is mention of OT (Objected to), but it is not clear that who raised this objection and on what ground.

Therefore, in absence of specific mention of the ground of objection raised and party who raised it, it is difficult to assume and accept that Insurance Company had object to with respect to mode of proof of these documents.

14. On one side Insurance Company is referring objection with respect to mode of proof of these medical bills and on the other hand learned counsel for the appellant-Insurance Company has relied upon the forms of Medical Reimbursement Charges filed with these medical bills. These Reimbursement Forms contained the details of medical bills produced by the claimant and these have been duly attested by the Medical Officers including Associate Professor verifying the expenditure of the medicines and tests etc incurred by the claimant/respondent No. 1 daily treatment.

15. Plea of Insurance Company that these medicine bills were reimbursed to claimant Nitya Nand is also not sustainable as there is no mention of employer with whom claimant-respondent No. 1 was serving with facility of medical reimbursement. Had there been reimbursement of medical bills, then original bills with original verification forms duly attested, verified and signed by treating Doctor would not have been available with the claimant/respondent No. 1. In such eventuality, original medical bills with original Medical Reimbursement Forms were to be deposited with the employer for reimbursement.

16. There is force in argument of learned counsel for the claimant/respondent No. 1 that there was and is no other way to get the medical bills verified from the Doctor, except by filling up the Medical Charges Reimbursement Forms, so as to place on record the medical bills duly verified and attested by the Doctors/hospital wherefrom claimant/respondent No. 1 had received treatment. It is not the case of the appellant-Insurance Company that medical bills are fake. Therefore, objection with respect to awarding compensation on the basis of medical bills is not sustainable.

17. Claimant/respondent No. 1 has to suffer treatment for more than 7 months and during this period he has also undergone surgery and a plate was also inserted in his leg and he was not able to move at his own. Therefore, damages for pain suffering and trauma @ ₹ 80,000/- is justified.

18. The objection with respect to awarding ₹ 40,000/- by assuming that claimant must have required at least two attendants, deserves to be interfered with, because in the claim petition claimant has referred engaging one attendant during his treatment from August, 2007 to March, 2008. However, even if one attendant had to be engaged for 6-7 months it would not have been available at the minimum wages of ₹ 4,000/- per month in the year 2007. Work of attendant requires special skill and patience. Such attendant has to work and serve round the clock. Therefore, such attendant would be available on wages in comparison to a normal labourer. Therefore, single attendant must have been paid one and half time higher wages, which in present case would be ₹ 6,000/- per month, thus total expenditure incurred for attendant for seven months comes to

□ 42,000/-. Therefore, on this ground claimant-respondent No. 2 is definitely entitled for at least □ 42,000/-

19. Earning of □ 6,000/- per month, claimed by the claimant/respondent No. 1 in his evidence, was and is not disputed by the Insurance Company either in cross-examination or otherwise. Motor Accident Claims Tribunal has awarded loss of income for not going on work for 6 months, whereas treatment for 7-8 months is evident from the record. Therefore, instead of □ 36,000/-, claimant/respondent No. 1 is entitled for □ 42,000/- as loss of income during his treatment.

20. Plea of Insurance Company that disability certificate Ex. PW-4/C, placed on record, indicates only temporary disability that too at the most for one year, has force. Because the certificate itself states that disability is temporary in nature and is to be reassessed after a period of one year. It was issued on 19.3.2009/-. Therefore, as argued by learned counsel for the appellant-Insurance Company, temporary disability at the most has been proved for one year only from the date of issuance of certificate. In cross-examination on behalf of Insurance Company, claimant/respondent No. 1 has also admitted himself that at the time of deposing in the Court, i.e. on 20.7.2015, he had been cured (यह ठीक हे की अब मै ठीक हो गया हूँ). Though, he has further clarified by saying self that he feels pain in the legs, but pain in leg may not a substitute for proof of permanent disability or loss of 100% earning capacity.

21. For the evidence on record, I am in agreement with the plea raised on behalf of Insurance Company that at the most disability certificate placed on record indicates the temporary disability of 25% till March, 2010. Therefore, even if it is considered that claimant has suffered 25% disability with respect to loss of income also, though it can be less or more than that and for longer period but for want of any material on record, it is not possible to assess the accurate loss of income and also loss for future income beyond March, 2010. Therefore, quantum of compensation determined under this head is not sustainable. Therefore, loss of income under this head would have been at the most till March, 2010. Loss of income till March, 2008 has already been awarded @ 100% during the period of treatment. Therefore, future loss of income can be considered only for 2 years i.e. from April, 2008 till March, 2010 and accordingly the claimant/respondent No. 1 shall be entitled for loss of future income @ 25% of total income on account of temporary disability for two years which will be $6000 \times 25\% = \square 1500 \times 12 \times 2 = \square 36,000/-$.

22. The amount of □ 20,000/- awarded for special diet and □ 5000/- as cost is more than reasonable. Therefore, deserves no interference.

23. No other ground urged or raised.

24. In view of above, under the head of medical expenses claimant/respondent No. 1 is entitled for □ 1,41,047/- i.e. ($\square 79,047 + 42,000 + 20,000/- = \square 1,41,047/-$).

25. Under the head of loss of income and future income, claimant shall be

entitled for ₹ 42,000/-+36,000/-=₹ 78,000/-.

26. Non pecuniary damages of ₹ 80,000/-, cost of ₹ 5,000/- as well as interest @ 9% per annum from the date of filing the petition shall remain unchanged.

27. Accordingly claimant/respondent No.1 is entitled for compensation of ₹ 2,99,047/- alongwith 9% interest per annum from the date of filing petition, i.e. 7.10.2009 till full and final payment or deposit of the amount in the Court alongwith cost of ₹ 5,000/-. Rest terms of the award shall remain as such.

The appeal is partly allowed and disposed of in aforesaid terms, alongwith pending applications, if any.