



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:19.05.2025

+ **MAC.APP. 309/2018 & CM APPL. 11531/2018 (delay)**

PAVAN PASWAN

..... Petitioner

versus

**RANJEET YADAV & ORS (NATIONAL
INSURANCE COMPANY LTD)**

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Varun Sarin, Ms. Parul Dutta & Ms.
Babita Rawat, Advocates

For the Respondent : Mr. Pankaj Seth & Ms. Khushi Sachdeva,
Advocates for R-3.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter '**MV Act**') seeking enhancement of compensation awarded by the learned Motor Accident Claims Tribunal *vide* award dated 02.11.2016 (hereafter '**the impugned award**'), passed in MACT No. 4040/2016.

2. The brief facts are that on 30.04.2014 at about 11:30 p.m., the appellant/ injured was going to his house. While crossing the red light at Indira Kalyan Vihar, he was hit by a Truck Container being driven by Respondent No. 1 in a rash and negligent manner. Due to this, the



appellant/ injured suffered grievous injuries all over his body, including amputation of his right leg below the knee.

3. The said incident led to the registration of FIR No. 309/2014 dated 02.05.2014, at Police Station Okhla Industrial Area, for the offences under Section 279/337 of the Indian Penal Code, 1860 ('IPC'). After completion of the investigation the police charge sheeted Respondent No. 1 for the offences under Sections 279/338 of the IPC and Section 3/181 of the MV Act.

4. The learned Tribunal, after examining the pleadings, evidence, and documents on record, assessed the compensation at ₹18,08,350/- and awarded an interest at the rate of 9% per annum to the appellant.

The details thereof are as under:

S.no.	Heads of Compensation	Amount
1.	Medical Expenses	₹3,000/-
2.	Pain and Suffering	₹40,000/-
3.	Special Diet, Conveyance Charges and Attendant Charges	₹15,000/-
4.	Loss of Future Earning Capacity / Future Income	₹9,16,134/-
5.	Loss of Amenities and Enjoyment of Life	₹50,000/-
6.	Disfigurement	₹50,000/-
7.	Loss of Income during Treatment Period	₹34,216/-
8.	Cost of Artificial Limb	₹7,00,000/-
	TOTAL	₹18,08,350/-



5. Aggrieved by the quantum of compensation awarded, the appellant has preferred the present appeal.

6. The learned counsel appearing for the appellant submitted that the appellant had been crushed under the offending vehicle resulting in grievous injuries specially on his right lower limb. He contended that the learned Tribunal had erred by quantifying the functional disability of the appellant at 35%, especially considering the fact that as per the disability certificate the appellant had suffered 70% permanent disability.

7. He further submitted that the appellant prior to the accident was working as a driver and the functional disability ought to have been assessed as 100% considering the fact that due to the injury the earning capacity of the appellant has become nil and the same has also restricted his movement.

8. The learned counsel also contended that the learned Tribunal failed to award any compensation for future medical expenses, specifically for the maintenance and replacement of his artificial leg. He submits that the average lifespan of the artificial limb is six years, with annual maintenance costs ranging from ₹10,000 to ₹15,000. Considering his age of 27 years, he would require multiple replacements, necessitating additional compensation.

9. He further challenges the impugned award on the aspect that the learned Tribunal awarded only a meagre sum of ₹50,000/- under the head of loss of amenities, ₹40,000/- under the head of pain and



suffering, ₹15,000 under the head of special diet, conveyance charges and attendant charges, ₹50,000 under the head of disfigurement, arguing that these amounts are inadequate given the severity of his disability.

10. He further submitted that the learned Tribunal failed to award any compensation under the heads of mental and physical shock and permanent disability.

11. *Per contra*, the learned counsel appearing on behalf of the respondent – Insurance Company contended that the learned Tribunal passed the impugned awards after due appreciation of evidence that came on record, which requires no interference. Hence, it is prayed that the appeal filed by the appellant/victim be dismissed.

Analysis

12. The short question before this Court is whether the compensation that has been awarded to the appellant ought to be enhanced or not.

13. It is well-settled that the amount of compensation awarded under the MV Act should be just and, to the extent possible, should fully and adequately restore the claimant to a position as existed prior to the accident. The object being to make good the loss suffered as a result of the accident in a fair, reasonable and equitable manner.

14. By its very nature, when a tribunal or court is tasked with determining the amount of compensation in accident cases, it inevitably involves a degree of estimation, hypothetical assessments, and a measure of compassion related to the severity of the disability



sustained. However, all these factors must be evaluated with objective standards.

15. Upon careful consideration of the rival submissions and a perusal of the impugned award, this Court finds merit in the appeal to a limited extent.

Functional Disability

16. Firstly, the appellant is essentially aggrieved by the computation of his functional disability as 35%. It is argued that the same should be assessed at 100% due to the amputation of his right leg below the knee, rendering him unfit for his previous vocation.

17. As per the disability certificate of the appellant on record, he has suffered 70% permanent disability where the condition is non – progressive as well as is not likely to improve in the future.

18. The Hon'ble Apex Court, in the case of ***Raj Kumar v. Ajay Kumar : (2011) 1 SCC 343***, had considered the effect of permanent disability on actual earning capacity. It was held that the Tribunal should first ascertain the activities the claimant was carrying on prior to the accident and the effect of the disability on the activities he is likely to carry on in future. The nature of work before the accident and also the age of the victim were held to be relevant factors.

19. In ***Raj Kumar v. Ajay Kumar (supra)*** the Hon'ble Apex Court gave an example that where the injured is a driver and suffers a permanent disability in the nature of amputation of his hand, the functional disability of the injured should be taken as loss of earning capacity at 100% of the permanent disability.



20. The learned counsel for the appellant contended that the appellant was working as a driver and was illiterate and due to his disability he was not able to find any form of employment.

21. It is stated that the appellant even finds it difficult to discharge his routine activities like using the washroom and is looked after by his family members. The Hon'ble Apex Court in *Jagdish v. Mohan* : (2018) 4 SCC 571, while discussing the seriousness of the disability in respect of the vocation of the injured, who is a carpenter, observed as under:

“14. In making the computation in the present case, the court must be mindful of the fact that the appellant has suffered a serious disability in which he has suffered a loss of the use of both his hands. For a person engaged in manual activities, it requires no stretch of imagination to understand that a loss of hands is a complete deprivation of the ability to earn. Nothing—at least in the facts of this case—can restore lost hands. But the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity.

15. The Tribunal has noted that the appellant is unable to even eat or to attend to a visit to the toilet without the assistance of an attendant. In this background, it would be a denial of justice to compute the disability at 90%. The disability is indeed total. Having regard to the age of the appellant, the Tribunal applied a multiplier of 18. In the circumstances, the compensation payable to the appellant on



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

(emphasis supplied)

22. This Court in ***Cholamandalam MS General Ins. Co. Ltd. v. Ram Kishan*** : 2018 SCC OnLine Del 10001, assessed the percentage of functional disability of the injured claimant even more than the permanent disability sustained by him. It was held as under:

“7. It has also come in the additional evidence of Dr. Adarsh Kumar that Injured is susceptible to frequent infection and he will frequently need medical consultation and due to the deformity appearing in the abdomen of the Injured, he is not likely to perform normal labour work. It is relevant to note that the Injured was a labourer and now due to this accident, he can only do desk job for which he is not qualified. It has also come in the additional evidence that there is a possibility of improvement of functional disability after the proposed surgery and Injured may not require the urine bag for his urine collection after the surgery. Although, the permanent disability of the Injured has now been re-assessed to be 27%, but in the face of additional evidence,



the functional disability suffered by the Injured due to this accident is assessed as 70%.”

(emphasis supplied)

23. The learned Tribunal assessed the appellant’s monthly income at ₹8,554/- per month, the minimum wage for an unskilled labour in Delhi.

24. It is observed by the learned Tribunal that the appellant prior to the accident was working as an unskilled labour and undeniably it can be safely presumed that he will not be in a position to secure the same job. Further he is not educated enough to get a well-meaning desk job, where he may be able to earn a decent amount. It is common knowledge that the employment condition in the city is not so favourable that a person with such disability may acquire a desk job. In such cases it can safely be said that the earning capacity of the appellant will be affected by 100% of the physical permanent disability. The functional disability of the appellant is therefore assessed at 70% for the purpose of determination of the future loss of income.

Medical Expenses

25. The learned Tribunal awarded a sum of ₹3,000/- towards medical expenses incurred by the appellant during treatment. The learned Tribunal has additionally awarded a sum of ₹7,00,000/- for the artificial limb. However, no compensation was awarded for future medical costs, including maintenance and replacements of the artificial limb.



26. The learned counsel for the appellant submits that as per the quotation of artificial limb which forms part of the Lower Court Record the appellant would have to bear a cost of ₹4,85,000/- each time he has to replace his artificial limb. Considering that the average lifespan of an artificial limb is six years, the appellant, at 27 years, will require multiple replacements and maintenance from time to time.

27. The Hon'ble Apex Court in the case of *Mohd. Sabeer v. U.P. SRTC* : 2022 SCC OnLine SC 1701, while determining the compensation payable towards prosthetic limb, held as under :

“COMPENSATION FOR THE PURCHASE AND MAINTENANCE OF THE PROSTHETIC LEG

22. The High Court has awarded a compensation of Rs. 5,20,000/- for the prosthetic limb and Rs. 50,000/- towards repair and maintenance of the same. The Appellant submits that the cost of the prosthetic limb itself is Rs. 2,60,000/- and the life of the prosthetic limb is only 5-6 years. The prosthetic limb also requires repair and maintenance after every 6 months to 1 year, and each repair costs between Rs. 15,000 to Rs. 20,000/-. This would mean that the prosthetic limb would last the Appellant for only 15 years under the current compensation. The Appellant at the time of the accident was aged 37 years and has a full life ahead. It has been clearly stated by this Court in the case of Anant Son of Sidheshwar Dukre (Supra) that the purpose of fair compensation is to restore the injured to the position he was in prior to the accident as best as possible. The relevant paragraph of the judgment is being extracted herein:

“In cases of motor accidents leading to injuries and disablements, it is a well settled principle that a person must not only be compensated for his physical injury, but also for the non-pecuniary losses which he has suffered due to the injury. The Claimant is entitled to be compensated for his inability to lead a full life and enjoy those things and amenities which he would have enjoyed, but for the injuries.”



“The purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident.”

23. As per the current compensation given for the prosthetic limb and its maintenance, it would last the Appellant for only 15 years, even if we were to assume that the limb would not need to be replaced after a few years. The Appellant was only 37 years at the time of the accident, and it would be reasonable to assume that he would live till he is 70 years old if not more. We are of the opinion that the Appellant must be compensated so that he is able to purchase three prosthetic limbs in his lifetime and is able to maintain the same at least till he has reached 70 years of age. For the Prosthetic limbs alone, the Appellant is to be awarded compensation of Rs.7,80,000 and for maintenance of the same he is to be awarded an additional Rs.5,00,000.”

28. In this regard, the learned Tribunal is directed to re-assess the cost of artificial limb to be granted to the petitioner, in terms of the judgement passed in ***Mohd. Shabeer @ Shabir Hussain v. Regional Manager, U.P. State Road Transport Corporation : 2022 SCC OnLine SC 1701***, with the total amount of Medical Expenses including Cost of Prosthetic Leg, maintenance, and repair charges.

Special Diet, Conveyance Charges and Attendant Charges

29. It is further observed that the learned Tribunal has awarded a sum of ₹5,000/- each under the heads of conveyance charges, special diet and attendant charges, the same requires consideration from this Court. This Court in ***Sumer v. National Ins Co. Ltd. : 2023 SCC OnLine Del 5533***, wherein the physical disability was assessed at 50%, enhanced the compensation towards the cost of attendant charges. The relevant portion of the said judgement is reproduced hereunder:



“33. The appellant challenges the Impugned Award in-so-far as it awards compensation of only Rs. 10,000/- to the appellant towards attendant charges.

34. The learned counsel for the appellant submits that looking into the nature of the injury suffered by the appellant, the appellant would require an attendant. He submits that the family members of the appellant are looking after the appellant, however, that cannot be a reason for denying the compensation to the appellant towards the attendant charges.

35. On the other hand, the learned counsel for the respondent no. 1 submits that, in fact, the appellant had not claimed any amount towards the attendant charges in the Claim Petition, nor had the same been proved. The appellant has also been granted Rs. 75,000/- for pain, suffering and trauma, and Rs. 50,000/- towards amenities. He submits that, therefore, there is no justification for enhancing the compensation payable towards the attendant charges.

36. I have considered the submissions made by the learned counsels for the parties.

37. Keeping in view the nature of injuries suffered by the appellant, it cannot be said that the appellant would require a permanent attendant. At the same time, he would certainly require some help on a regular basis, especially because of the amnesia suffered by him, as also because of hemiplegia suffered in his left upper and lower limb. **The compensation awarded to the appellant of only Rs. 10,000/- towards attendant charges, therefore, appears to be highly inadequate. Though, the appellant may be taking the services of his own family members, who may be performing the same gratuitously, compensation should still be awarded in favour of the appellant for the contribution made by the family members. Accordingly, the compensation on account of the attendant charges is enhanced to Rs. 2 lakhs.”**

(emphasis supplied)

30. In light of the observations made in *Sumer v. National Insurance Co. Ltd.* (*supra*), and keeping in view the specific facts and circumstances of the present case, this Court is of the opinion that



separate and enhanced compensation towards attendant charges is fully justified. The appellant has suffered 70% functional disability due to the amputation of his leg, which has significantly impaired his ability to perform daily activities independently. It is not unusual for family members to step in and provide necessary support in such situations. However, the fact that this assistance is offered gratuitously does not negate the claimant's entitlement to compensation under this head.

31. It is also noted that the appellant remained bedridden for several months following the accident, during which period constant care—whether provided by a hired attendant or a family member—would have been indispensable. The law does not differentiate between paid and unpaid caregiving when determining entitlement to compensation. Accordingly, the appellant is awarded a sum of ₹2,00,000/- under the head of attendant charges.

32. As regards the remaining components of ₹10,000/- awarded by the Tribunal under the combined head, this Court is of the opinion that the appellant had not produced any documentary evidence to lead his claim. Hence, the said amount is fair and reasonable towards conveyance charges and special diet. Hence, the award to that extent is affirmed.

Compensation for Pain and Suffering as well as Mental and Physical Shock

33. It is argued on behalf of the appellant the learned Tribunal without considering the severity of the injuries as suffered by the



appellant awarded a meagre sum under the head of pain and suffering and failed to award any sum towards mental and physical shock.

34. At this juncture, it is apposite to refer to the judgment in the case of *R.D. Hattangadi vs Pest control (India) Pvt. Ltd. & Ors* : (1995) 1 SCC 551, where the Hon'ble Apex Court has expounded on the pecuniary and non-pecuniary heads that can be awarded in cases of personal injury. The relevant portion of the judgment is reproduced hereunder:

*“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... 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.”*

(emphasis supplied)

35. In the opinion of this Court, no separate amount needs to be awarded towards mental and physical shock. Although the sum is awarded under the heading of “Pain and suffering”, the same encompasses the purpose of compensation for mental and physical shock as well.

36. Insofar as the quantum for pain and suffering is concerned, the Hon'ble Apex Court in *V. Mekala v. M. Malathi* : (2014) 11 SCC 178



while dealing with the similar issue awarded a sum of ₹2,00,000/- under the said head. The relevant paras of the judgement in *V. Mekala v. M. Malathi* (*supra*) are reproduced as under:

“21. The compensation under the head pain and suffering and mental agony was awarded by the High Court after recording concurrent findings with the award passed by the Tribunal. However, the courts below have not recorded the nature of the permanent disablement sustained by the appellant, while awarding Rs 1,00,000 under this head which is too meagre an amount and is contrary to the judgment of R.D. Hattangadi [R.D. Hattangadi v. Pest Control (India) (P) Ltd., (1995) 1 SCC 551 : 1995 SCC (Cri) 250] and Govind Yadav [Govind Yadav v. New India Insurance Co. Ltd., (2011) 10 SCC 683 : (2012) 3 SCC (Civ) 1082 : (2012) 1 SCC (Cri) 82 : (2012) 1 SCC (L&S) 422] cases. The relevant paragraphs of Govind Yadav case [Govind Yadav v. New India Insurance Co. Ltd., (2011) 10 SCC 683 : (2012) 3 SCC (Civ) 1082 : (2012) 1 SCC (Cri) 82 : (2012) 1 SCC (L&S) 422] read as under: (SCC p. 695, paras 25-26)

“25. The compensation awarded by the Tribunal for pain, suffering and trauma caused due to the amputation of leg was meagre. It is not in dispute that the appellant had remained in the hospital for a period of over three months. It is not possible for the tribunals and the courts to make a precise assessment of the pain and trauma suffered by a person whose limb is amputated as a result of accident. Even if the victim of accident gets artificial limb, he will suffer from different kinds of handicaps and social stigma throughout his life. Therefore, in all such cases, the tribunals and the courts should make a broad guess for the purpose of fixing the amount of compensation.

26. Admittedly, at the time of accident, the appellant was a young man of 24 years. For the remaining life, he will suffer the trauma of not being able to do his normal work. Therefore, we feel that ends of justice will be met by awarding him a sum of Rs 1,50,000 in lieu of pain, suffering and trauma caused due to the amputation of leg.”
Therefore, under this head the amount awarded should be enhanced to Rs 2,00,000 as the doctor PW 2 has opined that



at the time of walking with support of crutches, the appellant claimant will be suffering pain permanently. Therefore, under this head it has to be enhanced from Rs 1,00,000 to Rs 2,00,000.”

(emphasis supplied)

37. Undisputedly, the right leg of appellant was amputated due to the injury for which he was admitted in the hospital from 01.05.2014 to 06.05.2014. Therefore, in the opinion of this Court the learned Tribunal erred in awarding a lesser sum under the head of pain and suffering. In view of the observations made in the aforesaid judgment, the compensation of ₹1,00,000/- as claimed by the appellant is reasonable and is awarded. The impugned award is modified to that extent.

Loss of Amenities

38. It was contended by the learned counsel for the appellant that the learned Tribunal erred in awarding a lesser compensation towards loss of amenities and enjoyment of life.

39. This Court in ***Nandan Mukherjee v. Mohd. Rafiq* : 2024 SCC OnLine Del 9012** while granting compensation to a claimant whose leg was amputated in a motor accident, granted a sum of ₹2,00,000/- for loss of amenities. In the present case, compensation for ₹40,000/- has been awarded towards loss of amenities by the learned Tribunal. The relevant paragraphs in ***Nandan Mukherjee v. Mohd. Rafiq*** (*supra*) are reproduced hereunder:

“Special Diet and Conveyance Charges:—

35. In view of the nature of injury and period of treatment of about 6 months, the sum of Rs. 18,000/- granted for



compensation towards Special Diet and Conveyance charges, the amount is enhanced to Rs. 30,000/-, considering the nature of injury suffered.

Non-Pecuniary Heads:—

38. The Learned Tribunal has granted a total amount of Rs. 3,00,000/- i.e. Rs. 1,00,000/- each towards Pain and suffering, Loss of amenities of life & Loss of expectation of Life.

39. However, considering that the right leg of the injured was amputated, in light of *Mhd. Sabeer @ Shabir Hussain (Supra)*, the same is re-calculated as under:—

a) **Pain and Suffering = Rs. 2,00,000**

b) **Loss of Amenities of life = Rs. 2,00,000**

c) *Loss of Expectation of Life = Rs. 1,00,000/- (no change)*”

(emphasis supplied)

40. Looking at the nature of the injuries suffered by the appellant, he would have difficulty in leading his life, hence the learned Tribunal erred in awarding a meagre sum under the head of loss of amenities. In view of the observation of this Court in *Nandan Mukherjee v. Mohd. Rafiq (supra)* an amount of ₹1,00,000/- as claimed by the appellant is awarded. The impugned award is modified to that extent.

Disfigurement

41. Another grievance of the appellant is the grant of less compensation under the head of disfiguration. The Hon’ble Apex Court in the case of *Mohd. Shabeer @ Shabir Hussain v. Regional Manager, U.P. State Road Transport Corporation (supra)* awarded an amount of ₹2,00,000/- under the said head, taking into consideration



the appellant therein had suffered functional disability to a tune of 60% due to his amputation.

42. Therefore, in the view of the aforesaid judgment, the learned Tribunal erred in awarding a meagre compensation under the head of disfiguration. It cannot be overlooked that the appellant herein, in opinion of this Court, suffered 70% functional disability hence, the amount of ₹1,00,000/- as claimed by the appellant under the said head is reasonable and the impugned judgment is modified to this extent.

Miscellaneous Heads

43. A bald averment by the leaner counsel for the appellant that meagre compensation is awarded towards the other heads. In the opinion of this Court, the findings of the learned Tribunal are consistent with the legal position and evidentiary material on record. In the absence of any specific averment as to why a higher sum ought to be awarded, this Court finds no reason to interfere with the amounts awarded under the other heads.

Conclusion

44. Keeping in view the facts and circumstances of the case, the appeal is partly allowed. The matter is remanded back to the learned Tribunal for the limited purpose of re-determining the compensation by taking into consideration (i) award future loss of income while assessing the functional disability of the appellant as 70%, (ii) re-assess the cost of artificial limb in terms of para 27 of this judgment (iii) award a sum of ₹1,00,000/- as compensation towards pain and suffering (iv) award a sum of ₹1,00,000/- as compensation towards



loss of amenities, (v) award a sum of ₹2,00,000/- as compensation towards attendant charges, (vi) award a sum of ₹1,00,000/- as compensation towards disfigurement and finally compute the compensation of the appellant afresh.

45. The findings of the Tribunal on all other issues are affirmed and shall remain undisturbed.

46. The learned Tribunal shall undertake this re-computation expeditiously, preferably within a period of four weeks from the date of the first listing of the Claim Petition before the learned Tribunal on remand.

47. The parties shall appear before the learned Tribunal on 27.05.2025.

48. The compensation amount so determined, on remand, shall be released in favour of the appellant in accordance with the schedule of disbursement which will be stipulated by the learned Tribunal.

49. The present appeal is partly allowed in the aforesaid terms.

AMIT MAHAJAN, J

MAY 19, 2025