

Delhi High Court

Purshotam Dass vs New India Asso. Co. Ltd. & Ors. on 8 April, 2011

Author: J.R. Midha

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO No.280/1995

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Date of decision: 8th April, 2011

PURSHOTAM DASS

...Appellant

Through : Mr. Nitinjya Choudhary and
Ms. Sushma Sachdeva,
Advts.

versus

NEW INDIA ASSO. CO. LTD. & ORS. ...Respondents

Through : Mr. Kanwal Choudhary, Adv.

CORAM :-

THE HON'BLE MR. JUSTICE J.R. MIDHA

- | | | |
|----|---|-----|
| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

J.R. MIDHA, J. (Oral)

1. The appellant has challenged the Award of the Claims Tribunal whereby compensation of `1,55,000/- has been awarded to him. The appellant seeks enhancement of the award amount.

2. The accident dated 27th April, 1993 resulted in grievous injuries to the appellant. The appellant and his wife were travelling in bus No.DL-1P-2213. The appellant was standing near the front gate. The bus driver abruptly applied the brakes due to which the passengers standing in the bus including the appellant and his wife fell down. The appellant fell out of the front gate of the bus and his right foot was crushed under the wheels. The appellant suffered grievous injuries on the right foot, FAO.No.280/1995 Page 1 of 43 fracture on left femur, injury on knee, right hand, left shoulder and other injuries all over the body. The appellant was initially taken to Hindu Rao Hospital from where he was shifted to Batra Hospital. The appellant remained under treatment at Batra Hospital from 27th April, 1993 to 11th June, 1993. The right forefoot of the appellant was amputated and skin-grafting was done after healing of the wound.

3. The Claims Tribunal awarded a sum of `35,000/- towards the pain and suffering, `25,000/- towards loss of salary for five months, `35,000/- towards expenses on treatment, special diet and

conveyance, `30,000/- towards future prospects and enjoyment of life, `10,000/- towards expenses on future conveyance and `20,000/- towards miscellaneous expenses. The total compensation awarded is `1,55,000/-.

4. Learned counsel for the appellant urged the following grounds at the time of hearing of this appeal:-

- (i) Compensation for loss of earning capacity due to permanent disability be awarded;
- (ii) Compensation for pain and suffering be enhanced;
- (iii) Compensation towards conveyance be enhanced;
- (iv) Compensation for loss of amenities of life be enhanced; and
- (v) Compensation for engaging an attendant be awarded.

5. The appellant appeared in the witness box as PW-2 and his wife appeared in the witness box as PW-1 and they proved the rashness and negligence of the driver of the offending vehicle. FAO.No.280/1995 Page 2 of 43 The appellant proved the MLC - Ex.PW2/A prepared at Hindu Rao Hospital where he remained for 4-5 hours on 27th April, 1993. The appellant was, thereafter, taken to Batra Hospital where he remained for one and a half months up to 11th June, 1993 and the mid front portion of the right feet was amputated. A rod was inserted in the left leg which had got fractured and skin grafting was done there. The discharge summary of the Batra Hospital is Ex.PW2/2. The appellant could not sit, walk or stand after discharge from the hospital and remained on complete bed rest for a long time. The admission card of the Batra Hospital and the OPD card have been proved as Ex.PW2/3 to Ex.PW2/7. The appellant was again admitted in the hospital for removal of the rod by surgery from 4th November, 1993 to 9th November, 1993, the discharge summary in respect whereof is Ex.PW2/8. The disability of the appellant has been assessed as 60% vide Disability certificate-Ex.PW2/9. The appellant made 16 visits to the hospital incurring an expenditure of `400/- per visit. The appellant proved the salary certificate - Ex.PW2/10 and the leave of 150 days by leave certificate - Ex.PW2/11. The appellant claimed to have spent more than `1,00,000/- on diet, conveyance and medicine. The appellant also deposed that he could not travel by public transport and had to travel by three-wheeler or taxi for which he had spent `1,200/- per month. The appellant also spent `50/- to `60/- per day on special diet. The appellant's wife also took leave to look after her husband. The FIR and site plan were proved as Ex.PW2/17 and Ex.PW2/18. FAO.No.280/1995 Page 3 of 43

6. The appellant was aged 28 years at the time of the accident and was working as Machine Operator in the Research and Development Department with Engineers

India Ltd., drawing a salary of `3469.15. The appellant remained on leave till 22nd November, 1993 and was thereafter transferred to Administrative Department as he was unable to perform the duties of an Operator and was re-designated as Junior Assistant. The appellant's promotion was delayed on account of transfer to the Administrative Department. On 16th March, 2010, the Manager (HR), Engineers India Limited appeared before this Court and produced the personal file of the appellant and also proved the certificate - Ex.P-1 according to which the appellant could not perform the duties of the Operator due to 60% permanent disability after the accident and was, therefore, transferred to administrative department where he could get promotion on 1st January, 1996. The appellant got next promotions in 2001 and 2008. It was further certified that the employees in technical department get promotions faster than the administrative department and, therefore, the appellant could have got promotions earlier had he remained in the technical cadre.

7. The law with respect to the grant of compensation in injury cases is well-settled. The injured is entitled to pecuniary as well as non-pecuniary damages. Pecuniary damages also known as special damages are generally designed to make good the pecuniary loss which is capable of being calculated in terms of money whereas non-pecuniary damages are incapable of being assessed by arithmetical calculations. The pecuniary or special damages, generally include the expenses incurred by the claimants on his treatment, special diet, conveyance, cost of nursing/attending, loss of income, loss of earning capacity and other material loss, which may require any special treatment or aid to the insured for the rest of his life. The general damages or the non-pecuniary loss include the compensation for mental or physical shock, pain, suffering, loss of amenities of life, disfiguration, loss of marriage prospects, loss of expected or earning of life, inconvenience, hardship, disappointment, frustration, mental stress, dejection and unhappiness in future life, etc. The above list is not exhaustive and there may be special or additional circumstances depending on the facts in each case.

8. In the case of Raj Kumar v. Ajay Kumar & Anr., (2011) 1 SCC 343, the Hon'ble Supreme Court laid down the following general principles for computation of compensation in injury cases:-

"General principles relating to compensation in injury cases

4. The provision of the Motor Vehicles Act, 1988 ('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 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. Subramonia Iyer v. T. Kunhikuttan Nair - AIR 1970 SC 376, R. D.

Hattangadi v. Pest Control (India) Ltd. - 1995 (1) SCC 551 and Baker v. Willoughby - 1970 AC

467).

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

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, 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).

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(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. 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. Decision of this Court and 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."

9. In R.D. Hatangadi v. Pest Control (India) Pvt. Ltd., I (1995) ACC 281, the Hon'ble Supreme Court held that:-

"Broadly speaking, while fixing the amount of compensation payable to a victim of an accident the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas FAO.No.280/1995 Page 7 of 43 non-pecuniary damages are those which are capable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant; (i) medical attendance;

(ii) loss of earning of profit up to the date of trial;

(iii) other material loss. So far as 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. No amount of compensation can restore the physical frame of the

appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame.

In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards."

10. In the case of Common Cause, A Registered Society v. Union of India, AIR 1999 SC 376, the Hon'ble Supreme Court held that:-

"121. The object of an award of damages is to give the plaintiff compensation for damage, loss FAO.No.280/1995 Page 8 of 43 or injury he has suffered. The elements of damage recognized by law are divisible into two main groups: pecuniary and non-pecuniary loss is not so calculable. While the pecuniary loss is capable of being arithmetically worked out, the non-pecuniary loss is not so calculable. Non-pecuniary loss is compensated in terms of money, not as a substitute or replacement for other money, but as a substitute, what McGregor says, is generally more important than money: it is the best that a court can do.

11. In Nagappa v. Gurudayal Singh and Ors., AIR 2003 SC 674, the Hon'ble Supreme Court held that:-

"26. While calculating such damages, the Tribunal/court is required to have some guesswork taking into account the inflation factor. This aspect is well discussed by M.J. Rao, J. (as he then was) in P. Satyanarayana v.I. Babu Rajendra Prasad and Anr. 1988 ACJ 88. The learned Judge has given a Classification or Injuries: A Useful Guide and has observed thus:-

24. If a collection of cases on the quantum of damages is to be useful, it must necessarily be classified in such a way that comparable cases can be grouped together. No doubt, no two cases are alike but still, it is possible to make a broad classification which enables one to bring comparable awards together. Such classifications have been made by Bingham in his Motor Claims Cases, Munkman in his Employer's Liability and Kemp & Kemp in their Quantum of Damages. (Munkman

p.181).

26. (sic) Cases relating to injuries have been classified into four categories, i.e.: (a) total works; (b) partial wrecks and (c) where limbs and eyes and other specific parts of the body are lost, which can be sub-grouped according to the type of limb lost and (b) smaller injuries which cannot be specifically grouped but for which FAO.No.280/1995 Page 9 of 43 compensation can be assessed by comparison with injuries of loss of limbs, e.g., comparing permanent 'wrist injuries' with 'loss of hand', or comparing a temporary broken arm with the loss of the arm etc. Such comparisons are often made by judges. Munkman points out that in America, Mr. Melvin M. Belli, an eminent lawyer, classified injuries into 11 categories as (1) Back; (2) Traumatic amputation of leg; (3) Paralysis; (4) Hand or arm off; (5) Death; (6) Multiple fractures; (7) Burns; (8) Personality change; (9) Blindness; (10) Brain injury and (11) Occupation diseases. By 1967, awards (say) for blindness had risen to 930,000 dollars (Munkman pp. 181-

182). Today after 20 years, these awards must have gone up further. The 'total wreck' category comprises of cases of complete incapacity for work and virtually no enjoyment of life, e.g., paralysis, severe brain injury causing insanity, multiple injuries leaving the victim a total cripple. The 'partial wreck' cases are also cases where the entire body is affected and not one set of limbs alone as in the third category. Cases of brain injuries resulting in a personality change and multiple injuries with grave disfigurement fall in this second category. The third category does not present much difficulty for sub-

classification. The fourth category deals with minor injuries in a limb which be compared with major injuries in the same limb.

12. In case of a permanent disability, percentage of permanent disability is determined on the basis of the disability certificate issued by the Medical Board constituted by the competent authority. The permanent disability also results in functional disability and the loss of earning capacity is determined on the basis of the loss of functional disability. In the case of Raj Kumar FAO.No.280/1995 Page 10 of 43 v. Ajay Kumar & Anr. (supra), the Hon'ble Supreme Court laid down the following principles for assessment of future loss of earnings due to permanent disability:-

"Assessment of future loss of earnings due to permanent disability

6. 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 accidents 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 ('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.

7. The percentage of permanent disability is expressed by the Doctors with reference to the FAO.No.280/1995 Page 11 of 43 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%.

8. 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, 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. What FAO.No.280/1995 Page 12 of 43 requires to be assessed by the Tribunal is the effect of the permanently 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 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) SCALE 298 and Yadava Kumar v.D.M., National Insurance Co. Ltd. - 2010 (8) SCALE 567).

9. 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 FAO.No.280/1995 Page 13 of 43 to determine whether such permanent disability has affected or will affect his earning capacity.

10. 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 ability (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. 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 percent, 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.

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Sometimes the injured claimant may be continued in service, but may not 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. 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.

11. 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 Referencer for evaluation of permanent physical impairment (for example, the Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons, prepared by American Academy of Orthopedic Surgeons or its Indian equivalent or other authorized texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep FAO.No.280/1995 Page 15 of 43 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. 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.

12. 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 giving 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 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 FAO.No.280/1995 Page 16 of 43 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.

13. 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 percentage of loss of earning capacity is the same as 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 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.

14. The assessment of loss of future earnings is explained below with reference to the following illustrations:-

Illustration 'A': The injured, a workman, was aged 30 years and earning Rs.3000/- per month at the FAO.No.280/1995 Page 17 of 43 time of accident. As per Doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows:

- a) Annual income before the accident : Rs.36,000/-.
- b) Loss of future earning per annum : Rs. 5400/- (15% of the prior annual income)
- c) Multiplier applicable with reference : 17 to age
- d) Loss of future earnings (5400 x 17) : Rs. 91,800/-

Illustration 'B': The injured was a driver aged 30 years, earning Rs.3000/- per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows:

- a) Annual income prior to the accident : R. s.36,000/-
- b) Loss of future earning per annum : R. s.27,000/- (75% of the prior annual income)
- c) Multiplier applicable with reference : 17 to age
- d) Loss of future earnings : (27000 x 17) : Rs. 4,59,000/-

Illustration 'C': The injured was 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning FAO.No.280/1995 Page 18 of 43 capacity was also assessed as 70%. The calculation of compensation will be as follows:

a) Minimum annual income he would : Rs.60,000/- have got if had been employed as an Engineer

b) Loss of future earning per annum : Rs.42,000/- (70% of the expected annual income) Multiplier applicable (25 years)

c) Multiplier applicable (25 years) : 18

d) Loss of future earnings:(42000 x 18) : Rs.7,65,000/-

[Note : The figures adopted in illustrations (A) and (B) are hypothetical. The figures in Illustration (C), however, are based on actuals taken from the decision in Arvind Kumar Mishra (supra)].

15. After the insertion of section 163A in the Act (with effect from 14.11.1994), if a claim for compensation is made under that section by an injured alleging disability, and if the quantum of loss of future earning claimed, falls under the second schedule to the Act, the Tribunal may have to apply the following principles laid down in Note (5) of the Second Schedule to the Act to determine compensation:

"5. Disability in non-fatal accidents :

The following compensation shall be payable in case of disability to the victim arising out of non- fatal accidents:-

Loss of income, if any, for actual period of disablement not exceeding fifty two weeks.

PLUS either of the following :-

(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation, or

(b) In case of permanent partial disablement such percentage of compensation which would FAO.No.280/1995 Page 19 of 43 have been payable in the case of permanent total disablement as specified under item (a) above.

Injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923."

16. We may in this context refer to the difficulties faced by claimants in securing the presence of busy Surgeons or treating Doctors who treated them, for giving evidence. Most of them are reluctant to appear before Tribunals for obvious reasons either because their entire day is likely to be wasted in attending the Tribunal to give evidence in a single case or because they are not shown any priority in recording evidence or because the claim petition is filed at a place far away from the place where the treatment was given. Many a time, the claimants are reluctant to take coercive steps for summoning the Doctors who treated them, out of respect and gratitude towards them or for fear that if forced to come against their wishes, they may give evidence which may not be very favorable. This forces the injured claimants to approach 'professional' certificate givers whose evidence most of the time is found to be not satisfactory. Tribunals should realize that a busy Surgeon may be able to save ten lives or perform twenty surgeries in the time he spends to attend the Tribunal to give evidence in one accident case. Many busy Surgeons refuse to treat medico-legal cases out of apprehension that their practice and their current patients will suffer, if they have to spend their days in Tribunals giving evidence about past patients. The solution does not lie in coercing the Doctors to attend the Tribunal to give evidence. The solution lies in recognizing the valuable time of Doctors and accommodating them. Firstly, efforts should be made to record the evidence of the treating Doctors on commission, after ascertaining their convenient timings. Secondly, if the Doctors attend the Tribunal for giving evidence, their evidence may be recorded without delay, ensuring that they are not required to wait. Thirdly, the Doctors may be given specific time for attending the Tribunal for giving evidence instead of requiring them to come at 10.30 A.M. or 11.00 A.M. and wait in the Court Hall. Fourthly, in cases where the certificates are not contested by the respondents, they may be marked by consent, thereby dispensing with the oral evidence. These small measures as also any other suitable steps taken to ensure the availability of expert evidence, will ensure assessment of just compensation and will go a long way in demonstrating that Courts/Tribunals show concern for litigants and witnesses.

Assessment of compensation

17. In this case, the Tribunal acted on the disability certificate, but the High Court had reservations about its acceptability as it found that the injured had been treated in the Government Hospital in Delhi whereas the disability certificate was issued by a District Hospital in the State of Uttar Pradesh. The reason given by the High Court for rejection may

not be sound for two reasons. Firstly though the accident occurred in Delhi and the injured claimant was treated in a Delhi Hospital after the accident, as he hailed from Chirori Mandi in the neighbouring District of Ghaziabad in Uttar Pradesh, situated on the outskirts of Delhi, he might have continued the treatment in the place where he resided. Secondly the certificate has been issued by the Chief Medical Officer, Ghaziabad, on the assessment made by the Medical Board which also consisted of an Orthopaedic Surgeon. We are therefore of the view that the High Court ought not to have rejected the said disability certificate.

18. The Tribunal has proceeded on the basis that the permanent disability of the injured claimant was 45% and the loss of his future earning capacity was also 45%. The Tribunal overlooked FAO.No.280/1995 Page 21 of 43 the fact that the disability certificate referred to 45% disability with reference to left lower limb and not in regard to the entire body. The said extent of permanent disability of the limb could not be considered to be the functional disability of the body nor could it be assumed to result in a corresponding extent of loss of earning capacity, as the disability would not have prevented him from carrying on his avocation as a cheese vendor, though it might impede in his smooth functioning. Normally, the absence of clear and sufficient evidence would have necessitated remand of the case for further evidence on this aspect. However, instead of remanding the matter for a finding on this issue, at this distance of time after nearly two decades, on the facts and circumstances, to do complete justice, we propose to assess the permanent functional disability of the body as 25% and the loss of future earning capacity as 20%.

19. The evidence showed that at the time of the accident, the appellant was aged around 25 years and was eking his livelihood as a cheese vendor. He claimed that he was earning a sum of Rs.3000/- per month. The Tribunal held that as there was no acceptable evidence of income of the appellant, it should be assessed at Rs.900/- per month as the minimum wage was Rs.891 per month. It would be very difficult to expect a roadside vendor to have accounts or other documents regarding income. As the accident occurred in the year 1991, the Tribunal ought to have assumed the income as at least Rs.1500/- per month (at the rate of Rs.50/- per day) or Rs.18,000/- per annum, even in the absence of specific documentary evidence regarding income.

20. In the case of an injured claimant with a disability, what is calculated is the future loss of earning of the claimant, payable to

claimant, (as contrasted from loss of dependency calculated in a fatal accident, where the dependent family members of the deceased are the claimants). Therefore there is no need to deduct one-third or FAO.No.280/1995 Page 22 of 43 any other percentage from out of the income, towards the personal and living expenses.

21. As the income of the appellant is assessed at Rs.18000/- per annum, the loss of earning due to functional disability would be 20% of Rs.18000/- which is Rs.3600/- per annum. As the age of appellant at the time of accident was 25, the multiplier applicable would be 18. Therefore, the loss of future earnings would be $3600 \times 18 =$ Rs.64,800/- (as against Rs.55,080/- determined by the Tribunal). We are also of the view that the loss of earning during the period of treatment (1.10.1991 to 16.6.1992) should be Rs.12750/- at the rate of Rs.1500/- for eight and half months instead of Rs.3600/- determined by the Tribunal. The increase under the two heads is rounded off to Rs.20,000/-.

13. In the case of Arvind Kumar Mishra v. New India Assurance Co. Ltd., 2010 (10) SCALE 298, the accident resulted 70% permanent disablement. The Hon'ble Supreme Court held the functional disability to be 70%. The loss of earning capacity was computed according to the multiplier method. The Hon'ble Supreme Court held as under:-

"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 in so far 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. In some cases for personal injury, the claim could be in respect of life time'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 FAO.No.280/1995 Page 23 of 43 reasonable sum. The conventional basis of assessing compensation in personal injury cases

- and that is now recognized mode as to the proper measure of compensation - is taking an appropriate multiplier of an appropriate multiplicand."

14. In *Madan Lal Papneja v. State of Haryana & Ors.*, (2011) 161 PLR 61, the Punjab & Haryana High Court held as under:-

"VII. Disability assessment, as per government guidelines

8. In all cases resulting in grievous injuries that include fractures that further result in disablement, temporary or permanent, there is a practice to simply accept whatever the doctor assesses. There is hardly ever any cross examination in the disability assessment to the doctor, except a suggestion that his assessment is high. It is important to know how the assessment is made and what the percentage of disability signifies. In order to review the guidelines for evaluation of various disabilities and procedure for certification and to recommend appropriate modification/alterations, a committee was set up in 1988 by the Government of India, Ministry of Social Justice & Empowerment under the Chairmanship, DGHS, GOI with subcommittee, one each in the area of Mental Retardation, Locomotor/ Orthopaedic, Visual and Speech & Hearing disability. After considering the reports of committee, keeping in view the provisions of Persons with Disabilities (Equal opportunities Protection of rights and Full participation) Act 1995, guidelines for evaluation of following disabilities and procedure for certification was notified vide no. 13, June 2001 for:

1. Visual Impairment

2. Locomotor /Orthopedic Disability

3. Speech and Hearing Disability

4. Mental Retardation

5. Multiple Disabilities FAO.No.280/1995 Page 24 of 43

9. In the guidelines, the functional (permanent physical impairment or PPI) due to congenital, post disease or trauma have been evaluated. This is commonly interpreted as disability which is not so, in strict terms. In case of loco motor conditions, broadly, the body has been divided into upper limb, lower limb & trunk. In principle, the function of one part cannot be replaced by other, therefore each functional part in itself is 100% and thus loss of function/ PPI of that part is taken as 100%. On the other hand, the whole body value cannot exceed 100%. Thus in case the impairment is seen in more than one function or body

part, the mathematical sum may exceed 100 but total of body/individual cannot exceed 100%. Thus a total of one or all segments of body cannot exceed 100% in any situation.

10. The guidelines shall be applied for determining the % of disability. If a doctor or a medical board makes an assessment there shall be no mistake in accepting the same, prima facie. However, if the assessment is doubted, it is necessary to cross- verify with the mode of assessment prescribed under the guidelines [The method of computation is meant only to provide a theoretical basis for an inquisitive judge/lawyer/litigant]. Broadly, it necessary to know that the injury to upper limb is assessed thus:

a) Upper limb assessment

Upper Limb

Arm Component

			(i) Prehens	
(i) Loss of motion	(ii) Muscle Strength	(iii) Co-ordinated activities		Assessm
			(i)	0
			(ii)	0
			(iii)	L
			(iv)	h
			(v)	C
				S
				H

11. (i) The value of maximum range of motion (ROM) in the arm component is 90%. Each of the three joints of the arm (shoulder, elbow and wrist) is weighed equally, i.e., 30% or 0.30. This could be understood through an illustration. A fracture of the right shoulder may affect ROM so that active abduction (abduct is to draw away from the medial FAO.No.280/1995 Page 25 of 43 line of the body) is reduced to say, 90. It is possible to take the arm thrown downwards from alongside the leg to touch the ear by abducting it to 180. The relative loss is 50% of its efficacy, but in terms of the arm component, the % of loss shall be $50 \times 0.30 = 15\%$ loss of motion for the arm component. If more than one joint is involved, the same method is applied and the losses in each of the affected joints are added. If the loss of abduction of the shoulder is 60, loss of extension of wrist (as

opposed to bending, extending means straightening. Medically, they are referred respectively as palmar flexion and dorsi flexion) is 400, then the loss of range of motion for the arm is $(60 \times 0.30) + (40 \times 0.30) = 30\%$.

ii) The strength of muscles could be tested by manual testing like 0-5 grading.

0.- 100% (complete paralysis)

1.- 80% (flicker of contraction only)

2.- 60% (power detected when gravity is excluded, i.e., when the arm moves sideways and not upwards against gravity)

3.- 40% (movement against force of gravity but not against examiner's resistance)

4.- 20% (minimal weakness)

5.- 0% (normal strength) The mean percentage of muscle strength loss is multiplied by 0.30. If there has been a loss of muscle strength of more than one joint, the values are added as has been described for loss of ROM.

(iii) Principles of evaluation of co-ordinated activities shall be:

a. The total value for co-ordinate activities is 90% b. Each activity has value of 9%

(iv) Combining the values for the arm component:

The value of loss of function of arm component is obtained by combining the values of ROM, muscle strength and co-ordinated activities, using the following formula:

$a + b(90 - a)$, where 'a' will be the higher score 90 and 'b' will be the lower score.

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12. The total value of hand component is 90%.

i) The principles of evaluation of prehension include:

a). Opposition (8%) tested against index finger (2%), middle finger (2%), ring finger (2%) and little finger (2%).

b). Lateral pinch (5%) tested by asking the patient to hold a key.

c). Cylindrical grasp (6%) tested for (a) large object 4" size (3%) and small object 1" size (3%)

d). Spherical grasp (6%) tested for (a) large object 4" size (3%) and small object 1" size (3%) e.) Hook grasp (5%) tested by asking the patient to lift a bag.

ii) Principles of evaluation of sensations:

Total value of sensation is 30%. It includes, 1. Radial side of thumb (4.8%, that is the outer side), 2. Ulnar side of thumb (1.2%, that is the inner side), 3. radial side of each finger (4.8%) and 4. Ulnar side of each finger (1.2%). Total value of strength is 30%. It includes, 1. Grip strength (20%), 2. Pinch strength (10%). 10% additional weightage is to be given to the following factors viz., 1. Infection; 2. Deformity;

3. Mal-alignment; 4. Contractures; 5. Abnormal mobility (when a person has a wobbly hand, for example); 6. Dominant extremity (4%), i.e., depending on the lack of strength.

iii) Combining value of the hand component shall mean the final value or loss of function of hand component obtained by summing up of loss of prehension, sensation and strength.

iv) Applying the formula mentioned in the preceding paragraph, the % of disability for the combined arm and hand components could be calculated. If the impairment of the arm is say 27% and impairment of the hand is 64%, the combined value is:

$$27(90-64) \div 64 = 71.8\%$$
where 64 is the higher value and 27 is the lower value.

b) Lower limb assessment FAO.No.280/1995 Page 27 of 43

13. The lower extremity is divided into mobility component and stability component. Mobility component includes range of movement and muscle strength. To put it graphically, Lower Limb |



(i) The value of maximum ROM in the mobility component is 90%. Each of the 3 joints, i.e., hip, knee, foot-ankle is weighed equally at 30% or 0.30. For example, a fracture of the right hip affects range of motion, so that active abduction is 270 against the abduction of 540 found for the left hip. There is a 50% relative loss of abduction. The % of loss of mobility component is $50 \times 0.30 = 15\%$. If more than one joint is involved, the same method as applied above is applied and the losses in each of the affected joints are added. For example, if the loss of abduction of the hip is 60% and loss of extension is 40%, the loss of ROM for mobility component is $(60 \times 0.30) + (40 \times 0.30) = 30\%$

(ii) Principles of evaluation of muscle strength consists of: (1) Taking the value for muscle strength in the leg to be 90% and (2) Taking the strength of muscle tested by manual testing like 0 to 5 grading:

Grade 0 - 100% Grade 1 - 80% Grade 2 60% Grade 3 40% Grade 4 20% Grade 5 0% FAO.No.280/1995 Page 28 of 43 The mean % of muscle strength loss is first multiplied by 0.30. If there has been a loss of muscle strength of more than one joint, the values are added as described for ROM.

(iii) Combining values of mobility component. Suppose an individual has a fracture of the right hip joint and has in addition to 16% loss of motion, 8% loss of strength muscles, combining the values, the disability is:

$$8(90-16) 16 \text{-----} = 22.6\% 90$$

(iv) Principle of evaluating the stability component consists of taking the total value as 90% and tested on a scale method and clinical method.

c) Traumatic and non-traumatic lesions

14. Cervical spine fractures are assessed on the basis of evaluation of vertebral compressions, fragmentation, involvement of posterior

elements, nerve root involvement of posterior elements and moderate neck rigidity. They are assessed by X ray examination and treated surgically. Cervical inter- vertebral disc disorders, thoracic and dorso-lumbar spine fractures resulting in acute pain, paraplegia, vertebral compression resulting in severe pain, neurogenic low back disc injuries resulting in severe pain are assessed on a scale of 0 to 100%. Without the accompaniment of any compression, fractures or lesions, there could be persistent muscle spasm, stiffness of spine with mild, moderate to severe radiological changes are assessed in the range of 0 to 30% .

VIII. Efficacy of disability of assessment

a) Assessment of compensation for pain.

15. In the manner of assessment of pain and suffering, the disability assessed will be a good guide to know how the particular injury affects performance in the work place and elsewhere. Head injury or spinal injury are sometimes regressive and lead to further complications like epilepsy, numbness, acute pain and spasms. There is a need to know the real sufferer from a malingerer. Expert's evidence through a doctor will help the tribunal in determining the appropriate response to prayer for compensation.

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b) Translating disability into loss of earning power

16. All injuries and assessments of disability do not impact the earning capacity [Orissa State Road Transport Corporation v. Bhanu Prakash Joshi-(1994) 1 ACC 467 (Ori); New India Insurance Company Ltd v. Rajauna-(1996) 1 TAC 149 (Kant); Balaiah (T.) v. Abdul Majeed-AIR 1994 AP 354]; nor in a similar way. The disability has to be seen in the context of the particular occupation or calling that the victim is engaged in. For instance, a mal-union of fracture in the lower limb and stiffness at the knee for a professional driver of motor vehicle may completely make him unfit to be a driver. In Oriental Insurance Company Limited v. Koti Koti Reddy-2000(2) LLJ 552 (AP), the injuries caused to the claimant were on the forehead and right leg, particularly at joint and foot. The permanent disability was assessed at 30% by the doctor and due to calcanean fracture, it was in evidence that he could not work as driver. The WC Commissioner assessed the loss of earning capacity as 100% and the HC upheld the assessment. A deformity of the hand could affect a carpenter differently than how it

may be irrelevant for, say, a telephone operator. In Pratap Narain Singh Deo v. Srinvas Sabata- AIR 1976 SC 222, an amputation of the arm of a carpenter was taken to result in 100% loss of earning capacity; In Sadasihiv Krishan Adke v. M/s Time Traders- 1992(1) LLJ 877, a coolie lost his leg. The injury to his leg resulted in his walking with crutches and the Court assessed the loss of earning capacity to be 100%. The attempt at the trial shall always be to elicit how the particular percentage of disability has affected the job that the person was doing and if not suitable for the same job, to what other type of employment that he or she is fit for, in the changed circumstances and what is likely to be the loss of income. With the passing of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, a person may continue in the same employment, notwithstanding such disability, the ascertainment of loss of earning capacity will still be relevant to know the employability of the person in open market with the particular disability. The continuance of employment despite the injury may not itself dis-entitle the person from claiming compensation. Posing the question what such injury results, the Madras High Court said in The Management of Sree Lalithambika Enterprises, Salem v. S. Kailasam- 1 988 (1) LLJ 63 that the employer may continue an injured person in employment and deny that any loss of earning capacity has resulted in spite FAO.No.280/1995 Page 30 of 43 of privation of an organ. This, the court said, could not be supported and cannot be the intendment of the WC Act . To the same effect, see Executive Engineer, PWD, Udaipur v. Narain Lal-(1977) 2 LLN 415, 1977 LIC 1827 (Raj). It must be noticed both the Workmenâs Compensation Act and the MV Act use the expression loss of earning capacity differently from disability per se and without making reference to the claimantâs evidence and the expert opinion of a doctor, it will be arbitrary to simply take the % of disability as % of loss of earning capacity. If a Tribunal assesses compensation at a fixed sum for every %of disability, it will result in overlapping of claims if assessment of loss of earning capacity is independently assessed. There are certain recent decisions of the Supreme Court itself [Arvind Kumar Mishra v. New India Assurance Co Ltd and another C.A.No.5510 of 2005 dated Sep.29, 2010; Yadav Kumar v. The Divisional Manager, National Insurance Co. Ltd & another C.A.No.7223 of 2010, dated Aug.31, 2010], where the % of disability assessed has been taken as synonymous with % of loss of earning power, but it must be assumed that the court took the value of % of disability to be the same as % of earning power, having regard to the special facts and circumstances. When the loss of earning power and compensation are determined, it is not necessary to make any deduction for personal expenses, as we do, for determining

dependency for claimants in fatal accidents. The reason is obvious; the claimant is alive to receive the whole loss of income in injury cases and this principle has also been recognized in Oriental Insurance Co Ltd. v. Ram Prasad-(2009) 2 SCC 712.

IX. Future medical expenses

17. The question of providing for future medical expenses was specifically dealt with by the Supreme Court in Nagappa v. Gurudayal Singh - AIR 2003 SC 674, (2003) 2 SCC 274 when it observed that the MV Act does not provide for further award after a final award is passed. Therefore in a case where injury to a victim requires periodical medical expenses, fresh award cannot be passed or previous award cannot be reviewed, when medical expenses are incurred after finalization of the award. Hence, the only alternative is that at the time of passing of final award, the Tribunal should consider such eventuality and determine compensation accordingly. It is most desirable that the Tribunal elicits from the doctor himself if a future medical treatment shall be necessary and the likely expenses."

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15. Assessment of General Damages is a vexed question. It is really difficult to assess the exact amount of compensation, which would be equivalent to the pain, suffering and the loss suffered by the claimant. It can never be full compensation, but it must be fair and just. No amount of money can restore the physical frame of the claimant, yet the Courts have to make an effort to assess the compensation, which may provide relief to the injured. The general damages are "so far as money can compensate" meaning thereby that it is impossible to equate money with human suffering or personal deprivation. The money awarded can be calculated so as to make good a financial loss.

Money may be awarded so that something tangible may be procured to replace something else of like nature, which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that Judges and Courts can do is to award sums which must be regarded as giving reasonable compensation. In the process, there must be the endeavour to secure some uniformity in the general method of approach. It is, therefore, eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. The general damages awarded in the case of injuries are therefore to a considerable extent conventional.

16. The principles for computation of general damages laid down in *Ward v. James*, (1995) ALL.ER 563 are as under:-

"(1) The award should be moderate, just and fair and it should not be oppressive to the respondent;

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(2) The award should not be punitive, exemplary and extravagant; and
(3) So far as possible similar cases must be decided similarly. The community of public at large may not carry the grievance of discrimination."

17. Principles of uniformity and predictability are very important. There should be some measure of uniformity in awards, so that similar decisions may be given in similar cases otherwise there will be great dissatisfaction in the community and much criticism of the administration of justice. Secondly, the parties should be able to predict with some measure of accuracy the sum, which is likely to be awarded in a particular case. For, by this means, the cases can be settled peacefully, a thing very much to the public good.

18. In *Oriental Insurance Company Ltd. v. V.S. Vijay Kumar Mittal*, 2008 ACJ 1300, this Court discussed the principles relating to the award of non-pecuniary compensation towards pain and suffering, loss of amenities of life and disfigurement. This Court examined all the previous judgments with respect to the non-pecuniary compensation awarded in the case of permanent disability and held that the courts have awarded about `3,00,000/- under the heads of non-pecuniary damages for permanent disability of 50% and above. The findings of this Court are as under:-

"10. The possession of one's own body is the first and most valuable of all human rights and while awarding compensation for bodily injuries this primary element is to be kept in mind. Bodily injury is to be treated as a deprivation which entitles a claimant to damages. The amount of FAO.No.280/1995 Page 33 of 43 damages varies on account of gravity of bodily injury. Though it is impossible to equate money with human suffering, agony and personal deprivation, the Court and Tribunal should make an honest and serious attempt to award damages so far as money can compensate the loss. Regard must be given to the gravity and degree of deprivation as well as the degree of awareness of the deprivation. Damages awarded in personal injury cases must be substantial and not token damages.

11. The general principle which should govern the assessment of damages in personal injury cases is that the Court should award to

injured person such a sum as will put him in the same position as he would have been in if he had not sustained the injuries.

12. 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 non pecuniary damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money. Whereas, non pecuniary damages are those which are incapable of being assessed by arithmetical calculations.

13. Pecuniary loss may include the following:

- (i) Special damages or pre-trial pecuniary loss.
- (ii) Prospective loss of earnings and profits.
- (iii) Medicinal expenses.
- (iv) Cost of future care and other expenses.

14. Non pecuniary loss may include the following:

- (i) Pain and suffering.
- (ii) Damages for mental and physical shock.
- (iii) Loss of amenities of life which may include a variety of matters i.e. on account of injury the injured may not be able to walk, run or sit etc.
- (iv) Loss of expectation of life i.e. on account of injury normal longevity of the life of the person concerned is shortened.

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- (v) Disfigurement.
- (vi) Discomfort or inconvenience, hardship,

disappointment, frustration and mental stress in life.

XXXXX

18. In order to properly appreciate the contentions advanced by the learned counsel for the appellant, I note the following judgments:-

- (i) B.N.Kumar vs. D.T.C., 118 (2005) DLT 36.

In said case, injured sustained crush injuries on his right leg leading to its amputation above knee in a road accident on 5th November 1987. He suffered a permanent disability of 85%. Noting various judgments wherein Courts had awarded Rs.3,00,000/- under the head non-pecuniary damages, a Single Judge of this Court awarded Rs.75,000/- for 'pain and suffering' and Rs.2,00,000/- for 'continuing disability suffered by him'. Thus, a total of Rs.2,75,000/- was awarded under this head.

(ii) Fakkirappa vs. Yallowwa & Anr., 2004 ACJ 141 In said case, a minor male child sustained grievous injury in a road accident which occurred on 8.5.2000 resulting in amputation of his left leg below knee. Considering the gravity of injury suffered the injured, Division Bench of Karnataka High Court awarded following compensation under the head 'non-pecuniary damages':-

(i) Pain and suffering : Rs.50,000/-

(ii) Loss of amenities of life : Rs.1,00,000/-

(iii) Loss of marriage prospects : Rs.50,000/-

(iv) Damages for amputation of : Rs. 1,50,000/-

leg before knee

(v) Loss of expectation of life : Rs.50,000/-

_____ Total : Rs.4,00,000/-

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(iii) K. Shankar v. Pallavan Transport Corporation, 2001 ACJ 488 In said case, injured sustained serious injuries on his right leg in an accident on 14.2.1989. His right leg was amputated and he suffered permanent disability of 80%. A learned Single Judge of Madras High Court awarded the following compensation under the head 'non-pecuniary damages'.

(i) For permanent disability : Rs. 80,000/-

(ii) Pain and suffering : Rs. 50,000/-

(iii) Loss of expectation of life and proper marital : Rs. 50,000/-
alliance

(iv) For mental agony : Rs. 1,00,000/-

_____ Total : Rs. 2,80,000/-

(iv) M. Jaganathan v. Pallavan Transport Corporation, 1999 ACJ 366
In said case, injured aged 45 years sustained injuries in an accident on
21.6.1990. The injury sustained by the injured resulted in the
amputation of his left leg above the knee. Division Bench of Madras
High Court awarded following compensation under the head 'non
pecuniary damages':-

(i) Pain and suffering : Rs. 1,00,000/-

(ii) Compensation for continuing : Rs. 2,00,000/-

Permanent disability

(iii) Mental agony, torture and : Rs. 75,000/-

Humiliation because of Amputation _____ Total :
Rs.3,75,000/-

(v) Bhagwan Singh Meena v. Jai Kishan Tiwari, 1999 ACJ 1200 In said
case, the injured sustained severe and serious injuries on account of
the road accident. His right leg was amputated. A learned Single Judge
of Rajasthan High Court awarded a FAO.No.280/1995 Page 36 of 43
compensation of Rs.3,00,000/- under the head non-pecuniary
damages.

(vi) Dr. Gop Ramchandani v. Onkar Singh & Ors., 1993 ACJ 577 In
said case, in an accident which had occurred on 17.12.1985, injured
sustained injuries because of which his left leg was amputated
resulting in 50% permanent disability. A Single Judge of Rajasthan
High Court awarded a compensation of Rs.3,00,000/- under the head
'non pecuniary damages'. Break-up of the compensation under the
said head is as under:-

(i) Physical and mental agony : Rs.1,00,000/-

(ii) Permanent disability : Rs.1,00,000/-

(iii) Loss of social life and loss : Rs.1,00,000/-

in profession

Total : Rs.3,00,000/-

(vii) Jitendra Singh v. Islam, 1998 ACJ 1301 In said case, in an accident which had occurred on 14.02.1992, injured sustained injuries because of which his left leg was amputated resulting in 55% permanent disability. A Single Judge of Rajasthan High Court awarded a compensation of Rs.3,00,000/- under the head 'non pecuniary damages'.

(viii) Iranna v. Mohammadali Khadarsab Mulla & Anr. 2004 ACJ 1396 In said case, on 19.4.2000, injured aged 7 years met with an accident. Due to the said accident, he sustained grievous injuries resulting in amputation of his left leg below knee. Tribunal awarded following compensation to him under the head 'non pecuniary damages':-

(i) Pain and suffering : Rs.50,000/-

(ii) Loss of amenities, happiness, : Rs.1,00,000/-

frustration

(iii) Loss of marriage prospects : Rs.50,000/-

(iv) Amputation of leg below knee : Rs.1,50,000/-

and knee dis-articulation _____

FAO.No.280/1995 Page 37 of 43 Total : Rs.3,50,000/-

_____ From the afore noted judicial decisions, a trend which emerges is that between the years 1985 to 1990, Courts have been awarding about Rs.3,00,000/- under the head 'non pecuniary damages' for amputation of leg resulting in permanent disability of 50% and above."

19. To sum up, in accident claims relating to injuries, the victim is entitled to pecuniary as well as non-pecuniary damages. The pecuniary damages such as expenditure on treatment, special diet, conveyance, attendant, loss of income etc. are based on documentary evidence produced by the claimant. The non-pecuniary damages such as pain and suffering, loss of amenities of life, disfiguration and matrimonial prospects are conventional and depend upon the nature of injuries suffered and are based on comparable awards to maintain uniformity and predictability. In cases of permanent disablement, the claimant is also entitled to loss of earning capacity. The permanent disability is assessed on the basis of the certificate issued by the medical board. Every permanent disability does not result in loss of earning capacity. The loss of earning capacity is determined according to the principles laid down by the Hon'ble Supreme Court in the case of Raj Kumar (supra).

20. In the present case, the appellant has suffered 60% disability due to amputation on right foot and restriction of movement of left knee as per the Ex.PW-2/9. The functional disability of the appellant has to be determined before awarding the compensation for loss of earning capacity according to the FAO.No.280/1995 Page 38 of 43 principles laid down by the Honâ ble Supreme Court in the case of Raj Kumar (supra). The present condition of the appellant was examined by this Court on 25th March, 2011. The front mid portion of the right foot of the appellant has been amputated and a steel rod is inserted in left leg and skin grafting has been done due to which the left lower leg of the appellant has been disfigured. The appellant walks with the help of a stick. The permanent disability of the appellant is 60% as per the disability certificate, Ex.PW-2/9. The appellant was working as Machine Operator with Engineers India Ltd. at the time of the accident. As per the Certificate, Ex.P-1 of Engineers India Ltd., the appellant could not perform the duties of Operator after accident and was therefore transferred to the Administrative Department and re-designated as Junior Assistant. As such, there was no loss of earning capacity to the appellant at that point of time. However, the promotions of the appellant were delayed on account of transfer to the Administrative Department. As per the Certificate, Ex.P-1, the appellant could have got promotions earlier, had he remained in technical department. However, the Certificate does not specify the period of delay. In that view of the matter, it would not be possible to ascertain the exact amount of loss under this head. However, considering that the appellant has in fact suffered loss due to delay of promotions, a lump sum amount of `50,000/- is awarded to the appellant for loss of income due to delayed promotions.

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21. The Claims Tribunal has awarded a sum of `35,000/- to the appellant towards pain and suffering and `30,000/- towards future prospects and loss of amenities of life. Following the judgments of the Honâ ble Supreme Court and this Court and taking into account 60% permanent disability suffered by the appellant relating to amputation of right foot restricting movement with 60 degrees, the compensation for

pain and suffering is enhanced from `35,000/- to `75,000/- and the compensation for loss of amenities of life and disfiguration is also enhanced from `30,000/- to `75,000/-.

22. The Claims Tribunal has awarded a sum of `10,000/- towards future conveyance. Considering that the appellant has suffered 60% permanent disability due to amputation of right foot and restriction of movement of left knee and is unable to travel by public transport and, therefore, has to incur regular expenditure on conveyance, the amount awarded by the Claims Tribunal is inadequate. The compensation for conveyance is enhanced from `10,000/- to `50,000/- on the basis that the said amount would remain in fixed deposit and interest thereon should be sufficient to meet the future medical expenses. The Appellant is also seeking compensation for engaging an attendant. Noting that the Claims Tribunal has awarded `20,000/- towards the miscellaneous expenses which would include the expenditure for engaging an attendant, no further compensation is warranted under this head. FAO.No.280/1995 Page 40 of 43

23. The appellant shall be entitled to compensation of `3,30,000/- as per the break-up given hereunder:-

(i) Compensation for pain and : `75,000 suffering

(ii) Compensation for loss of : `75,000/-

amenities of life and
disfiguration

(iii) Compensation for expenses : `35,000/-
incurred on treatment, special
diet and conveyance

(iv) Compensation for loss of salary : `25,000/-
for five months

(v) Compensation for loss of income : `50,000/-
due to delayed promotions

(vi) Compensation towards future : `50,000/-
conveyance

(vii) Other miscellaneous expenses : `20,000/-

including expenses for engaging attendant Total : `3,30,000/-

24. The appeal is according allowed and compensation is enhanced from `1,55,000 to `3,30,000/-. The Claims Tribunal has awarded interest at the rate of 12% per annum

which is not disturbed on the original award amount of `1,55,000/-. However, on the enhanced award amount, rate of interest shall be 7.5% from the date of filing of the claim till realization. Enhanced award amount along with up to date interest be deposited by the Respondent No.1 with UCO Bank, Delhi High Court Branch.

25. Upon the aforesaid amount being deposited, the UCO Bank is directed to release 10% of the same to the appellant by transferring the same to the Saving Bank Account of the FAO.No.280/1995 Page 41 of 43 appellant. The remaining amount be kept in fixed deposit in the name of the appellant in the following manner:-

- (i) Fixed deposit in respect of 10% for a period of one year.
- (ii) Fixed deposit in respect of 10% for a period of two years.
- (iii) Fixed deposit in respect of 10% for a period of three years.
- (iv) Fixed deposit in respect of 10% for a period of four years.
- (v) Fixed deposit in respect of 10% for a period of five years.
- (vi) Fixed deposit in respect of 10% for a period of six years.
- (vii) Fixed deposit in respect of 10% for a period of seven years.
- (viii) Fixed deposit in respect of 10% for a period of eight years.
- (ix) Fixed deposit in respect of 10% for a period of nine years.

26. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of the appellant.

27. Withdrawal from the aforesaid account shall be permitted to the appellant after due verification and the Bank shall issue photo Identity Card to the appellant to facilitate identity.
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28. No cheque book be issued to the appellant without the permission of this Court.

29. The Bank shall issue Fixed Deposit Pass Book instead of the FDRs to the appellant and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the expiry of the period of the FDRs.

30. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

31. Half yearly statement of account be filed by the Bank in this Court.
32. On the request of the appellant, Bank shall transfer the Savings Account to any other branch according to the convenience of the appellant.
33. The appellant shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400).
34. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.
35. Copy of this order be also sent to Mr. M.M. Tandon, Member- Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) under the signature of Court Master.

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