



**IN THE HIGH COURT OF ANDHRA PRADESH, AMARAVATI**

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**M.A.C.M.A.Nos.2434 OF 2007 AND 1380 of 2009**

**M.A.C.M.A.No.2434 OF 2007**

**Between:**

Nandana Sudhakar, S/o.Satyanarayana,  
Hindu, Aged 36 years, Cleaner of the Van bearing No.AP 30/T  
5704, R/o.Palakonda Town & Mandal, Srikakulam District.  
... Appellant

**And**

1. N.Sankara Rao, S/o.Satyanarayana, Hindu,  
Aged 44 years, Owner of the Van bearing No.AP 30/T  
5704, R/o.Palakonda Town & Mandal, Srikakulam  
District.
2. The United India Insurance Company Limited,  
Represented by its Divisional Manager,  
G.T.Road, Opposite Suryamahal, Srikakulam.  
... Respondents

**M.A.C.M.A.No.1380 OF 2009**

**Between:**

The United India Insurance Company Limited,  
Represented by its Divisional Manager,  
G.T.Road, Opposite Suryamahal,  
Srikakulam Town, Mandal & District.

... Appellant

**And**

1. Nandana Sudhakar, S/o.Satyanarayana,  
Hindu, Aged 36 years, Cleaner of the Van bearing No.AP  
30/T 5704, Residing at Komatipeta, Palakonda Town &  
Mandal, Srikakulam District.
2. N.Sankara Rao, S/o.Satyanarayana, Hindu,  
Aged 44 years, Owner of the Van bearing No.AP 30/T  
5704, Residing at Komatipeta, Palakonda Town & Mandal,  
Srikakulam District. ... Respondents

DATE OF JUDGMENT PRONOUNCED: **15.06.2023**

**SUBMITTED FOR APPROVAL:****THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters / Journals? Yes/No
3. Whether His Lordship wish to see the fair copy of the Judgment? Yes/No

**DUPPALA VENKATA RAMANA, J**



**\* THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**  
**+ M.A.C.M.A.Nos.2434 of 2007 AND 1380 of 2009**

**% 15.06.2023**

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 5704, Residing at Komatipeta, Palakonda Town & Mandal,  
 Srikakulam District.  
 ... Respondents



**! Counsel for Appellant in  
MACMA No.2434 of 2007 : Sri Aravala Ramarao  
Counsel for 1<sup>st</sup> Respondent in  
MACMA No.1380 of 2009**

**^ Counsel for Appellant in  
MACMA No.1380 of 2009 :  
Counsel for 2<sup>nd</sup> Respondent in  
MACMA No.2434 of 2007 : Sri V.Veerabhadrachari**

**< Gist:**

**> Head Note:**

**? Cases referred:**

1. (2011) 13 SCC 236
2. 2014 (2) SCC 735
3. 2020 SCC Online Ker 3180
4. (1965) 1 All ER 563
5. (2013) 8 SCC 389
6. (2011) 1 SCC 343
7. (2012) 8 SCC 604
8. (2009) 6 SCC 121
9. (2003) 2 SCC 274

This Court made the following:



**THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

**M.A.C.M.A.Nos.2434 of 2007 AND 1380 of 2009**

**COMMON JUDGMENT:**

Both the appeals, one by petitioner/claimant in M.A.C.M.A.No.2434 of 2007 and another by United India Insurance Company in M.A.C.M.A.No.1380 of 2009 have been filed against the judgment and award dated 02.07.2007 delivered by the Motor Accidents Claims Tribunal-cum-II Additional District Judge (Fast Track Court), Srikakulam (for short "the Tribunal") in M.V.O.P.No.113 of 2003 granting compensation of Rs.3,49,668/- with interest @ 7.5% per annum thereon from the date of petition till realization against both the respondents jointly and severally.

2. Since these appeals are arising out of the same accident and raising common questions of law, they have been heard together and are being decided by this common judgment.

3 For the sake of convenience, the parties are hereinafter referred to as they are arrayed before the Tribunal in the claim petition.

4. The factual context of the case, is as under:

(a) On 02.11.2000 at about 7.00 p.m., the injured travelling in a Van bearing No.AP 30 T 5704 to discharge his duties as a



cleaner to go to Palakonda and when they reached near 69 km stone on Palakonda and Rajam Road, at about 9.00 p.m., the driver of the Van drove the same in a rash and negligent manner, without observing traffic Rules and without giving any signals to the other vehicles and dashed against the RTC Bus bearing No.AP 10 Z 3127, which was coming in the opposite direction, due to which, the said Van turned turtle and the cleaner(injured) and others, who were travelling in the said Van, sustained multiple grievous injuries. The injured sustained multiple grievous injuries on his both the legs, hands, head and on other parts of the body. Immediately, the injured was taken to Government Hospital, Palakonda for first aid and on the same day, he was shifted to CDR Hospital, Visakhapatnam, and got admitted in the hospital as an inpatient.

(b) Later, the matter was reported to the Police by the driver of the RTC Bus bearing No.AP 10 Z 3127 alleging that the accident took place as a result of the rash and negligent driving of the Van driven by its driver. Based on the report lodged by the driver of the RTC Bus, a case in Crime No.74 of 2000 of Palakonda Police Station was registered for the offence under Sections 337 and 338 IPC and FIR was issued and after investigation of the case, charge sheet was submitted to the Court by the Police



against the accused-driver, for having committed the offence punishable under Sections 337 and 338 IPC.

(c) The injured-N.Sudhakar filed an application claiming compensation of Rs.5,00,000/-, before the Tribunal on account of the injuries sustained by him in the said road accident.

(d) The 1<sup>st</sup> respondent did not contest the matter.

(e) The 2<sup>nd</sup> respondent/Insurance Company filed a written statement denying the allegations made in the petition especially the manner of accident, nature of injuries, mode and period of treatment, the medical and other expenses, and permanent disability and the petitioner is put to strict proof of the same. It is further averred that the accident occurred due to the contributory negligence on the part of the driver of the RTC bus bearing No.AP 10 Z 3127. It is further averred that there is no negligence on the part of the driver of the Van bearing No.AP 30 T 5704, while denying the validity of the driving licence and the insurance policy that was in force at the time of accident and prayed for dismissal of the petition.

(f) In view of the pleadings of the parties, the Tribunal framed the following issues:

- (1) Whether the accident occurred involving the Van bearing No.AP 30/T 5703, due to the rash and negligent driving of the said Van by its driver?



- (2) Whether the petitioner sustained any disability and, if so, to what extent?
- (3) Whether the petitioner is entitled to any compensation and, if so, to what amount and from whom?
- (4) To what relief?

(g) In order to establish his claim, at the time of enquiry, P.Ws.1 and 2 were examined and Exs.A.1 to A.12 and Ex.X.1 were got marked on behalf of the claimant/petitioner. No oral evidence was adduced on behalf of the respondents, but Ex.B.1 was marked.

(h) On appreciation of the evidence of P.Ws.1 and 2 and placing reliance on Exs.A.1 to A.12 i.e., Certified Copies of FIR, M.V.I Report, Wound Certificate and Charge sheet, and Medical Prescriptions, Medical reports, Discharge Sheet, Medical Bills, Physical Handicap Certificate, Xerox copy of SSC Certificate and X-ray films respectively and Ex.X.1 case sheet of the petitioner and Ex.B.1- Copy of insurance policy, the learned Tribunal was of the view that, in the instant case, the accident occurred due to the rash and negligent driving of the driver of the Van bearing No. AP 30 T 5704 and passed an award granting compensation of Rs.3,49,668/- with interest @ 7.5% per annum, and with proportionate costs against the 1<sup>st</sup> and 2<sup>nd</sup> respondents from the





date of the claim petition till the date of realization. The breakup details of the compensation awarded by the Tribunal, are tabulated hereunder:

<b>S.No.</b>	<b>Heads of compensation</b>	<b>Amount of compensation awarded in Rs.</b>
1	Pain & Suffering	30,000/-
2	Disability	2,04,000/-
3	Transport Charges	7,800/-
4	Attendant Charges	6,440/-
5	Medical Expenses	77,150/-
6	Cost of Medicines	22,278/-
7	Extra Nourishment	3,000/-
	<b>Total</b>	<b>Rs.3,50,668/-</b>

(i) But the Tribunal committed an error while calculating the amount awarded under the above heads as Rs.3,49,668/- instead of Rs.3,50,668/-.

(j) Aggrieved by, and dissatisfied with the said award passed by the learned Tribunal, the petitioner/claimant preferred the appeal in M.A.C.M.A.No.2434 of 2007 seeking enhancement of compensation.

(k) Having dissatisfied with the award, M/s.United India Insurance Company Limited preferred the appeal in M.A.C.M.A.No.1380 of 2009 on the ground that the learned Tribunal erred in fixing the liability and computing the compensation, contrary to the principles laid down in the Hon'ble Apex Court's judgments.



5. During the course of arguments, the learned counsel for the petitioner/claimant would submit that, considering the evidence on record, the Tribunal ought to have awarded higher compensation. He would further submit that the claimant has preferred the instant appeal on the ground that the findings recorded by the Tribunal are illegal and not sustainable in the eye of law and the same suffer from the error apparent on the face of the record. Further, he would submit that the claimant would have got more compensation than the awarded amount and the amount of compensation awarded by the Tribunal is not justified and called for interference of this Court.

6. Learned Standing Counsel for M/s.United India Insurance Company argued that, the compensation awarded by the Tribunal is high and excessive and there is no scope for further enhancement. It is further contended that in the Disability Certificate issued by the Medical Board it is specifically stated that the said Disability Certificate is not valid for judicial purpose and issued for travelling purpose as mentioned in Column No.6(b) in Ex.A.10. Therefore, the alleged disability sustained by the injured cannot be taken into consideration and for the purpose of claiming compensation he might have produced the same. It is further contended that Ex.B.1 covers



the risk of the third parties, but not the owner of the vehicle or his close relations, who travelled in the vehicle at the time of the accident. Further, he would submit that the learned Tribunal committed an error in awarding compensation against the 2<sup>nd</sup> respondent/Insurance Company without exonerating from its liability. Therefore, he prays that MACMA No.2434 of 2007 filed by the petitioner/claimant is liable to be dismissed.

7. In the light of the above rival arguments, the point for consideration in these appeals is:

*Whether the compensation awarded by the Tribunal is just and reasonable in the facts and circumstances of the case, or requires enhancement?*

POINT:

8. Considered the submissions of the learned counsels, perused and assessed the entire evidence on record including the exhibited documents. A perusal of the impugned award would show that the Tribunal has framed the Issue No.1 as to whether the accident occurred involving the Van bearing No.AP 30/T 5703, due to the rash and negligent driving of the said Van by its driver, to which the Tribunal after considering the evidence of P.W.1 coupled with Exs.A.1 to A.4 gave a finding in Para No.12 of the award that the accident occurred due to the



rash and negligent driving of the Van by its driver but not otherwise as contended by the 2<sup>nd</sup> respondent. Therefore, I see no reason to interfere with the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the offending vehicle bearing No.AP 30 T 5704.

9. The Tribunal further observed that the offending vehicle was covered with Ex.B.1/insurance policy and it was in force at the time of the accident, which is evident from Ex.A.2/M.V.I Report at Column No.15. Ex.B.1 shows that the policy was in force from the midnight of 08.10.2000 to 07.10.2001. Therefore, the offending vehicle was covered with the Insurance Policy by the date of accident.

10. The Tribunal while assessing the compensation payable to the claimant, took into consideration of his earnings @ Rs.2,000/- per month as a Cleaner as on the date of the accident. Further, the Tribunal observed that there is no documentary evidence to show that the injured was drawing a salary of Rs.3,000/- per month as a Cleaner on the date of the accident. Therefore, the Tribunal has taken the income of the injured as Rs.2,000/- per month.

11. At this juncture, this Court is of the view that the injured can be treated either as a Cleaner or a labour and his monthly



income, as on the date of the accident has to be taken into consideration as per the decision of the Hon'ble Apex Court in ***Ramachandrappa Vs. Manager, Royal Sundaram Alliance Insurance Company Limited***,<sup>1</sup> wherein, at Para Nos.13 & 15, it was held as follows:

*"13. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a Coolie and was earning `4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of `3000/- only on the assumption that wages of the labourer during the relevant period viz., in the year 2004, was `100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of `3000/- per month. Secondly, the appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.*

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*15. In the present case, appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between `100/- to 150/- per day or `4500/- per month. In our view, the claim was honest and*

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<sup>1</sup> (2011) 13 SCC 236



*bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from `4500/- to `3000/- per month. We, therefore, accept his statement that his monthly earning was `4500/”.*

12. From the above decision it is crystal clear that the accident occurred in the year 2004 and the wage of the labour was between Rs.100/- to Rs.150/- per a day or Rs.3,000/- to Rs.4,500/- per month.

13. In the instant case, the accident occurred on 02.11.2000. The claimant claimed his monthly income as Rs.3,000/- as a Cleaner. In the absence of documentary evidence, it may be presumed that the injured might have drawn wages of Rs.100/- per a day, which is reasonable. In a similar situation, where the accident occurred in the year 2004, the Hon’ble Apex Court in the case of *Ramachandrappa (supra)* has fixed the monthly income at Rs.4,500/- and in the subsequent decision of the Hon’ble Apex Court, wherein the accident occurred on 14.02.2008 in **Syed Sadiq & Others Vs. Divisional Manager, United India Insurance Company Limited,**<sup>2</sup> their lordships observed, at Para No.9, as follows:

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<sup>2</sup> 2014 (2) SCC 735



*“9. There is no reason, in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the appellant/claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning 6,500/- per month.”*

14. Following the above two decisions, in another decision reported in **Soman Vs. Jinesh James**<sup>3</sup> wherein Kerala High Court, at Para No.5, held as follows:

*“5. The Tribunal assessed the income of the appellant, who asserted to be a coolie, at Rs.3000/- in the year 2010. A coolie was fixed with a notional income of Rs.4,500/- per month in the year 2004, in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited [(2011) 13 SCC 236]. The Hon'ble Supreme Court has also recognized the principle that there would be incremental enhancement in the case of even self-employed individuals in the un-organized sector ([National Insurance Co. Ltd. vs. Pranay Sethi](#) (2017) 16 SCC 680) and with respect to an unspecified job of a coolie considering the increase in cost of living and economic advancements over the years, it can be safely assumed that even a coolie would be eligible for incremental addition of at least Rs.500/- in every subsequent year. In such circumstances, the appellant who is a coolie, is entitled to be fixed with a notional income of Rs.7500/- as on the year of accident, which is 2010.....”*

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<sup>3</sup> 2020 SCC Online Ker 3180



15. Taking into consideration of the above three judgments, this Court is of the view that the wages of the appellant/injured as a Cleaner, in and around the date of the accident, was minimum of Rs.100/- per a day. Therefore, following the parameters laid down by the Hon'ble Supreme Court in the aforesaid decisions, this Court is of the considered opinion that the petitioner/claimant, who claimed himself to be a Cleaner and the accident having occurred in the year 2000, the claimant's notional income can safely be refixed at Rs.3,000/- per month, which is just and reasonable and there is no reason for the Tribunal to have reduced the monthly earning of the petitioner from Rs.3,000/- to Rs.2,000/- per month.

16. It is a well settled principle that while determining the compensation payable to petitioner/claimant in the claim filed under the Motor Vehicles Act, 1988, this Court referred to the judgment of the Court of Appeal in **Ward Vs. James**<sup>4</sup> Halsbury's Laws of England, 4<sup>th</sup> Edition, Volume 12 (Page 446) wherein, it was held as follows:

*“When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he*

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<sup>4</sup> (1965) 1 All ER 563





*has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration”.*

17. Further, it is relevant to refer to the judgment of the Hon’ble Apex Court in **Rekha Jain Vs. National Insurance Co. Ltd.**,<sup>5</sup> wherein it was held as follows:

*“It is well settled principle that in granting compensation for personal injury, injured has to be compensated (1) for pain and suffering (2) for loss of amenities, (3) shortened expectation of life, if any, (4) loss of earnings or loss of earning capacity or in some cases for both, and (5) medical treatment and other special damages”.*

18. If the above two judgments are read together, the intention of the Hon’ble Apex Court though under different contexts, is crystal clear that the impugned award passed by the learned Tribunal is not just and reasonable, which becomes law of the land.

19. In the present case of nature, the injured sustained 50% disability as per the Disability Certificate issued by the Medical Board, dated 22.12.2003, and P.W.2 (Doctor), who treated the injured, deposed that the patient had the fracture of right femur

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<sup>5</sup> (2013) 8 SCC 389



(thigh bone) and fracture to right knee joint. He further deposed that on 03.11.2000 the patient was admitted in CDR Hospital, Visakhapatnam, and he was discharged on 30.11.2000. The patient was operated and fixation of nail was made to the thigh bone. At the time of discharge, the patient was advised two months bed rest. Patient again admitted for removal of nail. He further deposed that another Doctor issued Physically Handicapped Certificate/Ex.A.10 describing 50% disability and he concurred with the said finding and assessed the value of the disability, as the patient could not bend his knee. All the prescriptions shown to him are true. Ex.A.10 would show that the disability of the injured was assessed at 50%. In view of the evidence of P.W.2, the learned Tribunal had considered the disability at 50% while evaluating the future earnings. But, the Tribunal committed an error while evaluating the future earnings with monthly earnings of the injured at Rs.2,000/-. Therefore, the award passed by the learned Tribunal needs to be modified under the head of loss of earning capacity by following the judgment of Hon'ble Apex Court in **Raj Kumar Vs. Ajay Kumar**<sup>6</sup>.

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<sup>6</sup> (2011) 1 SCC 343



20. In the present case of nature, the claimant is a Cleaner travelling along with the driver of the vehicle sitting in the offending vehicle and he may not have the better prospect and should be entitled to better amenities in his life. The Tribunal had failed to consider proper income of the claimant and has not awarded just and reasonable compensation under different conventional heads. It would be proper to reconsider the quantum of compensation by taking the income of the injured at Rs.3,000/- per month at the time of the incident. The compensation awarded by the learned Tribunal is meager and the claimant is entitled to more compensation in view of the evidence adduced, which was not properly appreciated by the Claims Tribunal. Though an amount of Rs.3,000/- was claimed by the petitioner/claimant as his monthly income, the Claims Tribunal had erroneously fixed the income of the injured at Rs.2,000/- per month. It would be appropriate to reconsider the quantum by taking the monthly income of the injured at Rs.3,000/- at the time of the accident.

21. However, it may be appropriate to mention here, while laying down the legal position with regard to awarding compensation under the Motor Vehicles Act, the case of **Kavita**



**Vs. Deepak and Others**<sup>7</sup> wherein, the Hon'ble Apex Court relied on the judgment in the case of *Raj Kumar (supra)*, to award compensation. At this juncture, it is relevant to refer to *Raj Kumar's* case (*supra*) wherein, at Para Nos.4, 5 & 9, it was held as follows:

*"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 Vs. T.Kunhikuttan Nair – AIR 1970 SC 376, R.D.Hattangadi Vs. Pest Control (India) Ltd. – 1995 (1) SCC 551 and Baker Vs. Willoughby – 1970 AC 467)*

5. *The heads under which the compensation need to be awarded in personal injury cases as under:*

*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.*

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<sup>7</sup> (2012) 8 SCC 604



Non-pecuniary damages (General damages):

- (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
- (v) Loss of amenities (and / or loss of prospects of marriage)
- (vi) Loss of expectation of life (shortening of normal longevity)

*In routine personal injury cases, compensation will be awarded only under heads (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and item (ii)(a) do not pose much difficulty as they involve reimbursement of actual 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. Assessment of future loss of earnings due to permanent disability.*

- 6. ....
- 7. ....
- 8. ....

*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 to determine whether such permanent disability has affected or will affect his earning capacity.”*

22. In the present case of nature, the Tribunal committed an error in applying the multiplier ‘17’ instead of ‘16’ contrary to the guidelines laid down in **Sarla Verma Vs. Delhi Transport Corporation**<sup>8</sup>, wherein, it was held at Para-21, as under:

*“21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, **M-16 for 31 to 35 years**, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”*

23. Having failed to consider the same, the Claims Tribunal committed an illegality in awarding a meager amount of compensation payable to the claimant by following the decisions rendered by the Hon’ble Apex Court stated *supra*.

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<sup>8</sup> (2009) 6 SCC 121



24. The Tribunal erred in awarding compensation under various conventional heads. As per the decision in *Raj Kumar* case (*supra*), loss of future earnings has to be assessed and the loss of earning capacity has to be assessed on the basis of evidence. The claimant, who is a Cleaner and in and around the date of the accident, the wage of the Cleaner/labourer was between Rs.100/- to Rs.150/- per day or Rs.3,000/- to Rs.4,500/- per month. In my view, the claim was honest and bonafide, and therefore, there was no reason for the Tribunal to have reduced the monthly earnings of the appellant/injured from Rs.3,000/- to Rs.2,000/-. Therefore, it would be proper to reconsider the quantum by taking the income of the injured at Rs.3,000/- per month, at the time of the incident. The Tribunal has failed to consider the appropriate income of the claimant and did not award just and reasonable compensation under different heads. As such, it would be appropriate to reconsider the quantum by taking a sum of Rs.3,000/- per month as income of the injured at the time of the accident.

25. Considering the Disability Certificate issued by the Medical Board in this case, assessing the loss of earning capacity of the injured at 50%, would be just and reasonable. Thus, the calculation of compensation towards loss of future earnings, as



per the judgment of the Hon'ble Supreme Court of India in *Raj*

*Kumar's* case will be as follows:

- |  |      |               |
|--|------|---------------|
| a) Annual income before the accident                                     | .... | Rs.36,000/-   |
| b) Loss of future earnings per annum<br>(50% of the prior annual income) | .... | Rs. 18,000/-  |
| c) Multiplier applicable with reference<br>to age                        | .... | 16            |
| d) Loss of future earnings (18,000 x 16)                                 | .... | Rs.2,88,000/- |

26. But, the Tribunal has awarded Rs.2,04,000/- towards loss of future earnings. Therefore, the appellant/claimant is entitled to an amount of **Rs.2,88,000/-** towards loss of future earnings.

27. The Tribunal an amount of Rs.99,428/-(Rs.77,150 + 22,278/-) awarded towards medical expenses and cost of medicines. A perusal of the medical prescriptions under Ex.A.5, on counting, comes to Rs.2,34,532/-. The petitioner/claimant is entitled to an amount of Rs.2,34,532/- against Rs.99,428/-. Therefore, the compensation under the head of medical expenses and cost of medicines is enhanced from Rs.99,428/- to **Rs.2,34,532/-**.

28. The Tribunal ought to have awarded compensation towards loss of amenities as the person who is suffering permanent disability at 50% cannot lead a normal life. P.W.2 (Doctor), who treated him, stated that the patient could not bend





his knee and Ex.A.10 describes 50% disability. The compensation is only the means to grant some support for the loss he suffered with which he is expected to live for the rest of his life. Therefore, this Court is of the view that **Rs.1,00,000/-** has to be awarded towards the loss of amenities of life.

29. Further, the Tribunal has not awarded any amount towards loss of earnings for the period of treatment. The accident occurred on 02.11.2000 and he was admitted in CDR Hospital, Visakhapatnam, on 03.11.2000 and he was discharged on 30.11.2000. Further P.W.2 stated that the patient was advised 2 months bed rest. Further, one more month in and around he requires rest. Altogether, for four months, he lost his earnings. By taking into consideration the evidence, the loss of earnings for four months (120 days) as stated above, would come to Rs.12,000/- (Rs.3,000 x 4 = Rs.12,000/-). As such, the petitioner/claimant is entitled to an amount of **Rs.12,000/-** under the head of loss of earnings.

30. Apart from that, the amount under another conventional head i.e., Attendant Charges needs to be awarded to the injured. But, the Tribunal awarded an amount of Rs.6,440/- towards attendant charges, which is a meager amount. Since the injured was hospitalized for one month and was advised to take rest for



three months, as stated by P.W.2 (Doctor), at least one attendant has to be attended the injured even to lift him from the bed for other purposes. As such, the attendant may also loss his earnings for the period of treatment and bed rest. Therefore, the petitioner/claimant is entitled to an amount of Rs.12,000/- (Rs.3,000 x 4) towards attendant charges. Hence, an amount of **Rs.12,000/-** towards attendant charges deserves to be granted to the claimant.

31. The Tribunal awarded Rs.3,000/- towards extra nourishment and an amount of Rs.7,800/- towards transportation, which are very meagre. This Court is of the view that **Rs.25,000/-** is sufficient for transportation, and an amount of **Rs.25,000/-** needs to be awarded towards extra nourishment.

32. Though the Tribunal has awarded compensation of Rs.30,000/- towards pain and suffering, it needs to be enhanced to Rs.1,50,000/- as the injured was operated and nail was fixed in his thigh bone and kirshner wire (the steel wire like thread) was used for fixing of knee joint. Therefore, the sufferance of injured cannot be compensated in terms of money. Therefore, the compensation under the head of pain and suffering is enhanced from Rs.30,000/- to **Rs.1,50,000/-**.



33. In *Sarla Verma's* case (supra) the Hon'ble Apex Court, while elaborating the concept of 'just compensation' observed as under:

*"Just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit."*

34. Hence, keeping in view the disability of the claimant/injured, this Court is of the view that the award granted by the learned Tribunal is modified, recalculated and is computed herein below:

<b>S.No</b>	<b>Name of the Head</b>	<b>Enhanced/Reduced by this Court in Rs.</b>
1	Loss of future earnings	2,88,000/-
2	Medical Expenses & Cost of Medicines	2,34,532/-
3	Loss of amenities	1,00,000/-
4	Loss of earnings during the period of treatment & rest	12,000/-
5	Transportation	25,000/-
6	Attendant Charges	12,000/-
7	Extra Nourishment	25,000/-
8	Pain & Suffering	1,50,000/-
<b>Total</b>		<b>8,46,532/-</b>
(-) Compensation awarded By the Tribunal		3,49,668/-
Enhanced amount		4,96,864/-



35. As per the decision of the Hon'ble Supreme Court of India in the case of ***Nagappa Vs. Gurudayal Singh and others***<sup>9</sup>, under the provisions of the Motor Vehicles Act, 1988, there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record, if Tribunal /Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. In an appropriate case where from the evidence brought on record if Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. There is no embargo to award compensation more than that claimed by the claimant. Rather it is obligatory for the Tribunal and Court to award "just compensation", even if it is in the excess of the amount claimed. The Tribunals are expected to make an award by determining the amount of compensation which should appear to be just and proper. In the present case, the compensation as awarded by the Claims Tribunal, against the background of the facts and circumstances of the case, is not just and reasonable and the claimant is entitled to more

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<sup>9</sup> (2003) 2 SCC 274



compensation though he might not have claimed the same at the time of filing of the claim petition.

36. Therefore, in view of the foregoing discussion, this court is of the opinion that the award passed by the Tribunal warrants interference by enhancing the compensation from Rs.3,49,668/- to Rs.8,46,532/-.

37. Consequently, M.A.C.M.A.No.1380 of 2009 preferred by M/s.United India Insurance Company Limited, is hereby dismissed. Whereas, the another M.A.C.M.A.No.2434 of 2007 preferred by the petitioner/claimant is hereby allowed with costs enhancing the compensation from Rs.3,49,668/- to Rs.8,46,532/- with interest @ 7.5% per annum from the date of the petition till realization against 1<sup>st</sup> & 2<sup>nd</sup> respondents(insured and insurer) jointly and severally.

(ii) The respondents (insured and insurer) are directed to deposit the compensation amount within two months from the date of this judgment, failing which execution can be taken out against them.

(iii) The appellant/claimant shall pay the requisite Court-fee in respect of the enhanced amount awarded over and above the compensation claimed.



(iv) Rest of the directions given by the Tribunal with regard to entitlement of the appellant/injured in withdrawing the amount shall remain unaltered.

(v) The impugned award of the Tribunal stands modified to the aforesaid extent and in the terms and directions as above.

(vi) The record be sent back to the Tribunal within three weeks from this day.

As a sequel, interlocutory applications pending for consideration, if any, shall stand closed.

**JUSTICE DUPPALA VENKATA RAMANA**

15.06.2023

*L.R. Copy to be marked*

*Dinesh*  
*Mjl/ \**



**THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

**M.A.C.M.A.Nos.2434 OF 2007 AND 1380 of 2009**

**15.06.2023**

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