Reserved On : -
Pronounced On : 10/12/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1883 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J. L. ODEDRA

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Approved for Reporting	Yes	No

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SUVAN NAVARBHAI SANYABHAI
Versus
SURESHKUMAR BABUBHAI BARIYA & ORS.

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Appearance:
MR.HIREN M MODI(3732) for the Appellant(s) No. 1
MR VIBHUTI NANAVATI(513) for the Defendant(s) No. 3
RULE SERVED for the Defendant(s) No. 1,2

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CORAM:HONOURABLE MR.JUSTICE J. L. ODEDRA

CAV JUDGMENT

1. The present Appeal arises from the judgment and award passed in MACP No.1097 of 2008 by the learned Motor Accident Claims Tribunal (Aux.), Panchmahal at Godhara.

2. By way of the impugned judgment and award, the Tribunal was pleased to partially allow the said Claim Petition and was pleased to award a sum of Rs.3,30,400/- against all the respondents, who were the original opponents, jointly and severally, along with the interest at the rate of 9% per

annum from the date of filing of the Claim Petition till realization along with proportionate costs.

3. On perusal of the Claim Petition, it appears that on the fateful day, i.e., on 06.06.2008, the appellant was travelling in a Jeep bearing registration no. GJ-20-A-2774 belonging to a relative of his. The driver of the said vehicle, the respondent no.1 herein, (the original opponent no.1), was driving the said Jeep in rash and negligent manner at excessive speed. Whilst the vehicle was driven as aforesaid, all of sudden, a buffalo came on road. The driver, in order to avoid the buffalo, applied sudden brakes. Resultantly, he lost control over the Jeep and the Jeep turned turtle. Thus, the appellant suffered various injuries and as part of his treatment, his left leg had to be amputated from below the knee.

4. Learned advocate Mr. Hiren Modi, whilst arguing the matter, has only challenged the impugned judgment and award on the aspect of quantum of compensation as awarded by the learned Tribunal. He has submitted that the appellant, original injured claimant, was engaged in doing labour work for polishing diamonds and was earning,

in terms of the pleadings in the Claim Petition, a sum of Rs.7,000/- per month. He submitted that the said salary was not substantiated by any evidence before the learned Tribunal. Thus, the learned Tribunal was pleased to fix the notional income of the present appellant at Rs.3,000/- per month. He submitted that whilst calculating the future Loss of income for the appellant, the learned Tribunal has failed to consider prospective increase in income, which, considering the age of the appellant at 20 years, ought to be at 40% of the said notional income. He, thus, submitted that the said prospective increase in income at 40% comes to Rs.1,200/- and therefore, the income may please be considered at Rs.3,000/- plus Rs.1,200/-, which comes to Rs.4,200/-.

5. It was submitted that for determining the age of the injured(Appellant), reference may be had to document at Mark-22/6, which is the Disability Certificate issued by Dr. Jayesh S Patel MS Ortho, Trauma and Research Center, Godhara, which records the age of the appellant as a 20 years old. He submitted that considering the age, the prospective income, in terms of judgment in **National Insurance Co. Ltd vs Pranay Sethi** reported at **2017 (16)**

SCC 680, would be at 40%.

6. It was submitted that a prolonged treatment had to be undergone, for treatment of injuries of the appellant and the consequent amputation of leg, from below the knee. He submitted that as per the records, the appellant had to remain as an indoor patient with the hospital for a period of one and a half months. It was also submitted that the appellant has been advised to rest for another one and a half months thereafter. The learned advocate has relied on Certificate at Exhibit- 28, which, *inter alia*, indicates that the patient had been admitted with the concerned hospital – Shivam Orthopedic Trauma and Research Center on 06.06.2008 and was discharged on 24.07.2008. Thus, according to the learned advocate, the treatment spanned a period of approximately one and a half months. It was also submitted before this Court that the said patient had also been advised "rest", by the doctor for another period of one and a half months from 24.07.2008. It was thus submitted that the patient had to be on bedrest and thereafter to adjust to such lifestyle, post amputation of leg, it would have taken another month. It was submitted that therefore, for the said period of four months, actual loss of income

may kindly be computed. He submitted that the Tribunal erred in computing the same only for 3 months, which may be rectified. It was also submitted that there is no grievance as to the actual amount spent towards hospitalization and treatment, i.e. Rs.75,000/-, which the learned Tribunal itself has been pleased to award.

7. Insofar as the compensation towards Attendant charges, Transportation Charges and Special Diet, are concerned, the Tribunal had been pleased to award, an aggregate sum of Rs.22,000/- (Rs.17,000/- for Attendant and Transportation Charges; and towards Special Diet, a sum of Rs.5,000/-). It was submitted that the said amount are on the lower side, considering the span of treatment and therefore, appropriate enhancement may kindly be made.

8. It was further submitted that for the Pain, Shock and Suffering, the Tribunal has already awarded the appellant a sum of Rs.30,000/- which may also be enhanced. It was submitted that, however, no corresponding amount towards Loss of Amenities of Life has been awarded, and therefore, amount under the said head may kindly be awarded. The learned advocate has relied on the judgment

in the case of **Mohd. Sabeer Vs. Regional Manager UP State Transport Corporation** reported at **AIR 2023 SC 186: (2023) 20 SCC 774: 2023 ACJ 1 (SC)**. It was submitted that in the said case, facts and circumstances were similar and thus, compensation towards artificial limb post amputation of left lower limb below knee was allowed, and therefore, cost of artificial limb and its maintenance was permitted by the Hon'ble Supreme Court at the aggregate of Rs.12,80,000/-. It was submitted that the Hon'ble Supreme Court had reasoned that any prosthetic limb would require maintenance and that lifespan of such limb would be 15 years. It was submitted that in the said case, the accident had occurred on 12.06.2009[1]. It was submitted that thus considering the fact that the appellant therein, would need at least three replacements, the Hon'ble Supreme Court was pleased to award compensation of Rs.7,80,000/- and for maintenance of artificial limb and a separate amount of Rs.5,00,000/- which comes to an aggregate of Rs.12,80,000/-. It is submitted that in the present case also considering the similarity of facts, such amount for artificial limb may be awarded. It was submitted that even

1 Refer Paragraph 19of Mohd. Sabeer (Supra)

when the appellant has not specifically pleaded the same before the Tribunal, the fact remains that the appellant would be better placed if he were to avail the facility/service of such an artificial limb, and if so done, he would be placed in a position which would be closer to the position that he was before the accident. Hence, it was urged that this Court may kindly consider the same.

9. It was submitted that though the disability as rendered by document at Mark-22/6 was higher, yet the fact remains that the present appellant has given a pursis (Exhibit-31) to the Tribunal, wherein, the learned advocate for the insurance company has scribed that if the disability is considered at 30% for a body as a whole, he would not have objection. Thus, the appellant does not dispute the said degree of disability. It was submitted that in terms of the said disability, the future loss of income may be calculated. It was thus, submitted that considering the income of Rs.4,200/-, the aggregate annual income of the appellant would be Rs.50,400/- (Rs.4,200 X 12). It was submitted that as the appellant is 20 years of age, the multiplier applicable in the case of a 20 year old would be

18 in terms of the judgment in case of **Sarla Verma & Ors vs Delhi Transport Corp.& Anr** reported at **2009 (2) SCC (CRI) 1002**. He has relied on the following paragraph of **Sarla Verma (*supra*)** for the purpose of substantiating the multiplier:

> *"15. 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."*

10. As regards the multiplicand, it was submitted that since the disability is 30%, but his functional disability is 100%. It was submitted that for polishing diamonds, one has to sit in cramped space and owing to injuries, the Appellant cannot sit in cramped space. Hence, he no longer can do the work of polishing diamonds. Therefore, his functional disability may be fixed at 100%. The yearly income, therefore, may not be adjusted to 30% thereof, for the purpose of arriving at the multiplicand, therefore the

multiplicand would be (Rs.4,200 X 12 X 18) = Rs.9,07,200/-. It was, therefore, urged before this Court that this Appeal may kindly be allowed in totality and compensation may kindly be enhanced suitably.

11. Opposing the arguments of the learned advocate for the appellant, learned advocate for the respondent no.3 – Insurance Company, Ms. Mausami Nanavaty, has submitted that in the present case, the ratio in the case of **Mohd. Sabeer (*supra*)** was not applicable firstly, because in the case of **Mohd. Sabeer (*supra*)**, concerned applicant was a scrap dealer and that therefore, the functional disability in his case and that in the case of the appellant- original claimant would be different. It was submitted that, even, the amounts under the heads of Pain, Shock and Suffering, if any, may not be enhanced.

12. It was secondly submitted that in the present case, though there was an amputation of leg below knee, which is commensurate to the injury caused in case of **Mohd. Sabeer (*supra*)**, yet, there were additional injuries in the said case, which are described at Para-13 of the Hon'ble Supreme court's judgment. Referring to the said Para-13, it

was submitted that in the said case not only amputation of lower right limb, but there was a fracture in medial wall of the bilateral orbit. It was submitted that a bilateral orbit injury would mean injury to the socket containing eyeballs. Additionally, even the second lower limb of the concerned injured was suffering from a fracture of tibula right leg and with exposed vessels and other injuries. It was submitted that it was in such circumstances, that Hon'ble Supreme Court was placed to award an amount of Rs.2,00,000/- towards Pain, Shock and Suffering. However, considering that the present appellant has not suffered such grave injury, therefore, no sum, much less such huge sum of compensation under the head of Pain, Shock and Suffering may be awarded.

13. It was submitted by the learned advocate of the respondent – Insurance Company that in the present case, there is no evidence indicating that the appellant herein has availed of any artificial limb. It was submitted that that being the case, the question of compensating him for the purpose of any prosthetic limb would not be just.

14. It was also submitted that even the Loss of Amenities of

Life would not be to that extent as were in the case of **Mohd. Sabeer (*supra*)**. Lastly, it was submitted that loss due to disfigurement did not occur in the present case. Hence, on that count also, it was prayed that no compensation be awarded.

15. It was further submitted that the learned Tribunal has indeed not considered prospective income. But, insofar as that aspect is concerned, it was urged that the said aspect is left to the discretion of the Court in awarding, if any, prospective income, considering that the accident had occurred on 06.06.2008. It was submitted that in any case, the minimum wages prevalent, at that point in time, were Rs.2,900/- and despite the same, the learned Tribunal has considered Rs.3,000/- as the notional income of the injured appellant. Therefore, the issue of prospective income may be considered keeping in view the said aspect. It was thus urged that appropriate order may kindly be passed.

16. Having heard the learned advocates for the respective parties, this Court proceeds to decide the present appeal in terms appearing hereinafter.

17. The point of determination that arises in the present Appeal is whether the compensation as awarded by the Tribunal is just and reasonable? If not, whether it calls for any enhancement, and if so, to what extent?

18. Looking to the impugned judgment and award, it appears that the learned Tribunal has considered the monthly income of the appellant at Rs.3,000/- per month. On perusal of the impugned judgment and award, it does not appear that the said notional monthly income was arrived at by the learned Tribunal after taking into consideration the prospective income, i.e., additional amount of Rs.100/- over and above the minimum wages, as prevalent at that point in time. In any case, this Court believes that the learned Tribunal is the best judge of adjudging the notional income, the deposition of the appellant having been recorded before such Tribunal. The learned Tribunal having recorded the deposition of the appellant, it would have seen the demeanour and the overall personality of the appellant and therefore, the learned Tribunal has arrived at the monthly income of Rs.3,000/-. Moreover, if indeed the Tribunal had taken into account the prospective increase in income whilst arriving at the notional income, it

would have surely indicated so in the impugned judgment. However, no such observation was made by the Learned Tribunal. Thus the inference would be that the prospective income was not factored in, when the Tribunal had arrived at the notional income. Thus, in view of the judgment in case of **Pranay Sethi (*supra*)**, a prospective increase to the extent of 40% would be liable to be given, on the income, more particularly, when the age of the injured appellant is not disputed by either parties to be anything other than 20 years. As such the appellant was engaged in the work of polishing diamonds and therefore, he cannot be said to be having a permanent job. Rather, he would fall under the category of person receiving, "fixed salary". Thus, in view of **Pranay Sethi *(supra)***, the prospective income is taken at 40%. The relevant paragraph in **Pranay Sethi (*supra*)** reads as follows:-

> *"59.4 In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation.*

The established income means the income minus the tax component."

19. Therefore, overall monthly income for the purpose of determining the amount of compensation would be Rs.4,200/- being the aggregate of Rs. 3,000/- plus 40% of Rs.3,000/-.

20. Even the medical disability to the tune of 30 % is not disputed before this Court, therefore, for the purpose of calculating Future Loss of Income, the said monthly income will have to be reduced by 70%. So done, the monthly income would come to Rs.1,260/- (Rs.4,200/- - Rs.4,200 x 70/100). For determining the multiplicand, the said amount will have to be multiplied by 12, which comes to Rs.15,120/-. The said multiplicand, for the purpose of arriving at the Future Loss of Income ought to be multiplied by 18 which comes to Rs.2,72,160/-. It however appears that the Tribunal has taken the entire amount of salary whilst calculating the Future Loss of Income. It is worthy to note that no discussion on functional disability has been made by the Tribunal. And the Tribunal has straightaway considered 100% salary for the purpose of deciding Future Loss of Income. This Court, however has

deemed it fit to peruse the assertions at paragraph 7 of the affidavit of examination-in-chief Exhibit 30. There, at paragraph 7, the deponent asserts that owing to the injuries, he cannot work as before, nor can he walk as before, and that his working capacity has declined drastically. He states that without the aid of a walking stick, he cannot stand. That at his work-place, he is continuously required to alternate between standing and sitting, which he no longer can, owing to the injury. However, by what percentage has the working capacity declined, is not adequately described. Thus, form such limited assertions, it is difficult for this court to come to a conclusion that the working capacity has completely destroyed. In the circumstances, the functional disability is maintained at 30%, more so when, the job that he was doing was a job of polishing diamonds. Contrary to the arguments advanced by learned Advocate for the Appellant (original claimant), the deponent (claimant-Appellant) at deposition Exhibit-30 does not even assert that he cannot sit for extended periods of time or that the sitting space at his place of work is cramped. Thus, as stated hereinabove, the functional disability too is kept at 30% as loss of one

of the lower limbs below knee, does not have a drastic effect on his working, i.e., for polishing diamonds.

21. Now, the discussion on prosthetic limb. It may be recalled that the contention of the learned advocate for the respondent was that the appellant has not availed any prosthetic limb, and therefore, consequential compensation may not be awarded to him.

22. Now, it is apparent that the accident was of 06.06.2008, whereas, the accident in the case of **Mohd. Sabeer (*supra*)**, as indicated in Para-19 of the said judgment in case of **Mohd. Sabeer (*supra*)**, indicates that the injured in that case had suffered accident on 12.06.2009. Thus, the date of accident in both the cases are of similar period. However, in the case before the Hon'ble Supreme Court, the appellant was 37 years of age, whereas in the present case, the appellant was 20 years of age when he suffered an accident. If it was assumed that he did not avail of any prosthetic limb, so far, be it on account of crunch of funds, as in the judgment of **Mohd. Sabeer *(supra)***, the amount for availing artificial limb is substantial and thus, affordability of such prosthetic limb is also a consideration;

or, for lack of appropriate advice, then too, he may avail such prosthetic limb post this judgment. The object of awarding compensation for prosthetic limb by this Court would be to place the injured in, more or less, the same position as he was before the accident. For the said purpose, this Court is of the view that irrespective of the availing of prosthetic limb by the concerned injured appellant, this Court would still consider awarding the compensation under the said head, so that the injured appellant could be in a position, as close as the position that he was before the accident.

23. Furthermore, considering that the age of the appellant was 37 years in case of **Mohd. Sabeer (*supra*)** when he suffered the case, the cost of artificial limb was calculated from the said date. However, today, in the year of 2025, it can be stated that the accident had occurred about 17 years back. The age of the Appellant, considering the said lapse of period, would be more or less, the same, as the age on which the appellant in the case of **Mohd. Sabeer (*supra*)**, has suffered accident i.e., in the present case also, by now, the appellant would be about 37 years of age. That being the case, he deserves exactly the same amount of

compensation as was awarded by the Hon'ble Supreme Court in that case, in terms of the following paragraph:-

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

24. In the circumstances, a sum of Rs.12,80,000/- is awarded towards prosthetic limb to the present appeal. Again, insofar as compensation under the head of Pain, Shock and Suffering is concerned, injury is suffered by the claimant in **Mohd. Sabeer (*supra*)** were drastic. The judgment in case of **Mohd. Sabeer (*supra*)** describes the same at para-13, which is quoted hereinbelow for the ease of reference:-

> *"The Appellant has suffered an amputation of the lower right limb, a fracture in the medical wall of the bilateral orbit, crush injury right leg, fracture tibia right leg, exposed vessels and other injuries. As per the disability*

certificate, the Appellant has suffered 70% disability, however the High Court has held that the Appellant has only suffered 35% loss in future earnings due to the disability."

25. In the present case, however, the documents on record do not indicate exhaustive nature of injuries, however, from document at Mark-22/6 and Exhibit-28, on perusal of those documents, this Court finds that the only similarity between this case and that in **Mohd. Sabeer (supra)** was the amputation of leg below knee. Other injuries in the present case, as has been contended by the learned advocate for the appellant, are not too severe an injuries and they do not deserve elaborate discussion. Accordingly, this Court is inclined to award a sum of Rs.7,000/- under the head of Special Diet. The costs of Attendant is assessed by calculating two attendants, so round the clock, for 3 months, which comes to Rs.3,000/- x 3, which comes to Rs. 9000/- for one Attendant. Hence for two attendants, the amount comes to Rs.18,000/- and for Transportation charges, as sum of Rs. 3,000/- is awarded. Considering that the injuries of the present case are not as severe as that in the case of **Mohd. Shabeer (*supra*)**, a sum of Rs.1,00,000/- is awarded under the head of Pain, Shock

and Suffering. Under the head of Loss of Amenities of Life, a sum of Rs.1,00,000/- is awarded. Furthermore, there is no facial disfigurement in the present matter and therefore, loss of disfigurement of face is not awarded in the present case.

26. Lastly, the actual loss of income. Indeed, the view of the learned Tribunal holding that for a victim of accident, back to work within mere three months from accident, more so when there is an amputation of leg below the knee, is too harsh to say the least. Thus, this Court deems it appropriate to extent the period for compensation of Actual Loss of Income to four months, instead of the 3 months arrived at by the learned Tribunal. Thus, on this court, the actual loss of income would be Rs. 3,000/- x 4 which comes to be Rs. 12,000/-. By way of abundant caution, it is clarified that the income for calculation of actual loss would be the actual income, not that after adding prospective future income.

27. Accordingly, the following amount of compensation is liable to be awarded in the present case.

Sr.No.	Particulars	Amount as awarded by the learned Tribunal (in Rs.)	Amount as awarded by this Court (in Rs.)
1	Actual Loss of Income	9,000/-	12,000/-
2	Future Loss of Income	1,94,400/-	2,72,160/-
3	Loss of Amenities of Life	NIL	1,00,000/-
4	Prosthetic Limb and its maintenance	NIL	12,80,000/-
5	Pain, Shock and Suffering	30,000/-	1,00,000/-
6	Special Diet, Attendant and Transport Charges	Rs.5,000/-in Special Diet and 17,000/- in Attendant and Transport Charges	28,000/- (Rs.7,000/- in Special Diet, Rs.18,000/- Attendant Charges and Rs. 3,000/- Transportation Charges)

7	Medical Expenses	75,000/-	75,000/-
	Total	3,30,400/-	18,67,160/-
	Enhanced amount by this Court		**Rs.15,36,760/-**

28. As indicated in the aforesaid chart, the amount of compensation is liable to be enhanced by Rs. 15,36,760/- which shall carry interest at the rate of 9% per annum from the date of filing of the claim petition till actual deposit by the Insurance company. The Insurance company shall deposit such amount within a period of 8 weeks from the date of availability of the signed copy of this judgment.

29. The Tribunal shall thereafter disburse the said amount without the need for creating any further FDRs.

30. The present appeal stands allowed to the aforesaid extent and disposed of, accordingly.

31. R&P, if any, be remitted back to the Tribunal forthwith.

(J. L. ODEDRA, J)

JIGAR J RABARI

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: JIGAR RABARI(HCD0067), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 10/12/2025 16:30:17