

**Reserved On:- 08/12/2025  
Pronounced On : 19/12/2025**

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/FIRST APPEAL NO. 3891 of 2023**

**FOR APPROVAL AND SIGNATURE:  
HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Approved for Reporting	Yes	No
	√	

RAJMOHINI @ RAJMOHUNABEN KIDYABHAI DAMOR

Versus

SHAYAM HARISHBHAI DHOKAI & ORS.

**Appearance:**

MR MOHSIN M HAKIM(5396) for the Appellant(s) No. 1

MS KIRTI S PATHAK(9966) for the Defendant(s) No. 3

RULE SERVED for the Defendant(s) No. 2

RULE UNSERVED for the Defendant(s) No. 1

**CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

**CAV JUDGMENT**

- 1) Feeling aggrieved and dissatisfied with the judgment and award dated 23.06.2023 passed by learned Motor Accident Claims Tribunal (Auxi.), Vadodara (which shall hereinafter be referred to as "**the Tribunal**" for short), in Motor Accident Claim Petition No.677 of 2016, the appellant – original claimant has preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (which shall hereinafter be referred to as "**the Act**" for short).
- 2) Heard Mr. M. M. Hakim, learned Advocate for the appellant – original Claimant and Ms. K. S. Pathak, learned Advocate for

respondent – Insurance Company. Perused the original record and proceedings.

- 3) It is the case of the appellant that on 12.02.2016, in the night when the claimant was returning after attending her friend's marriage by driving her Activa bearing Reg. No.GJ-06-HA-4952, on correct side of the road and when she reached near SK Mobile Shop, Gorwa, at that time, the opponent no.1 – respondent no.1 by driving his Honda Car bearing Reg. No.GJ-06-JM-2245, came from Genda Circle in rash and negligent manner and dashed with Activa of the claimant from behind as a result the claimant and his friend sustained grievous injuries on the different part of the body and for the said offence a complaint being I-C.R. No.26/2016 came to be registered with Gorwa Police Station against the opponent no.1 – respondent no.1. Therefore, the appellant had filed MAC Petition seeking compensation. The learned Tribunal after appreciating the evidence produced on record was pleased to partly allowed the claim petition.
- 4) Learned Advocate Mr. M.M. Hakim, for the appellant – original claimant has submitted that the learned Tribunal has failed to award just and proper compensation and considered the income of the claimant as Rs.5,000/- per month ignoring the evidence on record. Though she was working as cashier in Central Mall

and also doing overtime and earning Rs.10,000/- per month and as per salary certificate of the year 2013 the learned Tribunal ought to have considered income as Rs.10,000/- per month. Even the learned Tribunal has committed error by not considering future prospect and not appreciated the fact that the claimant had sustained head injury and multiple fractures of lower limb and disfigurement of the face and awarded least amount towards pain, shock and suffering and loss of amenities. Further he has submitted that the learned Tribunal has committed error in considering 43.25% disablement while considering future loss of income. The learned Tribunal ought to have compounded the future loss and consider assessment of minimum 86.5% disablement, hence, the learned Tribunal has awarded meagre amount towards loss of amenities.

- 4.1) He has further submitted that the alleged accident took place in the year 2016 therefore at least rate of minimum wages of 2016 is required to be considered. Due to injuries the claimant has suffered loss and by proving her deposition and examining the Doctor proved the disablement and she was hospitalized two times and medical certificate is also considered. The learned Coordinate Bench has passed the order for reassessment of disability of the claimant and Sir Sayajirao General Hospital, Vadodara (which shall hereinafter be referred to as "**SSG**

**Hospital**") opined 27% permanent physical disability for both lower limbs but said certificate was issued belatedly and due to this reason also the matter is required to be remitted back to cross-examine the Doctor of Medical Board. Expenses of plastic surgery not considered and disability and disfigurement of the face are also not considered by the board.

- 4.2) Further he has requested to award just compensation towards loss of amenities and marriage prospect also as the claimant was 20 years old at the time of accident and she was the aspirant of Gujarat Public Service Commission, Union Public Service Commission and Teacher Eligibility Test but due to the injuries she had lost such opportunities. Hence, he has requested to allow the present appeal by enhancing the compensation or remit back the matter for fresh consideration. Further he has relied on the judgment of the Hon'ble Supreme Court in case of **Jakir Hussein Vs Sabir and others, reported in (2015) 7 Supreme Court Cases 252**, and oral judgment passed by this Hon'ble High Court in the case between **Nital Pravinchandra Shah Vs Vipul Kanubhai Shah & Anr, in First Appeal No.955 of 2016, dated 25.11.2025.**

- 5) Learned Advocate Ms. K. S. Pathak, for the respondent no.3 – Insurance Company has opposed the present appeal on the ground that this is not a usual appeal of enhancement, in

number of cases the Insurance Company gracefully admit the enhancement in case of meagre amount where just compensation is not awarded. Initially, the matter was admitted on the ground to consider minimum wages as per the schedule and to consider functional disability vide order dated 15.09.2023. While the matter is taken up for hearing by the coordinate bench, at that time as the Insurance Company has raised objection qua higher assessment of disablement, upon request of both the learned Advocates SSG Hospital, Vadodara was directed to assess physical permanent / partial disability of the claimant vide order dated 29.01.2025. Perusing the said order dated 29.01.2025 the claimant appeared before the Medical Board and report is submitted, wherein, disability of the claimant is considered as 27% permanent physical disability for both the lower limbs by the Medical Board constituted by four Doctors and they have opined about disablement. Hence, the learned Tribunal has committed error in considering the disability without properly appreciating the evidence on record and mechanically considered 43.25% disability. Hence, only on the said count compensation awarded is required to be reduced. Not only that to set an example and considering the fact that Doctors are issuing the certificate without properly assessing disablement and the learned Tribunal has also mechanically accepted such certificate without considering the ratio laid down

in the judgment of ***Raj Kumar Vs. Ajay Kumar and Anr***, reported in ***(2011) 1 Supreme Court Cases 343***.

5.1) Further she has submitted that as per the evidence tendered by the claimant, she herself in her cross-examination has admitted that she has no permanent disability and at her own she left her job. This is not a case that due to any such disability she has suffered the loss considering the avocation and engagement in the profession functional disability is required to be considered. The learned Tribunal has considered exaggerated disablement and it is the duty of the Tribunal that when higher side disablement or physical disablement is assessed then the evidence is required to be appreciated and functional disability shall be considered. In the cross-examination as she has admitted that she is able to do her routine work herself and she has denied that she is having any permanent disability. It is crystal clear that the claimant is not entitled for any compensation or has not suffered any functional disability. Learned Advocate has further submitted that guidelines to consider disablement is required to be issued and also as per Motor Vehicle Rule of State of Karnataka while considering disability certificate the Medical Board Certificate is required to be considered so exaggerated percentage of disability would have not come and requested to dismiss the present appeal.

6) Having heard the learned Advocates for the respective parties and going through the record it appears that the learned Tribunal has considered oral evidence of the claimant at Exhibit 25, copy of FIR at Exhibit 34, copy of panchnama of place of accident at Exhibit 36, copy of Insurance Policy of offending Honda Car at Exhibit 38, Deposition of witness Dr. Tushar Modi at Exhibit 31 and Disability Certificate issued by him at Exhibit 32, copy of medical bills at Exhibit 49 and copy of receipt of rent of car for treatment at Exhibit 50. In the chief-examination the claimant has reiterated the pleadings of the claim petition and due to vehicular accident the claimant sustained injuries and the learned Tribunal while considering the ratio laid down by the Hon'ble Supreme Court in the cases of ***Bimla Devi Vs H.R.T.C. reported in AIR 2009 SC 2819 and Parmeshwari Devi Vs Amir Chand, reported in 2011 (11) SCC 635***, came to the conclusion that the opponent no.1 – respondent no.1 was driving the Honda Car in rash and negligent manner and dashed with the Activa rode by the claimant and due to sole negligence of the opponent no.1 the accident was occurred. As negligent part is not in dispute by either of the party the opponent no.1 held solely negligent.

6.1) The present appeal is mainly preferred on the ground that the learned Tribunal has awarded meagre compensation considering

that the claimant was 33 years old at the time of accident and was working as Cashier in Central Mall and earning Rs.10,000/- per month and after occurrence of the accident she is unable to earn but no evidence is produced on record qua her income. The claimant has produced Salary Statement for the year 2013 but said document is also not proved and the learned Tribunal has considered Rs.5,000/- per month as income of the claimant to award just compensation. It appears that in the year 2013 she was working as Cashier in Central Mall, whereas, the accident occurred in the year 2016, therefore, as per the law laid down by the Hon'ble Supreme Court in the case of **Govind Yadav Vs. National Insurance Co. Ltd., reported in 2012(1) TAC 1 (SC)**, the learned Tribunal ought to have consider prevailing rate of minimum wages as per which income of the claimant is required to be reassessed as **Rs.7,800/- per month**. Further, the learned Tribunal has committed error in not considering addition towards future prospectus, therefore, this Court is of the view that **40% addition income towards future prospectus** is required to be considered i.e. Rs.3,120/- hence total income would come to **Rs.10,920/-** to award just compensation.

- 7) Now coming back to the seminal issue of disability sustained by the claimant, the claimant to prove her disability has examined

Dr. Tushar Modi at Exhibit 31, who has issued Disability Certificate at Exhibit 32, and opined that the claimant has sustained 12.5% disability and disfigurement of face and 74% disability qua both lower limbs and accordingly opined that claimant has sustained 86.5% permanent disability. After considering the evidence the learned Tribunal has assessed 43.25% disability of the claimant.

- 8) The learned Advocate Ms. K. S. Pathak for the respondent no.3 Insurance Company has raised grievance in respect of aforesaid opinion of disablement and acceptance of the disablement by the learned Tribunal and submitted that the disability is assessed on higher side and there was no any adverse effect of future loss of income and considering the avocation of claimant the learned Tribunal has mechanically accepted the disablement without considering the functional disability as she was doing table work as a Cashier.
- 8.1) As the learned Coordinate Bench has been pleased to pass an order vide order dated 29.01.2025 upon request of both the learned Advocates and directed the SSG Hospital, Vadodara to assess the physical permanent / partial disability of the claimant and the claimant was directed to remain present before the Chief Medical Officer / Civil Surgeon, SSG Hospital, Vadodara, on 10.02.2025 with all medical papers and Medical Board was also

directed that after fixing the date it shall assess physical disability sustained by the claimant and forward the report to this Court. Pursuant to the said order the Medical Board, SSG Hospital, Vadodara, consisting President and two members and Head of Department of Orthopedic Surgery have submitted the report on 01.03.2025, wherein, it has been clearly opined that Standing Medical Board, SSG Hospital, Baroda has examined the claimant and opined that patient is having 27% (Twenty Seven) permanent physical disability for both lower limbs, which is on very lower side then opined by Dr. Tushar Modi in Disability Certificate at Exhibit 32. Against the said assessment of disablement by the Medical Board the learned Advocate Mr. M. M. Hakim, for the appellant – claimant has submitted that the Medical Board has not considered the disfigurement of face of the claimant and the matter is required to be remitted back to the learned Tribunal for fresh consideration.

- 8.2) If we consider the evidence produced on record more particularly to prove the disablement of claimant the Insurance Company has cross-examined the claimant and Dr. Tushar Modi who has issued Disability Certificate at Exhibit 32. In his cross-examination the witness Doctor has admitted that the patient was admitted for 10 days but no such papers have been produced on record and there was a fracture of nasal bone. He

has further admitted that he has not done any facial treatment and who had done the facial treatment has not issued any Disability Certificate. Further he has admitted that from the year 2017 to till date he has not seen the patient and further stated that after the span of 5 years he is not aware about the present condition of the patient and if during 5 years if the patient has undergone any physiotherapy treatment then her disability might be reduced or improved. While in cross-examination of the claimant she has also admitted that she is able to do her routine work and she herself is doing routine work and she has denied that she is having any permanent disability. The Tribunal has considered 43.25% disability of the claimant. While coming to the said conclusion the learned Tribunal has not assigned any reason for accepting the said disability and straightaway accepted the same.

- 9) It is pertinent to note that in injury cases while awarding just compensation the learned Tribunal has to consider the functional disability and effect of disablement qua in relation to avocation and profession of the claimant. The physical disability and functional disability are all together different and the learned Tribunal has to ascertain the functional disability and Doctor has nothing to do with the functional disability. In this regard reference is required to be made from the judgment of the

Hon'ble Supreme Court in case of **Raj Kumar (supra)**, in paragraphs 8, 10 and 11 reads as under:

*8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor 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.*

*9. XXXXXXXXXXXXXXXXXXXXXXX*

*10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the*

*percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.*

*11. What requires to be assessed by the Tribunal is the effect of the 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)."*

- 10) Thus while assessing permanent disablement of the claimant the learned Tribunal ought to have considered on the actual earning capacity in following three steps as under :
  - I. The Tribunal has to ascertain what activities the claimant

could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability.

- II. The Tribunal has to ascertain the claimant's avocation, profession and nature of work before the accident.
- III. The Tribunal has to find out whether the claimant is totally disabled from earning any kind of livelihood, or 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 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.

11) In view of above it is the duty of the Court and the Tribunals to ascertain the functional disability of claimant in all injury cases filed under the MV Act for getting compensation. At the same time in ***Raj Kumar (supra)*** the Hon'ble Supreme Court has taken the note and further observed about duty and role of learned Tribunal in paragraphs 16 to 18, read as under :-

*"16. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as*

*in a civil suit, but as an active explorer and seeker of truth who is required to 'hold an enquiry into the claim' for determining the 'just compensation'. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the 'just compensation'. While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Handbook for evaluation of permanent physical impairment (for example 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 in view the first schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen.*

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

*18. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give 'ready to use' disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily 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 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.”*

- 12) Herein in the case on hand the learned Tribunal has mechanically accepted disability without assigning any reason the disability and as the respondent Insurance Company has raised the grievance and considering the request of both the learned Advocates the matter was referred to the Medical Board for reassessment of disability and based on the said material the Medical Board has opined 27% disability after reassessment. Hence, this is not a case wherein without giving any opportunity to the claimant / appellant this Court has reduced any disability. The opinion of the Medical Experts should not be discarded and that too when the panel of four expert Doctors have opined about the disablement. In case the Tribunal has reason to doubt

the Medical Certificate then there is always an option is available to reassess the disability and pursuant to the order of Coordinate Bench the disability was reassessed by the panel of four Medical Experts of Medical Board opined 27% disability. Considering all the medical papers produced by the claimant before the authority and in view of above the assessment done by the Doctor issuing Disability Certificate at Exhibit 32 and the learned Tribunal has accepted the same, which is not acceptable because without any reason straightaway disability is considered as 74% of both lower limbs is on higher side and for disfigurement 12.5% disablement is considered and straightaway which is added in the said disablement, whereas, the said addition is also not permissible. It is needless to say that when one or more limbs are involved in sustained injury for assessment of disability. Herein straightaway 12.5% disfigurement of face is added. In absence of any reason how such disfigurement or disability have adversely affected the functional disability and earning capacity of the claimant. Hence, without assigning any reason the learned Tribunal has added 12.5% disability and disfigurement of face is also not permissible and required to be discarded in absence of any evidence in this regard up to that extent the learned Tribunal has committed error in assessment of functional disability and to award the just compensation **27% functional disability** is required to be

considered as opined by the Medical Board.

13) The learned Advocate Mr. M. M. Hakim for the appellant has submitted to remand back the matter to examine the Doctor, it is needless to say that after considering the medical papers the Medical Board has opined the disablement after examining the claimant. Hence, as discussed in earlier part that there is difference between physical disablement and functional disablement and further the Hon'ble Supreme Court in case of ***Bajaj Allianz General Insurance Company Pvt Ltd Vs Union of India, in Writ Petition(s) (Civil) No(s).534/2020 dated 16.11.2021*** has issued certain directions, reads as under:

*"(iv) As far as the aspect of the issuance of certificate on disability of victims is concerned it is reiterated that the guidelines laid down by this Court in *Raj Kumar v. Ajay Kumar and Anr.*, (2011) 1 SCC 343 mandatorily must be followed by the MACTs, in respect of loss of income due to injury/disablement. The District Medical Board is also directed to follow the guidelines issued by the Ministry of Social Justice and Empowerment, Government of India vide Gazette Notification S. No.61, dated 05.01.2018, for issuance of Disability Certificate in order to bring Pan India uniformity.*

*The consequence is that the MACT would ascertain that permanent disability certificate issued by the District Medical Board or body authorized by it is in accordance with the Gazette Notification alone. Once the certificate is issued in this manner, the same can be marked for purposes of being taken into consideration as evidence without the necessity of summoning the concerned*

*witness to give formal proof of the documents unless there is some reason for suspicion on the document."*

Even as per the case of ***Anoop Maheshwari vs Oriental Insurance Co., Neutral Citation – 2025 INSC 1075***, so far the disability is concerned, the Certificate issued by the Medical Board can be accepted, even without a witness being examined. Hence, question does not arise to examine the Doctor to remand back the matter for fresh consideration once this Court is of the considered view that sufficient reliable evidence is available on record hence this Court is not inclined to accept arguments canvassed by the learned Advocate for the appellant. Hence, the argument canvassed by the learned Advocate for the appellant is not acceptable. Therefore, this Court is not inclined to remit back the matter as sufficient and reliable evidence is produced on the record by way of opinion of Medical Board and this Court has considered the said opinion dated 01.03.2025 submitted by the Medical Board. In this regard reference is required to be made in case of ***Suvej Singh Vs. Ram Naresh & Ors., Neutral Citation – 2025 INSC 1405.***

- 14) So far another argument for disfigurement is concerned learned Advocate for the appellant has relied on the judgment of the Hon'ble Supreme Court in the case of ***Rekha Jain Vs National Insurance Company Limited and Others, reported in***

**(2013) 8 Supreme Court Cases 389**, but as discussed in the earlier part about functional disability and effect of disability on earning capacity in case of **Rekha Jain (supra)** she was TV actress and there was direct relation and adverse effect of the injury to her profession and due to such injury affected her avocation and profession which resulted into direct loss of income.

- 15) Herein, it is the case of the claimant that she was working as a Cashier which is a table work and she has nothing to do with her disfigurement of face. If for the sake of arguments we consider 12% disfigurement even though it is not resulted into functional disability or adversely affect her income, further she herself admitted that she is able to perform her routine work and not having any disability. Considering the said admission on the part of claimant herself in evidence as well as nature of her profession and work the authority relied by the learned Advocate Mr. M. M. Hakim for the appellant is not helpful to the appellant. It is needless to say that, prior to relying on any authority the Court has to consider the fact of the case and in this regard reference is required to be made in the case of **Sushil Suri Vs Central Bureau of Investigation and Anr., reported in (2011) 5 Supreme Court Cases 708**, paragraph 32 reads as under:

*"32. It needs little emphasis that even one additional or different fact may make a world of difference between the conclusions in two cases and blindly placing reliance on a decision is never proper. It is trite that while applying ratio, the Court may not pick out a word or sentence from the judgment divorced from the context in which the said question arose for consideration. (See Zee Telefilms Ltd. V. Union of India, reported in (2005) 4 SCC 659.) In this regard, the following words of Lord Denning, quoted in Haryana Financial Corpn. V. Jagdamba Oil Mills, reported in (2002) 3 SCC 496, are also quite apt: (SCC p.509, para 22)*

*"22. .... 'Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.'"*

- 15.1) Hence, the above authority relied upon by the learned Advocate would not avail any assistance to the appellant and in view of above discussion considering the avocation, career and job of the victim such disablement is not considered as 100% functional disability as claimant was working as a Cashier and she is able to do her work. So far evidence for disfigurement is produced on record the document at Exhibit 42, is CT scan of face dated 13.02.2016, as per which bony nasal septum fracture is found but no abnormality is detected and so far alleged disfigurement is concerned is not resulted or converted in functional disablement and affected the earning capacity of the

claimant. Even, for the sake of arguments is accepted the permanent disablement was there then, the learned Tribunal has to assess on the basis of the functional disability resulting from the medical disability and by applying proper multiplier the percentage of medical disability not to be applied mechanically as stated in earlier part. All injuries do not result in loss of earning capacity and it is necessary to consider occupation of the injured to decide at what degree the limb has affected his or her function in his or her occupation. Therefore, this Court is not inclined to consider permanent disability certificate produced at Exhibit 32 and arguments canvassed by the learned Advocate for the appellant qua disability. In view of judgment of the Hon'ble Supreme Court in the case of **T. J. Parameshwarappa & Ors. Vs. New India Assurance Co. Ltd., & Ors, reported in (2022) 17 Supreme Court Cases 51**, the arguments canvassed by the learned Advocate for the appellant are not accepted.

- 16) The Tribunal has failed to observe the nature of injuries and in what manner it translated into functional disability and straightaway accepted the disability. The Tribunals are not duty bound to accept the disability stated by the Medical Officer as it is and the Tribunals have to apply its mind to the nature of the injuries and the Tribunals are expected to discuss the nature of

injuries sustained by the claimant and the manner in which it translate into functional disability, more particularly with reference to the avocation of the claimant. It is also obvious that Medical Officers would give opinion in respect of physical disablement but Medical Officers are not capable to give opinion about functional disability and this aspect has been elaborately discussed by the Hon'ble Supreme Court in the case of **Raj Kumar (supra)**. Hence, it is necessary that the Tribunals are to be sensitize with the requirements of mentioning the nature of injuries sustained by the injured in the judgment, without describing the injuries and calculate the disablement it is not possible to assess the functional disablement of the claimant in injury cases while awarding just compensation.

- 17) The learned Tribunal has awarded Rs.4,61,500/- towards medical expenses and the same is just and proper. The amount of Rs.10,000/- towards special diet, attendance and transportation is less considering twice hospitalization of the claimant and hence the same is required to be enhanced to **Rs.30,000/- (i.e. additional amount of Rs.20,000/-)**. So far pain, shock and suffering is concerned, the claimant has sustained injuries of lower limbs and hospitalized twice and considering her treatment and nature of the injuries the amount is required to be enhanced to **Rs.50,000/- (i.e. additional**

**amount of Rs.40,000/-).** Further, the Tribunal has considered actual loss of income for 6 months and awarded Rs.30,000/- which is required to be enhanced to **Rs.45,000/- (i.e. additional Rs.15,000/-).**

- 18) Learned Advocate for the appellant has also relied on the judgment of ***Jakir Hussein (supra)*** and argued that the learned Tribunal ought to have granted compensation towards loss of amenities and happiness. In the case of ***Jakir Hussein (supra)*** there was 100% disablement and due to this reason considering functional disablement loss of amenities was considered. Herein this is not a case that the claimant is having permanent disablement and she is unable to do or perform her routine work. Therefore, considering the evidence on record no case is made out to award any compensation towards loss of amenities or happiness or enjoyment of life in absence of any evidence qua disfigurement. So far marriage prospect is concerned, due to such injury she has to compromise and remained bachelor is not believable in absence of any material or evidence in this regard, hence, this Court is not inclined to accept the argument canvassed by the learned Advocate for the appellant. award any amount towards marriage prospect.
- 19) In view of ratio laid down by the Hon'ble Supreme Court in case of ***National Insurance Company Ltd. Vs. Pranay Sethi,***

*reported in 2017 ACJ 2700*, resultantly, recalculating the income of the deceased as Rs.7,800/- and addition towards future prospect is 40% = Rs.3,120/- which comes to **Rs.10,920/-**. Now total income under the head of loss of future income is required to be considered as Rs.10,920/-  $\times$  12  $\times$  16  $\times$  27% / 100 = Rs.5,66,093/-. The Tribunal has awarded Rs.4,15,000/- towards loss of future income, however, this Court is of the view that the appellant is entitled to get additional amount of **Rs.1,51,093/-** towards loss of future income.

20) It is needless to say that while awarding the compensation the Court has to consider the principle laid down in the case of ***Pranay Sethi (supra)***, wherein, paragraph 57 read as under:

*"57. Section 168 of the Act deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, "just compensation". The determination has to be on the foundation of evidence brought on record as regards the age and income of the*

*deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in Sarla Verma (supra) and it has been approved in Reshma Kumari (supra). The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the Courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the Courts is difficult and hence, an endeavour has been made by this Court for standardization which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardization keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardization" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age."*

- 21) As compensation must be just and proper and not less or more and the belief of the victim of the accident asking for some more compensation is not extravagant in view of ratio laid down by the Hon'ble Supreme Court in case of **Nagappa vs. Gurudayal Singh and others**, reported in **(2003) 2 Supreme Court Cases 274**, wherein it has been held that there is no restriction that compensation could be awarded only up to the amount claimed by the claimant and in an appropriate case, where from the evidence brought on record if the Tribunal / Court considers that the claimant is entitled to get more compensation than

claimed, the amount of compensation more than the claimed amount can be awarded.

22) As discussed above, the appellant – original claimant is entitled to get compensation computed as under:

<b>Heads</b>	<b>Awarded by Tribunal</b>	<b>Reassessed by this Court</b>
Loss of future income	Rs.4,15,000/-	<b>Rs.5,66,093/- including additional amount of Rs.1,51,093/-</b>
Pain, shock and suffering	Rs.10,000/-	<b>Rs.50,000/- including additional amount of Rs.40,000/-</b>
Special diet, attendance and transportation	Rs.10,000/-	<b>Rs.30,000/- including additional amount of Rs.20,000/-</b>
Actual loss	Rs.30,000/-	<b>Rs.45,000/- including additional amount of Rs.15,000/-</b>
Medical bills and expenses	Rs.4,61,500/-	Rs.4,61,500/-
Total compensation	Rs.9,26,500/-	<b>Rs.11,52,593/- including total additional amount of Rs.2,26,093/-</b>

23) In view of above, as the Tribunal has awarded total compensation of Rs.9,26,500/- , however, as discussed above the appellant is entitled to get additional amount of

**Rs.2,26,093/-** (Rs.11,52,593/- - Rs.9,26,500/-) with proportionate costs and interest as awarded by the learned Tribunal.

- 24) Hence, present appeal is **partly allowed**. The judgment and award dated 23.06.2023 passed by learned Motor Accident Claims Tribunal (Auxi.), Vadodara, in MAC Petition No.677 of 2016 stands modified to the aforesaid extent. Rest of the judgment and award remains unaltered. The respondent no.3 - Insurance Company shall deposit the said enhanced additional amount of compensation of **Rs.2,26,093/-** along with interest as awarded by the Tribunal, before the Tribunal within a period of **four weeks** from the date of receipt of this order.
- 25) After the aforesaid amount of enhanced compensation is deposited by the insurance company, learned Tribunal is directed to **disburse the entire amount alongwith the enhanced amount of compensation as well as earlier deposited amount, if any**, with accrued interest thereon, if any, to the original claimant, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure.
- 26) While making the payment, the Tribunal shall deduct the deficit court fees on enhanced amount.

- 27) Record and proceedings be remitted back to the concerned Tribunal forthwith.
- 28) Award to be drawn accordingly.

**(HASMUKH D. SUTHAR,J)**

ANKIT JANSARI