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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MACApp./266/2021

THE NEW INDIA ASSURANCE CO. LTD.
HAVING ITS REGISTERED AND HEAD OFFICE AT NEW INDIA ASSURANCE
BUILDING 87 MAHATMA GANDHI ROAD,FORT, MUMBAI- 40001 AND
REGIONAL OFFICE AT GUWAHATI-7.

VERSUS

NRIPENDRA SARKAR AND 2 ORS.
S/O- SRI NITAI SARKAR, R/O- VILL. NO. 2 DUNGABORI, P.S. JAGIROAD,
DIST.- MORIGAON, ASSAM, PIN- 782403.

2:SHAYAM KR. PRADHAN
S/O- CHABILAL PRADHAN
R/O- 11TH MILE (NEAR PANI TANKI)
P.O. JORABAT
P.S. BASISTHA
DIST.- KAMRUP
ASSAM
C/O- BINDA MOTOR WORKS NH-37 GALI NO. 5
W/NO. 56
KAMRUP
PIN- 781022.

3:PURNA BAHADUR
S/O- RAM BAHADUR
R/O- VILL.- AND P.O. JORABAT
P.S. BASISTHA
DIST.- KAMRUP
ASSAM
PIN- 781022

Advocate for the Petitioner : MR SISHIR DUTTA, MS. M CHOUDHURY,MS C BORAH

Advocate for the Respondent : MR. M TALUKDAR,

**BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG**

JUDGMENT

Date : 25-09-2024

Heard Ms. M. Choudhury, learned counsel for the appellant. Also heard Mr. M. Talukdar, learned counsel for the respondents.

2. The appellant/New India Insurance Company Limited by filing this appeal under section 173 of the Motor Vehicles Act, 1988 assailed the judgment and award dated 08.01.2021 passed by the learned Member, MACT, Moringaon in MAC Case no. 20/2017 whereby the learned Tribunal has awarded a sum of Rs. 20 Lakhs to the claimant with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the payment by M/S New India Insurance Company Limited (appellant herein).

3. The case of the claimant is that on 30.11.2016, at about 08.10 pm while he was going from Nellie side towards Jagiroad by a Motor Cycle bearing registration No. AS-21E-1209 and reached in front of the flyover of HPC Jagiroad, a vehicle bearing registration no. AS-01-DC-9365 (Truck) was coming from the same direction in a very rash and negligent manner and knocked him from the back of his bike due to which he fell with motor cycle. As a result of the said accident, he sustained multiple grievous injuries in different parts of his body and head. Thereafter, immediately, he was admitted at Kagajnagar Hospital,

HPC, Jagiroad and after basic treatment, he was referred to Guwahati and admitted at GNRC hospital, Guwahati. He took treatment as indoor patient for 3 days w.e.f. 30.11.2016 to 02.12.2016. Thereafter, he was again admitted at GMCH, Guwahati and there also he took treatment as indoor patient w.e.f. 03.12.2016 to 13.12.2016.

4. Thereafter, the claimant filed MAC case contending therein that the accident took place due to the rash and negligent driving of the driver of the offending truck. The claimant at the time of accident was 31 years. He was working as carpenter and used to earn Rs. 15,000/- pm from his occupation. And as a result of the head injury that he sustained in the said accident, his brain was damaged due to which he became completely dependent on his family.

5. The case was contested by the appellant/Insurance company by filing written statement and denied all the claims made in the claim petition.

6. Basing on the pleadings of the parties, the learned Tribunal has framed the following issues:

(i) Whether the accident took place on 30.11.2016 at 8:10 pm at National Highway 37 flyover in front of HPC, Jagiroad, PS-Jagiroad, Dist-Morigaon, Assam due to rash and negligent driving on the part of driver of the vehicle bearing registration No. AS-01-DC-9365?

(ii) Whether Nripendra Sarkar, injured in the said accident that took place on 29.05.2015 at N H Way 37 Fly Over in front of HPC Jagiroad, PS-Jagiroad, Dist- Morigaon, Assam?

(iii) Whether the claimant is entitled to get compensation, if yes

by whom it is payable and to what extent?

7. On conclusion of the trial, the issue nos. 1 and 2 has been decided in favour of the claimant/respondent herein holding that the accident took place on 30.11.2016 at about 8:10 pm due to rash and negligent driving of the driver (opposite party 3) and knocked the claimant from backside. As a result of which, the claimant sustained severe head injuries and took treatment.

8. The issue no. 3 has also been decided in favour of the claimant holding that due to the injury sustained by the claimant he became permanently disabled and having taken into consideration the permanent disability certificate and while observing that the claimant would need future treatment also granted provision for future treatment.

9. Being highly aggrieved by the said judgment and order dated 08.01.2021, the appellant/ New India Insurance Company Limited filed this appeal largely against the award under loss of earning on account of permanent disability of the claimant and the provision for future treatment amongst others on the following main grounds:

(i) That the learned Tribunal had erred in accepting the disability certificate which was not duly proved by the issuing authority and as such the impugned award which was passed on such perverse finding is liable to be set aside and quashed.

(ii) That the learned Tribunal has most illegally and arbitrarily accepted the loss of earning capacity of the injured to the extent of 50% in absence of assessment of a qualified Doctor in as much as the

disability of 50% cannot be synonymous to 50% loss of earning capacity.

(iii) That the owner of the offending vehicle himself has admitted and deposed before the learned Tribunal that there was no road permit to his vehicle at the time of accident. Therefore, there is a clear violation of terms and conditions of the policy for which Insurance Co. is not liable; however, in spite of such positive evidence, the learned Tribunal illegally awarded the compensation against the appellant insurance company which is not tenable in law.

(iv) That the learned Tribunal illegally and without any convincing evidence accepted the monthly income of the injured at Rs. 15,000/- including future prospect and passed the award, which is not tenable in law.

(v) That the learned Tribunal failed to consider the fact that the claimant/respondent is not entitled to interest on future prospect.

10. The learned counsel for appellant at the very outset submitted and made clear that she has no objection in respect of the award given to the claimant/respondent herein under other heads; however, she submitted that the claimant/respondent is not entitled to the award under head (i) (2) Loss of earnings on account of permanent disability and (ii) (b) provision for future treatment.

11. The learned counsel for the appellant submitted that the appellant is not entitled to any relief under the head loss of earning on account of permanent disability in as much as the appellant although produced the disability certificate issued by the Joint Director of Health

Services, Morigaon, Assam. However, the appellant was not treated at Morigaon, on the contrary the appellant received treatment at GNRC Hospital, Guwahati for 3 days and GMCH, Guwahati for 10 days and when the treatment was received at Guwahati and not at Morigaon, the authority at Morigaon has no right and authority to issue the disability certificate to the claimant.

12. The learned counsel for the appellant further submits that the disability certificate which has been accepted as exhibit 9 by the claimant was never proved by the Doctor or the authority who had issued the same. It is further submitted that mere production of a disability certificate or discharge certificate will not be prove of the extend of the disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the accident of disability of the claimant is taken for cross examination. However, in the instant case, as the Doctor who is stated to have issued the disability certificate was never cross examined there was no occasion for the appellant/Insurance company to cross examine the doctor who issued the disability certificate, in order to ascertain the authority of the said certificate, i.e., Exhibit 9.

13. The learned counsel for the appellant relied on the decision of the Hon'ble Supreme Court in ***Raj Kumar Vs. Ajay Kumar and Anr*** reported in ***(2011) 1 SCC 343*** whereby it was held that :

“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.

19. We may now summarize the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”

14. The learned counsel for the appellant referring to the document relied upon by the claimant/respondent herein submits that the claimant took treatment as indoor patient at GNRC Hospital, Guwahati on 30.11.2016 to 02.12.2016 and thereafter again he was admitted at GMCH, Guwahati on 03.12.2016 and remained there till

13.12.2016. However, in the said document by which the claimant was discharged, nowhere it was opined that the patient suffered permanent disability of 50%. The said disability certificate was issued on 05.05.2018 that is almost one and a half years after the claimant was discharged from GNRC, Guwahati and GMCH, Guwahati. The claimant did not examine the Doctor who had issued the disability certificate to prove the same. Under such circumstances, the learned Tribunal could not have arrived at the conclusion that the claimant has 50% disability basing on the unproved certificate obtained by the claimant.

15. With regard to the provision for future treatment, the learned counsel for the appellant submits that in view of the fact that the disability certificate produced by the claimant Exhibit 9 has not been proved by the Doctor who had examined and in view of the decision taken in the case of ***Raj Kumar Vs. Ajay Kumar and Anr*** (Supra), the disability certificate produced by the claimant is not admissible as it has not been proved. Therefore, as there is no permanent disability of the claimant, there should be no question of determining the future earning capacity as has been given to the claimant in the instant case.

16. The learned counsel for the appellant submits that at the time of accident the vehicle owner did not have the permit to use his vehicle. She further submits that since the owner of the vehicle did not bring on record to prove that he had a permit of a vehicle at the time of the accident in such a situation, the onus cannot be cast on the insurer. Therefore, the tribunal ought to have held the owner of the vehicle/insured liable to pay the compensation amount to the claimant

with interest with the stipulation that the insurer shall be entitled to recover the same from the owner of the offending vehicle.

17. In view of the above, the learned counsel for the appellant prays for setting aside and quashing of the judgment dated 08.01.2021 in so far as the loss of earning on account of permanent disability and provision for future treatment are concerned and also to hold the insured/owner of the vehicle liable to pay the compensation with the stipulation that the insurer shall be entitled to recover the same from the owner of the offending vehicle.

18. Per contra, the learned counsel for the respondent while defending the judgment dated 08.01.2021 submits that the appellant/insurance company had never disputed any of the contention made by the claimant before the Tribunal. The learned counsel for the respondent submits that the claimant had produced all the medical documents including the 50% disability certificate of the claimant. He further submits that the claimant/respondent herein, immediately after the accident took treatment at Morigaon hospital and thereafter on being referred he received treatment at GNRC, Guwahati for 3 days as indoor patient and thereafter he was again admitted in the GMCH, Guwahati for 10 days from 03.12.2016 to 13.12.2016. After that also the treatment of the claimant continued. And basing on the medical document issued from Morigaon hospital at Morigaon, the GNRC and GMCH, the Joint Director of Health Services, Morigaon, Assam having found 50% disability had issued disability certificate to the claimant. The said disability certificate was exhibited by the claimant as Exhibit 9. The opposite party had never raised any question as to the authority

of the said disability certificate produced by the claimant before the Tribunal. As such, the appellant had the opportunity to peruse the document and to raise objection if necessary. However, as no any objection has been raised by the appellant before the learned Tribunal during the cross examination, thus, the appellant cannot raise the same at the later stage before this Court.

19. The learned counsel for the respondent submits that no doubt the learned Tribunal did not examine the concerned Doctor but the appellant at no point of time made any prayer before the learned Tribunal to summon the Doctor concerned to decide the veracity of the disability certificate and thus, it failed to avail the chance of calling the material witness. He further submits that the learned Tribunal in para 15 observed that:

“15. It may be mentioned here that learned advocate of claimant has prayed for granting compensation on account of permanent disability. During evidence claimant has proved the disability certificate as Exbt. 9 which shows that the disability board under District Social Welfare Office, Morigaon has issued the disability certificate showing percentage of disability at 50% due to head Injury with communitated fracture of right frontal lobe. In his cross examination, PW1 has denied the suggestions that doctors have not properly assessed the disability. The above documents and evidence of sustaining head injury was duly supported by the various medical documents issued by GNRC and the document of disability is found reliable. The fact that the head injury is showing its effect resulting to seizure and damage in brain as seen from the report of GNRC. The claimant will be apparently in need of future treatment and with the problem he might not be able to continue his previous profession of skilled labour i.e., job of carpenter. Hence, he deserved the compensation by applying multiplier formula.”

20. In support of his submission, the learned counsel for the respondent relied on the decision in the case of ***National Insurance Co. Ltd Vs. Dipmoni Sarmah and 2 Ors*** in ***MACApp./1/2018***

dated **21.10.2019** reported in **(2019) Legal Eagle Gau) 1006** wherein at Para 8 it is observed that:

“8. I have gone through the entire record and considered the submissions of the learned counsels. On careful reading of the judgments rendered by the Hon’ble Supreme Court which are cited by both the learned counsels on the issue of non production or non examination of the Doctor, it appears to be quite clear that when the medical certificate and its contents are not disputed there is no need of calling for the Doctor to give evidence or for cross examination. It appears from the records that when the medical certificate was exhibited no objection was raised by the appellant. Further, it also appears that there was no contention from the appellant’s side on the contents of the certificate. As such, there was no need of producing or examining the Doctor. In that view of the matter, the first ground of appeal fails.”

21. The learned counsel for the respondent also relied on the decision of the Hon’ble Supreme Court in the case of **Raj Kumar Vs. Ajay Kumar and Anr** (Supra) wherein it held that:

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

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(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.

19. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”

22. The learned counsel for the respondent also submits that at the time of cross examination the opposite party did not make any suggestion to the claimant that the medical certificate exhibit 9 and other hospital documents produced by the claimant were fabricated or manufactured for the purpose of establishing the case of 50% permanent disability and getting the award before the Tribunal on account of 50% disability. Under the circumstances, the appellant cannot agitate before the appellate court which he had not done in the Trial Court.

23. The learned counsel for the respondent with regards to the non applicability of permit submits that the owner of the vehicle

deposing as PW 1 has clearly deposed that prior to the accident he had applied for renewal of the road permit and it was under the process in the DTO Office at the time of the accident. He also stated that he had applied for the renewal of the permit prior to the accident few days ahead of the expiry and the renewal permit was not received by him at the time of the accident. He reiterated his above statement in the cross examination stating that the renewal of the permit of the vehicle was under process in the DTO Office. Under the circumstances, it is submitted that since the permit was under renewal and it was submitted for renewal prior to the expiry date and it was under the process before the DTO Office, it is treated that the renewal would be done from the date of the expiry of the permit. As such, the question of no permit does not arise.

24. In support of his submission, the respondent relied upon the decision of this Hon'ble Court in ***New India Assurance Co. Ltd Vs. Rina Kumal and Anr in MAC case no. 34/2012 dated 14.02.2014*** reported in ***2014 Legal Eagle (Gau) 413*** wherein it was observed that:

“4. The absence of permit or infraction of the permit conditions does not defeat the effect of the policy as against third party claim. In that view, the insurer has to pay compensation to the claimants with the right of recovery from the insured by making an execution petition before the Tribunal and the Tribunal, after hearing the insured, can pass necessary order(s) in accordance with law. The conditions stipulated in the cited case does not constitute ratio. The said conditions are stipulated because of the peculiar circumstances. If the insured is not available immediately within a short span of time and payment of compensation to the claimant is deferred inordinately, the claimant would be put to great hardship. Therefore, the insurer to deposit the compensation and the same be paid to the claimants. The insurer can pursue his remedy against the insured by filing execution petition and the same be disposed of in the manner

indicated above. The appeal is accordingly disposed of."

25. In view of the above, the learned counsel for the respondent submits that there is no infirmity in the judgment and award passed by the learned Tribunal dated 08.01.2021 and as such, prays for dismissal of the appeal.

26. Heard both the learned counsel for the parties. I have also perused the documents on record and considered the various judgments of the Hon'ble Supreme Court and High Court relied upon by both the parties.

27. Since, at the very outset, the learned counsel for the appellant made it clear that she has no dispute with regards to the award in respect of; Pecuniary damages 1(A) Expenses relating to treatment, hospitalization, medicines (B) Expenses made on transportation (C) Nourishing food and miscellaneous expenditure, cost of attendant, etc, during treatment (assumptive); Non-pecuniary damages; ii (a) damages for pain, suffering and trauma as a consequence of the injuries, (c) Damages for loss of amenities in life; the above undisputed claims and awards are not being discussed in the appeal.

28. The disputes are with regards to the Pecuniary damages (i) (2) Loss of earnings on account of permanent disability and under non-pecuniary damages- (b) provision for future treatment.

29. It is seen that the fact and circumstances of the accident leading to the treatment of the claimant has not been controverted as has been discussed in detail by the learned Tribunal at Para 9 which is

reproduced herein below:

*“ 9. From the documents of taking treatment particularly from Exbt. 7 discharge certificate issued by the HPCL, Nagaon Paper Mill Hospital, Kagaznagar, shows that on 30.11.2016, the claimant Nipendra Sarkar was brought there following alleged RTA at 8 PM with multiple fracture of Maxilla, right side of frontal bone, contusion and other injuries. Immediately he was referred to GNRC, Guwahati, Exbt. 109, discharge certificate issued by GNRC Guwahati shows that Nipendra Sarkar was admitted there on 30.11.2016 and he was discharged on 02.12.2016 against medical advice. He was diagnosed severed head injury with fronal lobe haemorrhagic contusion, compound comminuted fractures of right front lobe following RTA on 30.11.2016 and operation was performed on 01.12.2016. Exbt. 8, discharge certificate issued by GMCH, Guwahati shows that the claimant was admitted there on 03.12.2016 with haemorrhagic contusion and was discharged on 13.12.2016. Subsequently the injured has attended GNRC OPD for follow up on several occasions. Thus the fact of sustaining head injury by the claimant was proved through the medical documents. The **fact of accident is not denied by the OP No. 1 and 3**, the owner and driver in their w/s which is otherwise proved by the police papers particularly by the form No. 54, (Exbt.1) FIR, charge sheet etc (Exbt.3).”*

30. The learned counsel for the respondent submitted that apart from the expenses on treatment the insured is entitled for compensation on account of loss in income and for his permanent disability for whole life due to head injury and further submits that while compounding the amount of compensation for his permanent disability due to head injury, the Tribunal and the Court should also take care of necessary expenses for future treatment, shortening of life etc. While the learned counsel for the appellant submitted there is no proof of permanent disability hence, the claimant is not entitled for permanent disability and future expenses. In this regard the learned Tribunal has observed that the claimant took treatment as indoor patient from 30.11.2016 to 13.12.2016; and while referring to the various prescriptions, the learned Tribunal observed that the said

prescription shows that subsequently the injured has attended GNRC and GMCH OPC for follow up treatment on several occasions till 2020. While referring to Exhibit 137 dated 06.01.2020, issued by GNRC Guwahati which shows that due to the head injury, the injured had developed the symptoms of seizure and was advised to avoid driving, swimming, fire, height, the learned Tribunal observed that the above report shows the severity and consequence of the head injury sustained by him on 30.11.2016. Further, while referring to the disability certificate Exbt.9, the learned Tribunal observed that the Disability Board under District Social Welfare Office, Morigaon has issued the disability certificate showing percentage of disability at 50% due to head injury with communitated fracture of right frontal lobe.

31. The learned Tribunal also observed that the only suggestion made by the appellant/opposite party during cross examination was denied by the claimant that the doctor has not properly assessed the disability. The learned Tribunal also observed that the above documents and evidences of sustaining head injury was duly supported by the various medical documents issued by GNRC and the document of disability was found reliable. It further observed that the fact that the head injury is showing its effect resulting to seizure and damage in brain as seen from the report of GNRC, the claimant/respondent herein will be apparently in need of future treatment. And with the said problem the claimant might not be able to continue his previous profession of skilled labour. i.e., job of carpenter. Therefore, the claimant deserved a compensation by applying multiplier formula. While discussing regarding the functional

disability, the learned Tribunal has also observed that admittedly the injured was a skilled carpenter by profession and proved his earning as Rs. 15,000/- per month, which shows that the claimant was a skilled carpenter by profession which has been proved by the author who issued the certificate. It is further observed that from the nature of head injury which was deteriorating with time apparently is permanent in nature and incurable. As such, the learned tribunal found it justified to take the functional disability to the extent of 50% as assessed by the Disability Board affecting his income in near future.

32. From the injuries as described above, it appears that the claimant/respondent herein had received a severe body and head injuries in the said accident and the injuries sustained by him was serious is being confirmed by the treatment that he had undergone in hospital at Morigaon, GNRC and then at GMCH, Guwahati and the exhibits medical documents.

33. The learned Tribunal while referring to the decision of the Hon'ble Supreme Court of India in the case of ***Raj Kumar vs. Ajay Kumar and Anr*** (Supra) by which the learned Court had considered in great detail the correlation between the physical disability suffered in an accident and the loss of earning capacity resulting from it and made the following observation:

“ 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.”

34. Further, keeping the above law in mind for granting compensation in the case where the injured has proved to have sustained functional disability to the extent of 50%, the learned Tribunal has evaluated the evidence in respect of the income and age of the injured and effect of disability on his income and having considered the nature of injury sustained by the injured, facts and circumstances of the case, compensation which the claimant was entitled in the instant case has been assessed.

35. In the instant case, it is well understood that when the person has received severe injury on his body and head and even after receiving treatment for about four years is still under treatment cannot be expected to be a normal in his functional and would be performing the same skilled job as he used to perform. After proper consideration of the entire documents and on examination of his present condition, the District Social Welfare Board has issued the Disability certificate Ext-9. In absence of any contrary document or proper objection during cross examination by the respondent appellant, the court has no reason to disbelieve the same.

36. The evidence shows that the owner of the vehicle has deposed that prior to the accident he had applied for renewal of the road permit and it was under the process in the DTO Office at the time of the accident. The said statement of the owner of the vehicle has not been controverted by the respondent/appellant during cross examination. In absence of any evidence against the owner that there

has been a violation of the terms and conditions of the policy and in view of the decision of this Court in ***New India Assurance Co. Ltd Vs. Rina Kumal and Anr (Supra)*** the appellant has failed to satisfy that the owner is liable to pay the compensation.

37. Considering the case in its entirety, I do not find any infirmity in the findings of the Tribunal and the judgment and award passed by the learned Tribunal including the pecuniary damages (Special damages) granted under (i) (2) Loss of earnings on account of permanent disability or Rs. 14,40,000/- and; non pecuniary damages (general damages) (ii)(b) provision for future treatment of Rs. 50,000/- etc.

38. Accordingly, this appeal is dismissed being devoid of merit.

39. Return the Trial Court Records immediately.

JUDGE

Comparing Assistant