



IN THE GAUHATI HIGH COURT

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

KOHIMA BENCH

MAC Appeal No. 07 of 2019

United India Insurance Company Ltd.
Represented by its Branch Manager,
Dimapur Branch, Nagaland

.....Appellant/Insurer

-VERSUS-

1. Md. Abdul Salam
S/o –Rubul Amin,
R/o- Golaghat Road, near Field Gate,
Dimapur, Nagaland.
2. Shri Henminggan Kipgen;
Village – Hidipi, SPO -Kalapahar, Karbi Anglong
(Driver of the vehicle))
3. Transking Carrier Pvt. Ltd;
6, Ramlochan Mullick Street;
Kolkata-700073;
(Owner of the vehicle)

..... Respondents

:::BEFORE:::

HON'BLE MR. JUSTICE ROBIN PHUKAN

By Advocates:-

For the Appellant : Mr. Pfoseko Pfotte

For the respondent : Mr. B.N. Sharma

Date of Hearing : 20.11.2023

Date of Judgment : 19.01.2024

JUDGMENT AND ORDER

Judgment and order, dated 12.04.2019, passed by the learned Member MACT, at Dimapur, Nagaland in MAC Case No. 70/2014, is challenged in this appeal by United India Insurance Company Ltd. It is to be noted here that vide impugned judgment and order, the learned Member MACT, Dimapur, has awarded a sum of Rs 6,94,680/-(Rupees six lakhs ninety-four thousand six hundred and eighty) under different heads, payable by the appellant along with interest @ 9% per annum, from the date of filing of the claim petition till actual realization.

2. The factual background, leading to filing of this present appeal is briefly stated as under:-

"On 11.04.2013, at about 11:30 PM, the claimant/respondent No.1, a skilled labour, being the casual employee of respondent No.3, was returning home after attending his assigned duty in a Crane, bearing Registration No. WB-24E/7413, being driven by respondent No.2, met with an accident near Khatkhathi Petrol Pump, due to steering failure and rash and negligent driving. The vehicle turned turtle and as result of which the respondent No.1 sustained grievous injuries i.e. "Multiple fractures of the left maxillary bone (wall) and left zygomatic bone with opacification of the left maxillary sinus, s/o haemorrhagic effusion with fracture of the posterior part of the ramus of the mandible on the right side, extending from the angle till the head and neck region, with overlying soft tissue swelling of the face. Thereafter, the respondent No.1 had filed a claim petition before the learned Member MACT, Dimapur, Nagaland under Section 166 of the M.V. Act. The appellant, United India Insurance Company Ltd. and the owner of the vehicle i.e. Transking Carrier Pvt. Ltd, and the Driver had contested the claim by filing written statements. Thereafter, hearing both the parties, the learned Court below, vide impugned judgment and order, awarded a sum of Rs 6,94,680/-(Rupees six lakhs ninety-four thousand six hundred and eighty) under different heads, payable by the appellant along with

interest @ 9% per annum, from the date of filing of the claim petition till actual realization.

3. Being highly aggrieved, the appellant, National Insurance Company Ltd., preferred this appeal on the following grounds:-

- (i) That, the learned Member MACT, have committed gross error by assessing the disability of the respondent No.1 at 40% without there being any disability certificate of medical board;
- (ii) That, the learned Member MACT, had failed to consider the fact that the burden to prove the fault under section 166 M.V. Act is upon the claimant but the claimant has failed to prove the rash and negligent driving of the vehicle on the part of the driver;
- (iv) That, the learned Member had failed to consider the fact that no mechanical report was produced by the claimant to establish the fact that the accident took place due to steering failure;
- (v) That, the learned Member MACT, had failed to consider the fact that the claimant had failed to prove his age and income by producing any document and also failed to prove the medical report to establish that he had sustained grievous injuries;

- (vi) That, the learned Member MACT, have failed to take into account that the driver of the vehicle had special endorsement from the licensing authority to drive a Crane;
- (vii) That, the learned Member had failed to take into consideration the fact that no regular police case was filed and the Police Report was filed band on GD Entry only;

4. I have heard Mr. Pfoseko Pfotte, learned counsel for the appellant. Also heard Mr. B.N. Sharma, learned counsel for the respondent.

5. Mr. Pfoseko Pfotte, learned counsel for the appellant had advanced four-fold arguments. Firstly Mr. Pfofte submits that the learned Member had assessed the disability of the claimant at 40% without any certificate issued by the Medical Board. Secondly, Mr. Pfofte submits that the claimant has failed to prove rash and negligent driving of the vehicle by the driver and as such the petition under section 166 M.V. is not maintainable. Thirdly, Mr. Pfofte submits that the learned Court below, without any documentary proof, has fixed the monthly income of the claimant at Rs.7000/- per month, which is not permissible. Fourthly, Mr. Pfofte submits that the claimant has failed to prove the medical documents by examining the Doctor to establish that he had sustained grievous injuries. Mr. Pfofte, also submits that the learned Member MACT had awarded interest @ Rs. 9 % per annum, which is not permissible and therefore, contended to allow the appeal by setting aside the impugned award.

6. On the other hand, Mr. B.N. Sharma, learned counsel for the respondent No. 1 submits that the issues raised before this court was not raised before the learned Member, MACT and as such the same cannot be raised in appeal. Mr. Sharma further submits that a Crane is a heavy vehicle and the driver the same had possessed a valid heavy driving licence. Mr. Sharma further submits that the allegation of absence of rash and negligent driving is unfounded in as much as there is evidence to suggest that the accident took place due to steering failure and that the Evidence Act is not strictly followed in MAC Cases. It is the further submission of Mr. Sharma that registration of a police case is not necessary to file a claim petition and award can be made on the basis of GD Entry. Mr. Sharma also submits that in absence of age proof and income proof certificate also the Tribunal can maintain a claim petition. Lastly Mr. Sharma submits that the Tribunal has not committed any illegality by fixing the interest at the @ Rs. 9% per annum and the same has been settled by Hon'ble Supreme Court in catena of decisions. Therefore, Mr. Sharma submits that the appeal may be dismissed.

7. Having heard the submissions of learned Advocate of both sides, I have carefully gone through the appeal and the documents placed on record and the judgments referred by learned Advocates of both sides and also carefully gone through the impugned judgment and order of the learned Member MACT, Dimapur, dated 12.04.2019.

8. The record reveals that while deciding the claim petition the learned Tribunal had framed following issues:-

- (i) Whether the respondent driver caused the accident out of rash and negligent driving of the vehicle, registration No. WB-24/E-7413 (Crane) and thereby the claimant sustained grievous injuries on 11.04.2013 on NH 39 at Lahorijan, Karbi Anglong at the relevant time ?
- (ii) Whether the claimant at the time of accident was 30 years old and having monthly income of Rs. 7000/- ?
- (iii) Whether at the time of accident, the Crane was driving with in the policy conditions by an authorised driver ?
- (iv) Whether the claimant claims for compensation is maintainable as prayed for ?
- (v) Whether the Police registered regular case and filed charge sheet against driver of the Crane ?
- (vi) Whether the claimant is entitled to compensation, if so, to what extent and payable by whom ?

9. Thereafter, hearing both the parties, the learned Tribunal decided all the issues, except issue No.(v), in affirmative and awarded compensation, as aforesaid, to be payable by the present appellant.

10. Here in this case, it is apparent from the record that the accident took place due to steering failure. And having gone through the record of the Tribunal, I find that the claim petition was filed under section 166

M.V. Act and it also appears that the impugned judgment and order was passed under Section 166 M.V. Act,

11. It also appears from the record of the learned court below that there are sufficient materials to suggest that the accident took place due to 'steering failure'. It is clearly stated in the Accident Information Report (Exhibit-P-2) that the accident took place purely on account of mechanical defect i.e. steering failure. But there is no dispute that the claimant had sustained grievous injuries on account of the accident that arose out of the use of the Motor vehicle. Now, what left to be seen is whether the claimant can maintain a petition since the element of wrongful act, which is the basis for tortious action, is not there.

12. While dealing with the issue, a Division Bench of Kerela High Court in **Oriental Fire And Genl. Ins. Co. vs. P.P. Misri And Ors. : 1993 ACJ 25**, relying upon a decision of a Full Bench of the Punjab & Haryana High Court in **Rajpal Singh vs. Union of India: 1986 ACJ 344 (P&H)** held that a claim petition can be filed for personal injuries and the Tribunal can adjudicate the matter even if it is not against the driver.

13. The Kerela High Court further held that-creating Rules or Law is no part of function of the Judges. But, situations may arise where the law is not clear, it may have different shapes, some clouding the decision process. This mechanical type of reasoning may lead to injustice in individual cases. But in uncertain cases, the court will be tempted to break the new ground. It is also held that **Rylands v. Fletcher (1868) LR 3**

HL 330, is a typical example where it was held that where there was no rule already in existence to the effect that if a person accumulates on his land anything likely to do harm if it escapes, then he is liable if it escapes and causes damage and the court's problem in that case is to develop just such a rule. To formulate a rule on the basis of existing rules and precedents to apply to novel situations is really difficult and once a rule is formulated, it may be possible to apply the syllogism automatically. But, in cases creating such a situation, the chief difficulty is to establish the premises of the syllogism. There may be other kinds of cases where the general rule may be well established, but it will be difficult and doubtful whether the facts presented before the court brings it within the rule. These types of cases occur usually with reference to statutory interpretation.

14. It is further observed by the Kerela High Court that the Supreme Court has made it very clear that the owner has got a liability and that it arises out of his failure to discharge a duty cast on him by law. It is possible to put the case now at hand under the principle that the owner has failed to discharge a duty cast on him by law insofar as he has entrusted a vehicle with mechanical defects to a driver for a hazardous journey in a precarious track over which the lorry has to be driven. There is ample evidence in this case that the accident occurred on account of mechanical failure. There is a clear finding that the accident happened not due to the rashness and negligence of the driver. He happened to be an innocent victim. It is further held that- anyhow, the insurer is liable to

indemnify the owner if he is found liable to pay any amount either under the Workmen's Compensation Act or under the Motor Vehicles Act.

15. Thereafter, it has opined that accepting that part of the principle laid down by the Supreme Court in **Minu B. Mehta v. Balkrishna Ramchandra Nay an 1977 ACJ 118 (SC)**, the owner is liable to compensate the driver on the principle that he has failed to discharge a duty cast on him by law and also on the principle that the owner is liable to the legal representatives of a deceased workman, if the workman dies in the course of employment, not on account of his negligence.

16. The Allahabad High Court also in the case of **Union of India v. Sushila Devi**, reported in **1990 ACJ 1 (Allahabad)**, held that Claims Tribunal is not confined in its jurisdiction to claims for compensation which are directed only against the driver, owner and insurer of the vehicle. Where the claim is founded on the assertion that the accident was caused by the use of the motor vehicle, the Tribunal shall undoubtedly have jurisdiction to entertain the claim even though it is directed against a third party. We are of opinion that the crucial aspect to be looked into in deciding the question of jurisdiction is that the claim must be in respect of accidents involving the death of, or bodily injury to, persons caused or contributed by the use of motor vehicle whether wholly or conjointly with some third party.

17. The Bombay High Court in **Marine and General Ins. Co. Ltd. v. Dr. Balakrishna Ramachandra Nayan : 1976 ACJ 288 (Bombay)**,

took the view that the Act provides liability arising out of the use of the motor vehicle and if one person suffers any loss, which has to be compensated and if that loss is occasioned on account of the use of the vehicle in spite of lack of negligence on the part of any person, the owner of the vehicle is liable.

18. In another case, in **Kesavan Nair v. State Insurance Officer 1971 ACJ 219 (Kerala)**, Justice Krishna Iyer, as he then was, of the Kerela High Court, observed thus:-

"Out of a sense of humanity and having regard to the handicap of the innocent victim in establishing the negligence of the operator of the vehicle a blanket liability must be cast on the insurer."

19. In the case of **Motor and General Finance (India) Ltd. Vs. Mary Mony: 1991 ACJ 101(Ker)** the Kerela High Court has held that :-

"Though the fundamental principle on which the liability is fasten can be traced to the law of Torts, many of the crucial aspects of that liability have been now made statutory by the Act. Even then the principles of law of Torts are relevant in the quantification of damages."

20. In another case a Full Bench of the Punjab & Haryana High Court in **Rajpal Singh vs. Union of India: 1986 ACJ 344 (P&H)** held that a claim petition can be filed for personal injuries and the Tribunal can adjudicate the matter even if it is not against the driver.

21. In **Kaushnama Begum and Ors. vs. New India Assurance Company Ltd. Appeal (Civil) No. 6 of 2001, Special Leave Petition (Civil) 1431 of 2000**, Hon'ble Supreme Court had inter-alia

held that the issue of wrongful act or omission on the part of the driver of the motor vehicle involved in the accident has been left to a secondary importance and mere use or involvement of motor vehicle in causing bodily injury or death of human being or damage to property would make the petition maintainable under section 166 and 140 of the Motor vehicle Act.

22. In the case of **Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai and Anr. {1987 (3) SCC 234}** while dealing with the issue Hon'ble Supreme Court has held that :-

"Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use, should not the owner be made liable for damages to the person who suffered on account of such accident? This question depends upon how the Rule of Ryland vs. Fletcher (supra) can apply in motor accident cases."

22.1 Thereafter, it has been held that- the question considered was regarding the application of the Rule in cases arising out of motor accidents wherein it has been observed that:-

"Today, thanks to the modern civilization, thousands of motor vehicles are put on the road and the largest number of injuries and deaths are taking place on the roads on account of the motor vehicles accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in Rylands v. Fletcher. From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor vehicles highly dangerous. Hit and run cases where the drivers of the motor vehicles who have caused the accidents are not known are increasing in number. Where a pedestrian without negligence on his part is injured

or killed by a motorist whether negligently or not, he or his legal representatives as the case may be should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents there has been a continuous agitation throughout the world to make the liability for damages arising out of motor vehicles accidents as a liability without fault."

22.2 It was further held that:-

"Like any other common law principle, which is acceptable to our jurisprudence, the Rule in *Rylands vs. Fletcher* can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, we are disposed to adopt the Rule in claims for compensation made in respect of motor accidents."

23. Further, Hon'ble Supreme Court in **Mangla Ram vs. The Oriental Insurance Co. Ltd. &Ors., in Civil Appeal No. 2499-2500 of 2018 (arising out of SLP(Civil) Nos. 28141-42 of 2017,** it has discussed the responsibility of the owner and insurance company when the negligence is not established on the part of the driver. Thereafter, discussing its earlier decision in **Kaushunma Begum** (supra) held that -

"We are therefore, of the opinion that even apart from section 140 of the MV Act, a victim in an accident which occurred while using a motor vehicle, is entitled to get compensation from a Tribunal unless any one of the exceptions would apply. The Tribunal and the High Court have, therefore, gone into error in divesting the claimants of the compensation payable to them".

24. Thus, the legal proposition, that can be crystallized from the decisions of Hon'ble Supreme Court, as discussed herein above, especially

in **Kaushnama Begum** (supra), **Gujarat State Road Transport Corporation** (supra) and of the Kerela High Court in **P.P. Misri And Ors.**(supra), is that - a victim of an accident, that takes place on account of use of the motor vehicle, is entitled to get compensation from the owner of the vehicle even though there is no fault or negligence on the part of the driver, in view of the rule of strict liability as propounded in the case of **Ryland vs. Fletcher**(supra). And that the claim petition is maintainable before Motor Accident Claim Tribunal under section 166 and 140 M.V. Act. The learned, Tribunal, thus, had rightly held that the claim petition before the Motor Accident Claim Tribunal is maintainable. The submission, so advanced by Mr. Pfotte, learned counsel for the appellant, thus, appears to be devoid of merit, and accordingly, the same stands repelled.

25. It is a fact that without any documentary proof, the learned Tribunal had assessed the age of the claimant as 25 years and fixed his monthly income@ Rs.7000/ (Rupees Seven Thousand) per month, based upon his oral evidence of the claimant, and also assessed his disability as 40%. Mr. Pfotte, learned counsel for the appellant had rightly pointed this out during argument. But, the oral evidence of the claimant regarding his monthly income @ Rs.7000/, per month, remained undisputed in cross-examination. And therefore, fixing the income @ Rs. 7000/, per month, by the Tribunal, cannot be said to be based on wrong premises or irrational in view of the law laid down by the Hon'ble Supreme Court in **Smti. Savita Vs. Bindar Singh & others, 2014 AIAR (Civil) 419 (S.C.)**. In

the case of **Chandra @ Chanda @ Chandraram and Anr. vs. Mukesh Kumar Yadav and Others** reported in **(2022) 1 SCC 198**, wherein it has been held that some guess work is permissible in fixing monthly salary/income of the deceased driver in absence of any documentary proof. The learned Tribunal also, based on the oral evidence of the claimant and also upon the Accident Information Report (Exhibit-P/2), assessed his age as 25 years on the relevant date i.e. date of accident. Therefore, it cannot be said that the learned Tribunal had committed any error in deciding his age also.

26. Further, it appears that at the relevant time of accident, the driver of the vehicle, namely, Hengmingan Kipgen had possessed Heavy Driving Licence bearing No. 28464/MK with validity till 14.01.2016, as revealed from Accident Information Report, -Exhibit-P/2, for driving heavy transport vehicle and as per Insurance Policy -Exhibit-P-3, the vehicle comes in the category of Heavy Transport Vehicle and that at the time of accident the policy was in force. A careful perusal of the policy document reveals that the policy was in force. These facts have not been disputed by the appellant side.

27. The learned Tribunal, having assessed the monthly income of the driver was Rs.7000/-, (Rupees Six Thousand) and his disability at 40% and his age as 25 years, assessed the quantum of compensation asunder:-

- (i) Loss of future earning on account of permanent disability:-
Rs.3,88,800/- i.e. 40% of Rs. 7000 x 12 x 17 (multiplier)
- (ii) Medical Expenses:-**Rs. 96,480/-**
- (iii) Pain, shock and suffering etc. **Rs.10,000/-**
- (iv) Incidental Expenses during treatment :- **Rs.10,000/-**
- (v) Loss of income for one month during treatment **Rs.7,000/-**

Thereafter, the learned Tribunal had determined the total quantum of Rs.6,94,680/-(Rupees Six Lacs Ninety Four Thousand Six Hundred and Eighty) only, and accordingly, ordered the appellant to pay the compensation to the claimant.

28. It is to be mentioned here that while dealing with the quantum of compensation, in routine injury cases, Hon'ble Supreme Court in **Raj Kumar Vs. Ajay Kumar** reported in **2011 (1) TAC 785(SC)** held that in routine personal injury cases, the heads, under which the compensation can be awarded are as follows –

- (i) Expenses relating to treatment, hospitalization, medicine, transportation, nourishing food and miscellaneous expenses;
- (ii) Loss of earning 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 earning on account of permanent disability;

- (iii) Future medical expenses;
- (iv) Damages for pain, sufferings, trauma as a consequences of injury ;
- (v) Loss of amenities (and/or) loss of prospect of marriage;
- (vi) Loss of expectation of life (shortening of normal longevity);

29. Now, coming to the quantum of compensation I find from the record that the claimant had spent a sum of **Rs.96,480/-** (Rupees Ninety Six Thousand Four Hundred and Eighty) only, in treatment of the injuries sustained by him in the said accident. The appellant had not disputed the same. Thus, the claimant will entitle to the aforesaid amount i.e. **Rs.96,480/-** (Rupees Ninety Six Thousand Four Hundred and Eighty) only, as compensation under the head No. (i).

30. Now, coming to the quantum of compensation under the head No. (ii) (a) and (b), we find from the evidence of the claimant that at the relevant point of time, the injured was 25 years old and professionally he was a Skilled Labour and his monthly income was Rs.7000/-. As the claimant was hospitalized from 12.04.2013 to 27.04.2013 at Zion Hospital (as per Discharged Summery - Exhibit-P/6), the learned Tribunal had assessed his financial loss for one month only. Further, it appears that the learned Tribunal has assessed the disability of the claimant as 30%, but without indicating the disablement as permanent or partial disablement and without any evidence and Disability Certificate. The Tribunal, inspite of absence of disability certificate, had assessed the disability as 40%, on

the ground that the claimant is having difficulty in walking, sitting and standing for a long time and he cannot lift heavy things and cannot do much manual work as he was doing before the accident.

31. Now, what left to be seen is whether in absence of any medical evidence and Disability Certificate, the alleged disability of the claimant can be assessed as 40%. While dealing with the issue in the case of **Raj Kumar** (supra) Hon'ble Supreme Court has held as under:-

Assessment of future loss of earnings due to permanent disability:-

6. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Disabilities Act' for short). But if any of the disabilities enumerated in section 2(i) of the

Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

7. The percentage of permanent disability is expressed by the Doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100%.

8. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the

effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this court in *Arvind Kumar Mishra v. New India Assurance Co. Ltd.* - 2010(10) SCALE 298 and *Yadava Kumar v. D.M., National Insurance Co. Ltd.* - 2010 (8) SCALE 567).

9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the

permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount

may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.

11. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to 'hold an enquiry into the claim' for determining the 'just compensation'. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the 'just compensation'. While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Handbook for evaluation of permanent physical impairment (for example the Manual for Evaluation of Permanent Physical Impairment for Orthopaedic Surgeons, prepared by American Academy of Orthopaedic 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. If a Doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and if so the percentage.

12. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who

give 'ready to use' disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local Hospitals/Medical Colleges) and refer the claimant to such Medical Board for assessment of the disability.

13. We may now 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.

32. Admittedly, in the case in hand the claimant has not examined the attending Doctor and also not produced any disability certificate. The evidence of the claimant is worth mentioning here in this context. He testified as under:-

"Out of the accident I sustained head injuries and stitching besides fracture of left leg. I have medical treatment at Zion and other Hospitals. However, in cross-examination by the appellant it is elicited that- "It is correct that no part of my limb have been amputated. It is correct that I can walk without stick. It is correct to say that I have not suffered permanent impairment of hands or legs. It is correct that I can undertake business even if I cannot do heavy manual work. It is correct today I have not furnished any Disability Certificate in support of my claim".

33. There are, however, medical documents to substantiate that the claimant had sustained grievous injury on his person. But, in absence of any such evidence and materials as well as disability certificate, mere assessing the disability of the claimant at 40%, to the considered opinion of this court, is bereft of any logic and also against the law, so laid down by the Hon'ble Supreme Court in the case of **Rajkumar**(supra).

Therefore, this court is unable to endorse the approach of the learned Tribunal.

34. It is a fact that Motor Vehicle Act is a beneficial piece of legislation and its provisions has to be interpreted keeping in mind the objective, sought to be achieved by the legislature. Mr. B.N. Sharma, the learned counsel for the respondent No.1/claimant has rightly pointed this out during hearing. But, even concurring to his argument, this court is unable to endorse the approach, which the learned Tribunal had adopted. There must be some sort of evidence to suggest that because of the injuries sustained by the claimant he became disable, and the same has some bearing upon his income.

35. Thus, to the considered opinion of this court the claimant is entitled to **Rs.7000/-** under Head No.(ii) (a), but he is not entitled to any relief under head No.(ii) (b), since there is no materials to suggest that he will suffer loss of future income on account of permanent disability.

36. There is also no medical evidence to suggest that the claimant has to incur medical expenses in future for his treatment. Therefore, in absence of any documentary proof, this court is of the view that he will not entitle to any compensation under the Head No. (iii).

37. Now, coming to the quantum of compensation under the Head No. (iv), we find from the evidence of the injured/claimant that he was in Hospital from 12.04.2013 to 28.04.2013 due to the injuries sustained by

him in the motor vehicle accident. He was 25 years old at the material time of accident. Having regard to above, we are of the view that a sum of **Rs.50,000/-** will be the just and proper amount of compensation under this head.

38. There is no medical evidence to suggest that the injury sustained by the claimant, will have any impact upon his normal longevity of life, nor there is any evidence to show that he will not be able to enjoy amenities of his life. Therefore, we are of the considered opinion that the claimant will not entitle to any compensation under the head Nos. (v) and (vi). However, we would like add a sum of **Rs.25,000/-** as the cost of litigation as per judgment of the Hon'ble Supreme Court in **Boloram Prasad Vs. Kunal Saha & others (2014) 1 SCC 384.**

39. Thus, the claimant is entitled to the total amount of **Rs.1,78,480/- (Rupees one lac seventy eight thousand four hundred & eighty)** only, as compensation, and in our considered opinion, this amount would be the just, equitable, fair and reasonable amount of compensation here in this case.

40. The learned Tribunal has directed to pay interest @ 9%, from the date of filing the claim petition till payment of the amount. Though, the learned counsel for the appellant submits that the percentage of interest is in higher side, yet, in view of the judgment of the Hon'ble Supreme Court in **Municipal Corporation of Delhi Vs. Upahar Tragedy Victims Association and Ors, (2011) 14 SCC 481** and also

in **Kalpanaraj vs. Tamil Nadu State Transport Corporation: (2014)Acci.C.R.693 (S.C.)**, where it is provided that the amount shall carry interest @ 9%, till realization of the amount, no fault can be found with the finding of the learned Tribunal.

41. In the result, we have find, no merit in this appeal and accordingly, the same stands dismissed. However, the quantum of compensation, which, the claimant is entitled to, is modified to the extent as indicated above. The appellant is directed to pay a sum of **Rs. 1,78,480/- (Rupees one lac seventy eight thousand four hundred & eighty)** to the claimant within 30 days from today, adjusting the amount which has already been paid.

JUDGE

Comparing Assistant