

GAHC020007022021



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

Case No. : MACApp./17/2021

THE UNITED INDIA INSURANCE CO. LTD.,
REPRESENTED BY ITS BRANCH MANAGER, DIMAPUR, NAGALAND

VERSUS

SMTI. MINU PAUL AND 4 ORS
W/O LATE SUBOL PAUL,
MS. PRIYA PAUL, D/O LATE SUBOL PAUL,
MS. DIYA PAUL, D/O LATE SUBOL PAUL,
AND MASTER ANKIT PAUL, S/O LATE SUBOL PAUL,
PERMANENT ADD. - VILLAGE - GHARIALDUBI, P.O. BOKAJAN,
KARBI - ANGLONG, ASSAM.
PRESENT ADD. - RAILWAY COLONY, C/O SHRI. KISHORE
PURKASHTYA, NEAR SARASWATI MANDIR, DIMAPUR, NAGALAND

2:SHRI. A. RISHIKESH SHARMA

S/O NIDHIBON
R/O LAMSANG
IMPHAL WEST
MANIPUR(OWNER OF OIL TANKER B/REGD. NO.MN-01/6159

3:YAMNAM ANIL SINGH

S/O Y DHABALO SINGH
R/O NANGKHEI KHUMAN OLD CHEEKON
P.S. IMPHAL EAST
MANIPUR(DRIVER OF OIL TANKER B/REGD. NO.MN-01/6159

4:SHRI. SUKHA RANJAN PAUL

S/O SURESH CHANDRA PAUL

R/O GHARIALDUBI
P.O. BOKAJAN
KARBI ANGLONG
ASSAM(OWNER OF PICK-UP VAN B/REGD. NO.AS-09/C-6169

5:SHRI. AJIT SUREN @ AJIT MAZI SOREN

S/O SOMAI MAZI SOREN
R/O VILLAGE - NAOKATA
P.O. BOKAJAN
DISTRICT - KARBI ANGLONG
ASSAM
PRESENTLY RESIDING AT MINISTER COLONY
C/O DEEPAK DAS
DIMAPUR
NAGALAN

Advocate for the Petitioner : TAYONGCHUBA

Advocate for the Respondent : P. B. CHHETRY

Date of Hearing : 19.03.2024
Date of Judgment : 29th ***April, 2024***

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT AND ORDER

Heard Mr. Tayongchuba, learned counsel for the appellant and also heard Mr. P.B. Chetry, learned counsel for the respondents.

2. In this appeal, under Section 173 of the Motor Vehicles Act, 1988, the appellant, United Indian Insurance Company Ltd., has put to challenge the correctness or otherwise of the judgment and order dated 09.07.2020, passed by the learned Member, Motor Accident Claims Tribunal (MACT), Dimapur, Nagaland, in MAC Case No.103/2014. It is to be noted here that vide impugned judgment and order dated 09.07.2020, the learned Member, MACT, Dimapur, has directed the appellant to pay compensation amounting to Rs.4,67,764/- only, to the respondent No.1, within a period of 1(one) month from the date of

order and further directed that in the case of failing to make payment, the compensation amount shall carry interest @9% per annum, from the date of filing the claim petition.

3. The background facts, leading to filing of the present appeal, are briefly stated as under:-

“On 31.10.2013, Shri Subol Paul, respondent No.1, since deceased and represented by his wife Smt. Minu Paul, was travelling in a pick-up van, bearing Registration No.AS-09C-6169, from Bokajan towards Golaghat side and on reaching Garampani Reserve, the pick-up van by which Mr. Subol Paul was travelling, knocked down by an Oil Tanker, bearing Registration No.MN-01-6159, which was coming from opposite direction. In the said accident, Subol Paul sustained serious injuries and he was shifted to Golaghat Civil Hospital and from there to Assam Medical College, Dibrugarh. Thereafter, Subol Paul has instituted one Motor Accident Claim proceeding before the learned Member, MACT, Dimapur, claiming a compensation amounting Rs.14,84,000/- for the injuries sustained by him. Upon the said claim petition, the learned Member, MACT, Dimapur, issued summon to the present appellant and other respondents. The appellant entered appearance and contested the petition by filing written statement and denied its liability. Thereafter, hearing both the parties, the learned Tribunal was pleased to direct the appellant, vide impugned judgment and order dated 09.07.2020, to pay compensation amounting Rs.4,67,764/- in favour of the claimant and further directed to make payment of the said amount within a period of 1(one) month from the date of the order and in default to pay interest @9% per annum from the date of filing the claim petition.”

4. Being aggrieved, the appellant approached this Court by filing the present appeal on the following grounds:-

(i) That, the learned Member, MACT, Dimapur, has failed to take into

consideration that the onus to prove rash and negligent driving of the vehicle rest upon the claimant, as the claim petition was preferred under Section 166 of the Motor Vehicles Act, 1988. But the claimant has failed to prove the negligence on the part of the driver of the vehicle being registration No. MN-01-6159, by adducing any evidence.

- (ii) That, the learned Tribunal also failed to take into account the fact that the claimant has failed to examine the police personnel to prove the documents so issued by him and as such, fastening of liability upon the present appellant is highly arbitrary and liable to be set aside.
- (iii) That, the learned Tribunal also failed to take into account the fact that the claimant has failed to examine the doctor, who has issued the medical documents to prove that he has sustained grievous injuries and also suffered disability.
- (iv) That, the learned Tribunal also failed to take into account that the claimant has failed to prove his age and income by furnishing relevant documents and in absence of such proof, granting of compensation in favour of the claimant is illegal and that the learned Tribunal had also failed to appreciate the evidence in its proper perspective and to apply judicial mind, resulting miscarriage of justice and accordingly, it is contended to set aside the impugned judgment and order.

5. Mr. Tayongchuba, learned counsel for the appellant though reiterated all the grounds mentioned hereinabove during hearing, he mainly stressed upon the point that the claimant has failed to establish rash and negligent driving on the part of the driver of the Oil Tanker, bearing Registration No.MN-01-6159 and secondly, Mr. Tayongchuba stressed upon the fact that without examination of the doctor and proving the medical documents relied upon by the claimant, the

learned Tribunal has arrived at the finding that the claimant has suffered grievous injuries and also suffered disability and therefore, Mr. Tayongchuba contended to allow this appeal.

6. On the other hand, Mr. P.B. Chetry, learned counsel for the respondents submits that the claimant has already suffered demise and now the matter is being pursued by his widowed wife that the learned Tribunal has rightly arrived at the finding that the claimant has suffered serious injuries on his person and also suffered disability and produced the relevant documents to that effect and as such the impugned judgment and order passed by the learned Member, MACT, Dimapur warrants no interference from this Court and therefore, it is contended to dismiss the same.

7. Having heard the submission of learned Advocates of both sides, I have gone through the memo of appeal and the documents placed on record and also perused the impugned judgment and order dated 09.07.2020.

8. It appears that upon the pleadings of the parties, the learned Tribunal has framed following issues:-

- (i) *Whether the Oil Tanker, bearing Registration No.MN-01-6159 knocked down a Pick-up Van, bearing Registration No.AS-09C-6169 on 31.10.2013 at about 8:30 a.m. at Garampani Reserve on NH-39? If so, whether Shri Subol Paul (hirer of the pick-up van) sustained grievous injuries in the said accident?*
- (ii) *Whether the accident occurred due to rash and negligent driving of Truck, bearing Registration No.MN-01-6159?*
- (iii) *Whether the claimant, namely, Shri Subol Paul was aged about 38 years and was earning a sum of Rs.7,000/- per month at the time of accident?*

- (iv) *Whether the vehicles involved in the accident were possessing valid vehicular documents including insurance coverage and were driven by drivers having valid and effective driving licences?*
- (v) *Whether the accident was a result of composite negligence?*
- (vi) *Whether the claimant has suffered permanent disability and entitled to any compensation? If so, what extent and payable by whom?*

9. It also appears that the learned Tribunal, thereafter, discussing the evidence adduced by the claimant and also by the respondents, decided the issues in favour of the claimant and assessed the quantum of compensation at **Rs.4,67,764/-** and directed the respondent Nos.3 and 4 to pay a sum of **Rs.4,42,764/-** after deducting the interim compensation amounting Rs.25,000/- from the total amount of compensation.

10. The learned Tribunal on the basis of evidence adduced before it, recorded a finding in respect of Issue Nos.(i), that the accident took place on 31.10.2013, at about 8:30 a.m. at Garampani Reserve on NH-39, in which the learned claimant had sustained grievous injuries. Thereafter, the learned Tribunal, in respect of Issue No. (ii), had arrived at a finding that the accident took place due to rash and negligent driving on the part of the driver of the Oil Tanker, bearing Registration No. MN-01-6159. And in respect of Issue No. (v) the learned Tribunal had recorded a finding that there was no composite negligence in the said accident.

11. I have carefully gone through the evidence, so adduced by the claimant and it appears that the accident took place on 31.10.2013, at about 8:30 a.m. at Garampani Reserve on NH-39. The evidence of the claimant also reveals that the accident took place in a turning and the Oil Tanker, bearing Registration No. MN-01-6159, which was coming from the opposite side, was in high speed and

the driver of the said tanker could not turn the steering and as a result of which the Tanker dashed against the Pickup Van, on its right side. This fact has not been disputed by the respondents. The accident information report issued by the Barpathar Police Station (Exhibit-P2) also indicates that the accident took place on 31.10.2013, at about 8:30 a.m. at Garampani Reserve on NH-39, involving an Oil Tanker, bearing Registration No.MN-01-6159 and this fact is also not been disputed by the respondents. Further, it appears that in connection with the said accident Borpathar P.S. Case No. 91/2013, under section 279/338/427 IPC has been registered against the driver of the Oil Tanker. It is to be noted here that Accident Information Report-Exhibit-P-2, is not disputed by the appellant side. Thus, this court is of the considered opinion that the learned Tribunal has rightly decided the Issue No.(i) in favour of the claimant.

12. The evidence of the claimant also reveals that in the said accident he had sustained multiple injuries all over his person with fracture of shaft of humerus (R). The medical documents (Exhibits-P4, P5, P6) issued by the Assam Medical College and Hospital, Dibrugarh and Exhibit-P7, the medical report, prescription and cash memos and the disability certificates- Exhibit-P16 (Sl.No.1 to 3), and the X-Ray Plate - Exhibit P-9, amply corroborated the oral testimony of the claimant. And nothing tangible could be elicited in cross-examination of the claimant to discredit his evidence and the documents exhibited by him also not seriously been disputed by the respondent. Thus, it appears that the learned Tribunal had rightly decided the Issue No.(ii).

13. It is not in dispute that in the said accident two vehicles i.e. Oil Tanker, bearing Registration No.MN-01-6159 and a Pick-up Van, bearing Registration No.AS-09C-6169 were involved. But, there is clear and cogent evidence to show that the accident took place as result of rash and negligent driving on the part of the driver of the Oil Tanker bearing registration No.MN-01-6159. And the Accident Information Report-Exhibit-P-2, in connection with the said accident in

Borpathar P.S. Case No. 91/2013, under section 279/338/427 IPC has been registered against the driver of the Oil Tanker. And as such, there is no material to suggest that there was on the part of the Pick-up Van, bearing Registration No.AS-09C-6169 and as such there cannot be composite negligence. The learned Tribunal, thus rightly, decided the Issue No.(v).

14. It also appears that the learned Court below, on the basis of the evidence placed on record has arrived at the finding that at the relevant point of time, age of the claimant Subol Paul was 38 years and though no documentary proof was adduced in support of the same, yet, the medical prescription of different Hospitals and medical reports, indicates that his age was 38 years at the material point of time. And this fact could not be rebutted by the appellant side.

15. It also appears from the evidence of the claimant and the Trade License (Exhibit-P-8), that the claimant was businessman and he used to sell shoes in weekly markets in and around Karbi Anglong. The claimant had categorically stated that his monthly income was Rs. 7,000/-. It is, however, a fact that the claimant had not produced any documentary evidence in support of his age and income. But, the learned Tribunal has fixed a notional income of the claimant at Rs.6,000/- per month. The finding so recorded by the learned Tribunal appears to be justified and reasonable. It is worth mentioning in this context that Hon'ble Supreme Court, in **Chandra @ Chanda @ Chandraram and Anr. vs. Mukesh Kumar Yadav and Others** reported in **(2022) 1 SCC 198**, held that some guess work is permissible in fixing monthly salary/income of the deceased driver in absence of any documentary proof. Of course herein this case the claimant was not a driver. But the same rationale can be applied in case of the claimant also. That being so, no fault can be found with the finding, so recorded by the learned Tribunal.

16. It also appears that while dealing with the Issue No.(iv), the learned

Tribunal has found that the pick-up van, bearing Registration AS-09C-6169 was possessing all required documents, such as, RC book (Exhibit-P16), fitness certificate (Exhibit-P-17), certificate under Section 3(1)/66 of the M.V. Act (Exhibit-P-18), insurance policy (Exhibit-P-19) and driving licence of the driver (Exhibit-P-20) and also the learned Tribunal has found that the certificate of registration of the Oil Tanker, bearing Registration No.MN-01-6159 was exhibited as Exhibit-P-10 and the national permit was exhibited as Exhibit-P-11 and the certificate of fitness as Exhibit-P-12 and the certificate of insurance as Exhibit-P-13 and the driving licence of the driver of the Oil Tanker as Exhibit-P-14 and driving training certificate required for Oil Tanker's driver also exhibited as Exhibit-P18 and thereafter, decided the issue in affirmative. In view of the materials placed on record and also in view of the submission of learned Advocates of both sides, the finding of the learned Tribunal appears to be justified and reasonable and backed by the materials placed on record.

17. While deciding the Issue No. (vi), the learned Tribunal has arrived at a finding that the claimant had suffered 30% permanent disability, in respect of the right arm, in view of Disability Certificate (Exhibit-P-16), exhibited by the claimant. It appears that the Disability Certificate was not issued by a Medical Board. But, the same has not been seriously disputed by the respondent side and thereafter, the learned Tribunal, having assessed the monthly income of the driver was Rs. 6000/-, (Rupees Six Thousand) and his disability at 30% and his age as 38 years, assessed the quantum of compensation asunder:-

- (i) Loss of earning on account of permanent disability :-**Rs.3,24,000/-** i.e. 30% of Rs. 6000 x 12 x 15 (multiplier)
- (ii) Medical Expenses:-**Rs.13,764/-**
- (iii) Pain, shock and suffering etc. **Rs.30,000/-**

(iv) Incidental Expenses during treatment: **-Rs.50,000/-**

(v) Future Medical Expenses:- **Rs.50,000/-**

Thereafter, the learned Tribunal had determined the total quantum of Rs.4,67,764/-(Rupees Four Lacs Sixty Seven Thousand Seven Hundred and Sixty Four) only and accordingly, ordered the appellant (respondent No.3 and 4) to pay compensation to the claimant.

18. It is to be mentioned here that while dealing with the quantum of compensation, the Hon'ble Supreme Court in **Raj Kumar Vs. Ajay Kumar 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)

19. Bearing aforesaid proposition of law in mind, now an endeavor will be made to assess the quantum of compensation, which the claimant here in this case is entitled to. It appears from the record that the claimant had spent a sum of **Rs. 13,764/**(Rupees Thirteen Thousand Seven Hundred Sixty Four)

only, in treatment of the injuries sustained by him in the said accident. The appellant had not disputed the same. Therefore, the claimant will entitle to the aforesaid amount i.e. **Rs. 13,764/**(Rupees Thirteen Thousand Seven Hundred Sixty Four). Besides, it appears that the claimant, having suffered grievous injuries on his person, took treatment at Golaghat Civil Hospital and thereafter at Assam Medical College Hospital and having taken treatment at there for a period of 10 days, he also took treatment at Bokajan CHC. The learned court below has awarded a sum of **Rs. 50,000/** under the head of incidental expenses. In the given facts and circumstances, the sum so awarded by the learned Tribunal appears to be reasonable and justified. And as such award of a sum of **Rs. 63,764/** under head No.(i) appears to be just and reasonable.

20. 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 38 years old. And by profession he was a businessman and the learned Tribunal had assessed his monthly income at Rs.6000/-. Further it appears that the learned Tribunal has assessed the disability of the claimant at 30%, but, without indicating the disablement as permanent or partial disablement, only on the basis of Disability Certificate.

21. Now, what left to be seen is whether assessment of loss of earning of the claimant on account of permanent disability, by the learned Tribunal, at **Rs.3,24,000/-** in the given fact and circumstances, is justified or not. While dealing with the issue, in the case of **Raj Kumar** (supra) Hon'ble Supreme Court has held that:-

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 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).

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 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.

(v) 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. Thus, it appears from the aforesaid case law that in order to ascertain the effect of permanent disability on the actual earning following three steps are to be taken :-

- (i) 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 disability,**
- (ii) Secondly, it has to be ascertained his avocation, profession and nature**

of work before the accident, as also his age. In this regard following three steps has to be adopted:-

- (a) the claimant is totally disabled from earning any kind of livelihood, or
- (b) 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
- (c) 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.

23. But, from a perusal of the impugned judgment and order in the instant case, it does not appears that the learned Tribunal had adopted the aforementioned course of action while determining the effect of permanent disability on the future earning. Therefore, this court is unable to endorse the approach of the learned Tribunal.

24. It is not in dispute that the Motor Vehicle Act is a beneficial piece of legislation and its provisions have to be interpreted keeping in mind the objective sought to be achieved by the legislature. But, even then this court is unable to endorse the approach, which the learned Tribunal had adopted. There must be some sort of evidence to suggest that on account of the injuries sustained by the claimant that lead to his disability to affect his income. The evidence of the claimant is worth mentioning here in this context wherein he had admitted that he can do petty business sitting in a place.

25. Now, coming to the quantum of compensation under herd No. (ii)(a) of para No. 18, I find that the accident took place on 31.10.2013, the claimant was hospitalized and he had undergone treatment at Assam Medical College Hospital

till 10.11.2013. Thereafter, also as outdoor patient, he continued to take treatment at Assam Medical College Hospital, Dibrugarh and Bokajan CHC. So, he could not return to his avocation at least for two months, given the nature of his avocation. Thus, to the considered opinion of this court the claimant is entitled to **Rs. 12,000/-** under Head No.(ii) (a), being his monthly income was Rs.6000/ per month.

26. Now coming to the quantum of compensation to be awarded under the head No. (ii) (b), I find from the record of the learned Tribunal, specially from the Exhibit-P-16, that the claimant has suffered physical disability at 30% in relation to his right forearm. Since his disability is in relation to his right forearm only, the corresponding functional permanent disability, with reference to the whole body, is deduced at 25%. And having assessed his functional permanent disability, with reference to whole body at 25%, the loss of earning capacity is assessed at 25%, since he suffered fracture of humerus of his right hand. So, his loss of future earning is assessed as under:-

- | | |
|--|----------------|
| (a) Annual income before accident:- | =Rs. 72,000/- |
| (b) Loss of future earning capacity per annum (25% of the prior annual income) | =Rs. 18,0000/- |
| (c) Multiplier applicable with reference to his age is | = 15 |
| (d) Loss of future earning:- (18,000/ x 15) | =Rs. 2,70,000/ |

Thus, the quantum of compensation under head No.(ii) (b), is assessed at **Rs.2,70,000/.**

27. There is also no medical evidence to suggest that the claimant has to

incur medical expenses in future for his treatment. Even then the learned Tribunal had awarded a sum of Rs.50,000/ under this head. Since the claimant had sustained grievous injuries involving fracture of humerus of his right hand, the sum awarded by the learned Tribunal on this count appears to be not so unreasonable. Therefore, this court is of the view that the claimant will be entitled to a sum of **Rs.50,000/** as compensation under the Head No. (iii).

28. Now, coming to the quantum of compensation under the Head No. (iv), it appears from the evidence of the injured/claimant that on 31.10.2013, the claimant was hospitalized and he had undergone treatment at Assam Medical College Hospital till 10.11.2013. Thereafter, also as outdoor patient he continued to take treatment at Assam Medical College Hospital, Dibrugarh and Bokajan CHC due to the injuries sustained by him in the motor vehicle accident. He was 38 years old at the material time of accident. Having regard to above, the sum of **Rs.30,000/**, awarded as compensation under this head by the learned Tribunal, this court is of the view that the same is just and proper amount of compensation.

29. 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 be entitled to any compensation under the head Nos. (v) and (vi). However, we would like to 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.**

30. Thus, the claimant is entitled to the total amount of **Rs.4,50,764/-- (Rupees four lakhs fifty thousand seven hundred & sixty four)** 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.

31. 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.

32. In the result, I 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.4,50,764- (Rupees four lakhs fifty thousand seven hundred & sixty four)** to the claimant within 30 days from today, adjusting the amount which has already been paid. Send down the record of the learned Tribunal forthwith with a copy of this judgment and order. The parties have to bear their own cost.

Sd/-
JUDGE

Comparing Assistant